

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ACAY LAMPKINS,	§
	§ No. 162, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0606021907
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 24, 2010  
Decided: November 22, 2010

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

**ORDER**

This 22<sup>nd</sup> day of November 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) In March 2007, the defendant-appellant, Acay Lampkins, pleaded guilty to Assault in the Second Degree. He was sentenced as a habitual offender to 8 years of Level V incarceration, to be followed by 6 months of Level II probation. Soon after pleading guilty, Lampkins filed a motion for postconviction relief, which was denied by the Superior Court. On appeal, we remanded the matter to the Superior Court for consideration of additional claims made by Lampkins.<sup>1</sup>

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<sup>1</sup> *Lampkins v. State*, Del. Supr., No. 369, 2007, Steele, C.J. (Dec. 29, 2008).

(2) On remand, the Superior Court again denied the motion and, again, Lampkins appealed. On appeal, we affirmed the Superior Court's judgment of conviction.<sup>2</sup> However, we also agreed with the State's position that its original motion to have Lampkins declared a habitual offender was defective<sup>3</sup> and, therefore, vacated Lampkins's sentence and again remanded the matter to the Superior Court, this time for resentencing. On remand, the State filed a corrected motion to have Lampkins declared a habitual offender. The Superior Court granted the motion, resulting in the instant appeal.

(3) In this appeal, Lampkins claims that a) the State improperly exceeded this Court's order of remand by correcting its original motion to have him declared a habitual offender; b) the Superior Court erred by declaring him a habitual offender on the basis of the State's corrected motion; and c) the State was prevented from filing a corrected motion after acknowledging that the original one was defective.

(4) The transcript of the hearing that took place in the Superior Court following this Court's September 18, 2009 remand reflects the following. Lampkins's attorney represented that, while Lampkins was "concerned" that the State had filed a corrected motion, he knew of no authority preventing the State

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<sup>2</sup> *Lampkins v. State*, Del. Supr., No. 369, 2007, Steele, C.J. (Sept. 18, 2009).

<sup>3</sup> The motion failed to set forth 3 prior felony offenses as required by Del. Code Ann. tit. 11, §4214(a).

from filing such a motion. As a result, Lampkins's counsel declined to object to the State's corrected motion. When asked for further comment, Lampkins declined, stating that his counsel had "said it all."

(5) We have reviewed our Order dated September 18, 2009. The Order stated that, "[h]aving reviewed the parties' contentions, we conclude that it is necessary to vacate the Superior Court's sentencing order and remand this matter for a new sentencing hearing." We find nothing in the Order preventing the State from presenting a corrected motion to have Lampkins declared a habitual offender. Moreover, the transcript of the new sentencing hearing reflects that Lampkins, through counsel, waived his right to object to the State's corrected motion.<sup>4</sup> We, therefore, conclude that Lampkins's claims are without merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.<sup>5</sup>

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>4</sup> *MacDonald v. State*, 816 A.2d 750, 756 (Del. 2003).

<sup>5</sup> We note that Lampkins raises a claim of ineffective assistance of counsel for the first time in his reply brief. We decline to address arguments that were not raised in his opening brief. Supr. Ct. R. 14(c).