

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
)	
v.)	I.D. No. 0405021313
)	
CHRISTOPHER S. HERRING,)	
)	
Appellee.)	

Submitted: October 22, 2007

Decided: May 12, 2008

*Motion for Postconviction Relief.
Summarily Dismissed.*

OPINION

Appearances:

Christopher S. Herring, Pro Se.

Stephen M. Walther, Esquire, Deputy Attorney General.
Attorney for the State of Delaware.

JOHN E. BABIARZ, JR., JUDGE

In May 2005, Defendant Christopher Herring was found guilty of Robbery First Degree and three related felonies. On the State's motion, he was declared by the Court to be a habitual offender and sentenced to 50 years in prison.¹ His conviction and sentence were affirmed on appeal.² Defendant has now filed a Motion for Postconviction Relief, alleging eight instances of reversible error. For the reasons explained below, the Motion for Postconviction Relief is dismissed.

The relevant facts are as follows. Early one morning in May 2004, Defendant sat in a red sports car in the parking lot of the Allendale Apartments in New Castle, Delaware. When Patricia Taylor came out of her building and headed for her car, Defendant got out of his car and walked toward her, brandishing a sawed-off shotgun and demanding that she give him her belongings. He took her purse, got back in his car and drove away. Taylor called the police, who canvassed the area looking for a car that fit the description given to them by Taylor. They found such a car in the parking lot at Cedarwood Apartments in Newark and set up a surveillance team. Two black men came out of one of the buildings and got into the car. They were detained shortly thereafter, and one of the men identified himself as Christopher Herring. Following an investigation, Herring was arrested for the robbery of Patricia Taylor.

¹DEL. CODE ANN. TIT. 11, § 4212(a).

²*Herring v. State*, 2006 WL 3062899 (Del. Supr.).

At trial, he was found guilty of Robbery First Degree, Possession of a Firearm During the Commission of a Felony, Possession of a Destructive Weapon and Receiving Stolen Property.

Defendant argues first that the Court erred in denying his motion to suppress based on the failure to give *Miranda* warnings prior to taking Defendant's statement. On direct appeal, the Delaware Supreme Court affirmed this Court's decision, and it is therefore barred as having been formerly adjudicated.³ Defendant makes a related claim that the search warrant was defective, but he does not explain the alleged insufficiency. Pursuant to Rule 61(a)(1), a defendant must provide an adequate factual and legal basis for his claims. Defendant has not done so for his search warrant claim, and it therefore has no merit.

Defendant asserts that this Court abused its discretion in failing to investigate the transcripts of the suppression hearing, which he claims were tampered with or altered in some way. He alleges that the transcripts do not accurately reflect the testimony of the police officers who appeared at the hearing. He has not complied with the requirement of Rule 61(a)(1) that a defendant provide a sufficient factual basis for his claims. Without this basis, this claim is a conclusory assertion that does not withstand analysis.

³See Rule 61(i)(4).

Defendant argues that as a habitual offender he is not subject to consecutive sentences and that the Court erred in imposing a 25-year sentence for Robbery and a consecutive 25-year sentence for PFDCF. This claim has no legal basis because the Delaware Supreme Court has affirmed consecutive sentences imposed under Del. Code Ann. tit. 11, § 4214(a).⁴

Defendant argues that the State presented insufficient evidence to have him declared a habitual offender, and that the Court erred in sentencing him as such. At the sentencing hearing, this Court found Defendant to be a habitual offender pursuant to 11 Del. Code § 4214(a) and sentenced him to 50 years in prison to be followed by probation. This determination was based on the following convictions, which were demonstrated by certified court documents from the respective courts: Armed Robbery, New Jersey Superior Court, February 22, 1985; Receiving Stolen Property, Superior Court of Delaware, June 13, 1994; Receiving Stolen Property, Superior Court of Delaware, November 18, 1998. The Robbery First Degree served as the fourth and subsequent offense warranting habitual status under § 4214(a). The State presented “unambiguous documentary evidence” of Defendant’s prior convictions, in satisfaction of the statute and as specified in *Hall v. State*.⁵ Defendant’s

⁴See, e.g., *Hawkins v. State*, 2002 WL 384436 (Del. Supr.).

⁵788 A.2d 118, 128 (Del. 2001). See also *Morales v. State*, 696 A.2d 390, 394 (Del. 1997) (holding that a declaration of a defendant’s status as habitual offender must be free from

contentions regarding his sentencing have no merit.

Defendant asserts that his trial attorney was ineffective for not knowing that a weapon is a component of a Robbery First Degree charge. This claim has no merit because the State presented evidence that Defendant used a saw-off shotgun to threaten and rob the victim. This claim has no merit.

For all these reasons, Defendant's Motion for Postconviction Relief is *Summarily Dismissed*.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEB,jr/bjw/ram
Original to Prothonotary

legal error and supported by substantial evidence in the record.).