

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HUBERT E. PARKER,	§
	§
Defendant Below-	§ No. 193, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. S99-01-0063, 0065,
Plaintiff Below-	§ 0067
Appellee.	§ S99-04-0266, 0270,
	§ 0272
	§ S99-02-0603

Submitted: September 4, 2001

Decided: October 15, 2001

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

**ORDER**

This 15<sup>th</sup> 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, Hubert E. Parker, filed an appeal from the April 9, 2001 order of the Superior Court denying his motion to correct an illegal sentence.<sup>1</sup> We find no merit to the appeal. Accordingly, we **AFFIRM**.

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<sup>1</sup>Super. Ct. Crim. R. 35(a).

(2) In this appeal, Parker claims that his sentence for third degree burglary as a lesser-included offense of second degree burglary was improper because: a) the second degree burglary charge was dismissed by the prosecutor; b) the second degree burglary charge did not appear in the plea agreement; c) the sentence subjected him to double jeopardy; and d) the sentence amounted to an enhancement of punishment in violation of due process.

(3) In December 1998, Parker was arrested for two burglaries and other related offenses. He was arrested again in February 1999 for two drug offenses. In March 1999, Parker was arrested a third time for another burglary and related offenses. On January 24, 2000, Parker entered guilty pleas to seven of the numerous outstanding charges against him, including one count of Burglary in the Third Degree as a lesser-included offense of Burglary in the Second Degree.<sup>2</sup> He was sentenced to 5 years incarceration at Level V as an habitual offender<sup>3</sup> for that conviction. Parker did not file a direct appeal of his convictions or sentences, but did file three separate postconviction motions challenging the third degree burglary conviction and sentence. The

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<sup>2</sup>Pursuant to Super. Ct. Crim. R. 11(e) (1) (C).

<sup>3</sup>Pursuant to 11 Del. C. § 4214(a).

Superior Court's denials of those motions were affirmed by this Court on appeal.<sup>4</sup>

(4) Parker's claims are without merit. He contends that the second degree burglary charge was dismissed by the prosecutor and does not appear in the plea agreement, but those contentions are contradicted by the record. The plea agreement, plea colloquy, docket sheet and sentencing order clearly reflect that the third degree burglary charge to which Parker pleaded guilty was deemed to be a lesser-included offense of second degree burglary.<sup>5</sup> Parker further contends that his sentence violates double jeopardy and enhances his sentence in violation of due process, but he presents no legal or factual support for those contentions. Moreover, Parker entered into a plea agreement with the State. During his plea colloquy, Parker stated that he had read the plea agreement, had signed it and understood it. Responding specifically to questions from the Superior Court judge, Parker stated that he

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<sup>4</sup>*Parker v. State*, Del. Supr., No. 244, 2000, Veasey, C.J., 2000 WL 1152406 (July 26, 2000) (ORDER); *Parker v. State*, Del. Supr., No. 341, 2000, Walsh, J., 2001 WL 213389 (Feb. 26, 2001) (ORDER); *Parker v. State*, Del. Supr., No. 542, 2000, Berger, J., 2001WL 292596 (Mar. 14, 2001) (ORDER).

<sup>5</sup>Another second degree burglary charge was dismissed by the prosecutor as part of the plea agreement (S99-01-0060), but that had no effect on the charge to which Parker pleaded guilty (S99-01-0063).

understood he was pleading guilty as an habitual offender to third degree burglary as a lesser-included offense of second degree burglary and that he would be serving 5 years at Level V for that conviction. In the absence of clear and convincing evidence to the contrary, Parker is bound by the representations he made in his signed plea agreement and during his plea colloquy.<sup>6</sup> To the extent that Parker seeks to re-argue his previous claim that the 5-year sentence exceeds the Truth in Sentencing guidelines or seeks to argue that the sentence exceeds the statutory penalty, those claims are barred as previously adjudicated.<sup>7</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.<sup>8</sup>

BY THE COURT:

s/Joseph T. Walsh  
Justice

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<sup>6</sup>*Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).

<sup>7</sup>*Parker v. State*, Del. Supr., No. 244, 2000, Veasey, C.J., 2000 WL 1152406 (July 26, 2000) (ORDER); *Brittingham v. State*, Del. Supr., 705 A.2d 577, 579 (1998).

<sup>8</sup>On September 7, 2001, Parker filed a “Motion-Credit for Time Served.” This pleading is hereby stricken as a non-conforming document. Supr. Ct. R. 34.