

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CALVIN A. JOHNSON,	§
	§
Defendant Below,	§
Appellant,	§ No. 138, 2001
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. ID No. 9804000177
Plaintiff Below,	§
Appellee.	§

Submitted: December 18, 2001

Decided: December 20, 2001

Before VEASEY, Chief Justice, WALSH and HOLLAND, Justices.

ORDER

This 20<sup>th</sup> day of December 2001, upon consideration of the briefs of the parties it appears to the Court that:

(1) In this appeal from the Superior Court's denial of postconviction relief, the appellant, Calvin A. Johnson ("Johnson"), contends that the Superior Court erred in denying his claim for postconviction relief based on ineffective assistance of counsel and in sentencing him as a habitual offender without Johnson being present.

(2) It appears from the record that this is an appeal from the Superior Court's denial of Johnson's second motion for postconviction relief. In his first petition under Super. Ct. Crim. R. 61, which Johnson apparently filed *pro se*, he

also asserted a claim of ineffective assistance of counsel. That petition was denied and Johnson did not appeal.

(3) Although the Superior Court considered the merits of Johnson's claims in his second postconviction motion, we conclude that the renewed ineffective assistance of counsel claim is procedurally barred, pursuant to Superior Court Criminal Rule 61(i)(4), as a claim adjudicated in a previous motion for postconviction relief. With respect to Johnson's claim of improper sentencing as an habitual offender without his being present, although not specifically adjudicated in the previous motion for postconviction relief, is not a claim that qualifies as one entitled to reconsideration "in the interests of justice" under Rule 61(i)(4). It is clear from the plea colloquy and the plea agreement that Johnson admitted that he was an habitual offender subject to sentencing pursuant to 11 *Del. C.* § 4314(a) and was fully aware that the State would move for his sentencing as an habitual offender. The subsequent entry of the formal adjudication of habitual offender status after the sentencing caused Johnson no prejudice and he is thus unable to satisfy that requirement. *Cf. Strickland v. Washington*, 466 U.S. 668 (1984).

(4) Finally, we note that while his original counsel may have misinformed Johnson concerning the minimum mandatory consequences of his habitual offender

sentence, the sentence imposed conformed to the plea agreement in every respect. Again, Johnson suffered no prejudice because of any incorrect advice. We conclude that the Superior Court correctly denied Johnson's second motion for postconviction relief and accordingly affirm.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh  
Justice