IN THE SUPREME COURT OF THE STATE OF DELAWARE

GRAYLIN L. HALL,	§	
	§	No. 113, 2006
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. ID No. 0001001994A
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: September 29, 2006
Decided: October 27, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

O R D E R

This 27th day of October 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Graylin L. Hall, filed an appeal from the Superior Court's February 3, 2006 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a) and from the Superior Court's February 23, 2006 order denying his motion to alter or amend the judgment or, in the alternative, for reargument. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In 2000, Hall was found guilty by a Superior Court jury of Assault in the Second Degree, Burglary in the Second Degree and

Possession of Burglar's Tools. He was sentenced as a habitual offender[1] to life in prison on the burglary conviction and was sentenced on the remaining convictions to a total of 6 years of Level V incarceration. This Court affirmed Hall's convictions and sentences on direct appeal.[2]

(3) In this appeal, Hall claims that: a) his burglary sentence is illegal because there was insufficient evidence to support his status as a habitual offender; b) his burglary sentence is unconstitutional because the Superior Court judge failed to properly instruct the jury on the element of physical injury; c) the Superior Court improperly ruled that his Rule 35(a) motion should have been brought as a postconviction motion pursuant to Rule 61; and d) the Superior Court abused its discretion by denying his motion to alter or amend the judgment or, in the alternative, motion for reargument as untimely.

(4) Hall's first claim is that his sentence as a habitual offender is illegal because the State presented insufficient evidence of the requisite number of predicate offenses. This claim was subjected to extensive analysis in Hall's direct appeal. There, this Court held that, under *Morales v. State*,[3] "the State need offer only unambiguous documentary evidence of a

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[1] Del. Code Ann. tit. 11, § 4214(b).
[2] *Hall v. State*, 788 A.2d 118 (Del. 2001).
[3] 696 A.2d 390 (Del. 1997).

prior predicate conviction, not live witnesses, and not a particular or exclusive type of documentary evidence. . . . Here, . . . it is clear . . . that Hall pleaded guilty to two specific counts of burglary in the second degree, which are indeed enumerated offenses under Section 4214(b). . . . [T]here was substantial evidence to support the Superior Court's conclusion that the State had met its burden of proof in establishing beyond a reasonable doubt the predicate offenses required under [the habitual offender statute]."[4] This holding of the Court constitutes the law of the case unless Hall can demonstrate clear error or an important change in circumstances.[5] In the absence of any such evidence, we conclude that Hall's first claim is without merit.

(5) Hall's second claim is that his sentence is unconstitutional because the Superior Court judge failed to instruct the jury on the element of physical injury. This claim is incorrect as a matter of law. Second degree burglary is a predicate offense for purposes of the habitual offender statute regardless of whether it involves physical injury.[6] Moreover, evidence of prior convictions for purposes of habitual offender status is not submitted to

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[4] *Hall v. State*, 788 A.2d at 125-29.
[5] *Bailey v. State*, 521 A.2d 1069, 1093 (Del. 1987).
[6] *Williams v. State*, 539 A.2d 164, 174-75 (Del. 1988).

the jury, but, rather, to the judge.[7] We, therefore, conclude that Hall's second claim is without merit.

(6) Hall's third claim is that the Superior Court improperly ruled that his Rule 35(a) motion should have been brought as a postconviction motion pursuant to Rule 61. Even assuming error on the part of the Superior Court, there was no prejudice to Hall. Because Hall has failed to demonstrate that his sentence exceeds the statutorily-authorized limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize, he is not entitled to relief under Rule 35(a).[8] We, therefore, conclude that Hall's third claim is without merit.[9]

(7) Hall's fourth, and final, claim is that the Superior Court abused its discretion by denying as untimely both his motion to alter or amend the judgment and his motion for reargument. If viewed as a motion for

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[7] *Morales v. State*, 696 A.2d 390 (Del. 1997).
[8] *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).
[9] *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (This Court may affirm a judgment of the Superior Court on grounds different from those relied upon by the Superior Court).

reargument, Hall's motion was untimely.[10] If viewed as a motion to alter or amend the judgment, Hall's motion was timely.[11] However, because there is no merit to Hall's claim that his habitual offender sentence was illegal and unconstitutional, there were no valid grounds for that motion and the Superior Court properly denied it. We, therefore, conclude that Hall's fourth claim is also without merit.[12]

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

[10] Super. Ct. Civ. R. 59(e) and 6(a).
[11] Super. Ct. Civ. R. 59(d) and 6(a).
[12] *Unitrin, Inc. v. American General Corp.*, 651 A.2d at 1390.