

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN F. WHITEMAN,	§
	§
Defendant Below-	§ No. 40, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN89-03-1597
Plaintiff Below-	§
Appellee.	§

Submitted: September 28, 2001

Decided: October 23, 2001

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

ORDER

This 23rd day of October 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Benjamin F. Whiteman, filed an appeal from the January 10, 2001 order of the Superior Court denying his motion for reduction/modification of sentence. We find no merit to the appeal.

Accordingly, we AFFIRM.

(2) In this appeal, Whiteman claims that he was improperly sentenced to life in prison as an habitual offender in violation of double jeopardy and his due process rights. He bases this claim on his allegations that the Superior Court,

first, conspired with the State to alter his 1987 written plea agreement, resulting in his pleading guilty twice for the same crime,¹ and, second, improperly failed to afford him a hearing on his status as an habitual offender.

(3) The record reflects that, in 1982, Whiteman was convicted of Robbery in the Second Degree; in 1983, he was convicted of Possession of a Deadly Weapon by a Person Prohibited; and, in 1985, he was convicted of Escape in the Second Degree. On April 14, 1987, Whiteman pleaded guilty to Burglary in the Second Degree and was sentenced to 10 years at Level V, to be suspended after 3 years for 7 years of probation. On June 19, 1987, the date of sentencing, the Superior Court judge signed an order declaring Whiteman to be an habitual offender, as was agreed to in Whiteman's signed plea agreement. The Superior Court declined to sentence Whiteman to life in prison, as was authorized by statute,² and instead sentenced him to a 10-year prison term, to be suspended for probation after 3 years, in accordance with the recommendation of the State. In denying Whiteman's later motion for a reduction in his sentence, the Superior Court noted that Whiteman would most likely receive a term of life imprisonment if he committed another felony. In 1989, Whiteman was convicted

¹First on April 14, 1987 and again on June 19, 1987.

²11 Del. C. § 4214(a).

by a Superior Court jury of Unlawful Sexual Penetration in the Third Degree and was sentenced to life in prison as an habitual offender,³ based upon the June 19, 1987 order of the Superior Court. Later, Whiteman unsuccessfully pursued a direct appeal of his conviction and sentence as well as two motions for postconviction relief.⁴

(4) Whiteman's claim that he was sentenced improperly as an habitual offender in 1989 is without merit. We have reviewed the record, which includes the original 1987 documents—the guilty plea form, plea agreement, notice of nolle prosequi,⁵ order declaring Whiteman to be an habitual offender, sentencing sheet and sentencing order. There is no evidence that the Superior Court, in conspiracy with the State, altered the documents resulting in Whiteman's pleading guilty twice to the same crime. Furthermore, it was not necessary for the Superior Court to hold a hearing on Whiteman's habitual offender status in

³11 Del. C. § 4214(a).

⁴*Whiteman v. State*, Del. Supr., No. 455, 1989, Walsh, J., 1991 WL 12112 (Jan. 11, 1991) (ORDER); *Whiteman v. State*, Del. Supr., No. 445, 1993, Walsh, J., 1994 WL 35364 (Jan. 31, 1994) (ORDER); *Whiteman v. State*, Del. Supr., No. 485, 1996, 1997 WL 90776 (Feb. 24, 1997) (ORDER).

⁵In conjunction with Whiteman's guilty plea, the State dismissed a companion charge of Theft Under \$300.

1987, since he agreed to habitual offender status in his signed plea agreement.⁶

Finally, at the sentencing hearing following Whiteman's 1989 conviction, the Superior Court properly relied on its previous 1987 order when it sentenced Whiteman to life imprisonment as an habitual offender.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

⁶*Parker v. State*, Del. Supr., No. 244, 2000, Veasey, C.J., 2000 WL 1152406 (July 26, 2000) (ORDER) (there was no need for a hearing on habitual offender status when it was agreed to in defendant's signed plea agreement).