

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAUL W. SOMMERS,	§
	§ No. 233, 2010
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr. I.D. No. 0801019271
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: November 3, 2010
Decided: December 20, 2010

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

O R D E R

This 20th day of December 2010, it appears to the Court that:

1) The defendant-appellant, Paul W. Sommers (“Sommers”), was charged by Indictment with, *inter alia*, Possession of a Firearm by a Person Prohibited (“PFBPP”). Sommers entered a guilty plea to the PFBPP count. The Superior Court sentenced Sommers for PFBPP, as follows: eight years imprisonment suspended after serving six years and eight months of incarceration at Level V for an eighteen-month term of probation at Level III. The Superior Court noted in its sentencing order that, as to the PFBPP, “5 years at Level 5 [is a] minimum” and further that “[t]he five year term of incarceration regarding the PDWBPP IN08-01-2878 is a

minimum/mandatory term of incarceration pursuant to 11 *Del. C.* 1448, due to the fact that the defendant has two prior violent felony convictions.”

2) The record reflects that Sommers had been previously convicted of Vehicular Assault in the First Degree¹ in 1993. He was convicted of Unlawful Sexual Penetration in the Second Degree in 1999.² Sommers does not challenge the separate existence and validity of these two prior felony convictions. At the time Sommers committed the current crime of PFBPP, both of these prior offenses were included in the list of those violent felonies that could be used to enhance a sentence for PFBPP.³

3) The only issue in this direct appeal is whether a conviction for a felony listed in title 11, section 4210(c) of the Delaware Code that occurred prior to the 1996 enactment of section 4210(c) could be used as a predicate conviction when applying the enhanced sentencing provision in title 11, section 1448(e)(1)(c). Whether Sommers’ 1993 conviction constitutes a predicate felony under title 11, section 1448(e)(1) is a question of law which is reviewed *de novo* by this Court.⁴

¹ Del. Code Ann. tit. 11, § 629 (1993).

² Del. Code Ann. tit. 11, § 771 (1999). Sommers was convicted of Kidnapping in the Second Degree at the same time. Del. Code Ann. tit. 11, § 783 (1999).

³ Del. Code Ann. tit. 11, § 4210(c).

⁴ *E.g.*, *Wehde v. State*, 983 A.2d 82, 85 (Del. 2009) (citing *Tony Ashbury & Son, Inc. v. Kent County Reg’l Planning Comm’n*, 962 A.2d 235, 239 (Del. 2008) (“We review questions of law including the interpretation of a statute, *de novo*.”)).

4) Both parties agree that, because of his prior felony convictions, Sommers was subject to the penalty provisions set out in title 11, section 1448(e)(1). The parties disagree on whether Sommers' record reflects one or two convictions for prior violent felonies. At issue is the interpretation of the phrase in section 1448(e)(1)(c), "been convicted on 2 or more separate occasions of a violent felony." The State contends that Sommers' two prior convictions satisfied the statutory language. Sommers asserts that the plain meaning of title 11, section 1448(e)(1)(c) provides that a person needs to be convicted on two or more separate "occasions" of a "violent" felony. According to Sommers, he does not qualify for an enhanced sentencing penalty because on the "occasion" of his conviction for Vehicular Assault in the First Degree it was not defined as a "violent" felony.

5) Sommers argues that the General Assembly's use of the word "occasion" and the term "violent felony" reflect its intention that only prior convictions that occurred after 1996 are to be used to subject a defendant to the enhanced provisions in section 1448(e)(1)(c). The sentencing judge rejected Sommers' argument that the language in section 1448(e)(1)(c) should be interpreted to exclude any pre-1996 conviction for a crime now

listed in title 11, section 4210(c).⁵ We agree. The intention of the General Assembly is reflected in the unambiguous language of the statute.

6) When applying section 1448(e)(1)(c), the convictions that are properly used as predicates for an enhanced sentence must arise from separate criminal acts and be for the specific crimes currently listed in section 4210(c).⁶ Reading subsection 1448(e)(1)(c) and the definition of “violent felony” in subsections 1448(e)(3) and 4210(c), *in pari materia*, Sommers’ record reflected two prior violent felony convictions, to wit, Vehicular Assault in the First Degree and Unlawful Sexual Penetration in the Second Degree. Since Sommers came within the terms of the unambiguous statutory requirement for an enhanced penalty, the Superior Court was required to apply the statute as written.⁷ We hold that Sommers’ sentencing order properly denominates a portion of his term of imprisonment as the five-year minimum sentence required by section 1448(e)(1)(c).

⁵ Once the Superior Court notified him that he was subject to the five-year minimum sentence under title 11, section 1448(e)(1)(c) of the Delaware Code, Sommers was given the opportunity to withdraw his guilty plea. He expressly declined and went forward with sentencing.

⁶ See *Ross v. State*, 990 A.2d 424, 431 (Del. 2010).

⁷ See *id.* at 430-31.

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

BY THE COURT:

/s/ Randy J. Holland
Justice