

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE D. JOHNSON,	§
	§
Defendant Below-	§ No. 275, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 92006336DI
Plaintiff Below-	§
Appellee.	§

Submitted: September 19, 2008

Decided: December 11, 2008

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 11th day of December 2008, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Andre Johnson, filed this appeal from the Superior Court's denial of his motion for correction of sentence. We find no merit to Johnson's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that a Superior Court jury convicted Johnson in 1994 of two counts each of second degree burglary, second degree conspiracy, and misdemeanor theft. The jury also found him guilty of other related offenses, including weapon offenses. Upon motion by the State,

the Superior Court declared Johnson to be a habitual offender. The Superior Court sentenced him on one burglary conviction to life imprisonment. On his remaining convictions, the Superior Court sentenced Johnson to a total period of nineteen years imprisonment. In May 1995, Johnson voluntarily dismissed his direct appeal to this Court. Thereafter, in April 2008, Johnson filed a motion for correction of sentence, which the Superior Court denied. This appeal followed.

(3) Johnson raises three issues in his opening brief on appeal. First, he contends that the Superior Court erred when it sentenced him to only one life sentence as a habitual offender, rather than imposing the two life sentences for which he was eligible. Johnson contends that this error makes his entire sentence illegal and that double jeopardy principles would prohibit the Superior Court, upon resentencing, from imposing any sentence greater than eight years for each of his burglary convictions. Second, Johnson argues that his life sentence as a habitual offender is unconstitutional because the issue of his “incurability” was not submitted to a jury and proven beyond a reasonable doubt. Finally, Johnson contends that Delaware’s habitual offender statute is unconstitutional.

(4) We find no merit to any of Johnson's contentions. The constitutionality of the Delaware habitual offender statute is well-settled.¹ As this Court previously has noted, the habitual offender statute reflects a rational legislative judgment that offenders who have been repeatedly incarcerated, released and convicted of subsequent offenses are incorrigible and need to be incapacitated.² The United States Supreme Court has upheld this same principle.³

(5) Moreover, the United States Supreme Court's decision in *Apprendi v. New Jersey*⁴ does not compel a different conclusion. In that case, the Court held that any fact which would expose a defendant to a possible sentence in excess of the statutory maximum must be found by a trier of fact beyond a reasonable doubt. The Court's holding, however, specifically exempts prior convictions from this rationale.⁵ Thus, a defendant's record of prior felony convictions does not have to be submitted to a jury and proven beyond a reasonable doubt, as Johnson mistakenly contends.

¹ See *Williams v. State*, 539 A.2d 164, 180 (Del. 1988).

² *Siple v. State*, 701 A.2d 79, 85 (Del. 1997).

³ *Ewing v. California*, 538 U.S. 11, 30 (2003).

⁴ 530 U.S. 466 (2000).

⁵ *Id.* at 490.

(6) Finally, we find no legal basis for Johnson’s argument that the Superior Court had no discretion to sentence him to only one life sentence instead of two. Despite being eligible for life sentences on both of his burglary convictions, the State had discretion to seek habitual offender sentencing as to only one of those convictions.⁶ When asked by the sentencing judge, the State reflected that it only sought the imposition of one life sentence. Consequently, the sentencing judge was limited to imposing only one life sentence.⁷

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁶ *Reeder v. State*, 2001 WL 355732 (Del. Mar. 6, 2001) (noting that the State had discretion to seek habitual offender status “for each count or none.”)

⁷ *Id.* (when “the State initiates the habitual offender process, the [trial] court is limited to granting only the result sought by the State.”).