

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY MCCLEAF,)
) No. 684, 2002
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for Kent County
)
 STATE OF DELAWARE,) Cr ID. No. 9910005729
)
 Plaintiff Below,)
 Appellee.)

Submitted: December 16, 2003
Decided: February 5, 2004

Before **HOLLAND**, **BERGER**, and **STEELE**, Justices.

ORDER

This 5th day of January 2004, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. In February 2000, a Superior Court judge found Anthony McCleaf guilty of Shoplifting, Forgery in the Second Degree, and Criminal Impersonation. The judge declared McCleaf a habitual offender. The judge sentenced him to ten years incarceration on the forgery conviction and fifteen days incarceration on each of the remaining charges followed by a period of probation. We affirmed McCleaf's convictions on direct appeal. In July 2000, McCleaf filed a *pro se* motion for a new trial. A Superior Court judge denied his motion and we affirmed. On March 25, 2002, McCleaf filed a *pro se* motion for postconviction relief. A

Superior Court Commissioner recommended that McCleaf's postconviction motion be dismissed as procedurally barred under Superior Court Criminal Rule 61(i)(3). McCleaf appealed the Commissioner's recommendation and a Superior Court judge denied his motion for postconviction relief.

2. McCleaf appeals claiming that: (1) there was insufficient evidence to find him guilty of Forgery in the Second Degree; (2) his convictions were based on false and perjured testimony; (3) there was insufficient evidence to establish that he was eligible for sentencing as a habitual offender; (4) a Superior Court judge abused his discretion when he denied his request for a continuance; (5) his counsel was ineffective; (6) the ten-year sentence imposed for Forgery in the Second Degree violated the Eighth Amendment; (7) a Superior Court judge abused his discretion when he did not address all of McCleaf's postconviction issues; and, (8) a Superior Court judge abused his discretion when he denied McCleaf's request for preparation of a transcript of the habitual offender hearing.

3. On July 29, 2003, we granted the State's Motion to Affirm on all issues except McCleaf's claim that his ten-year sentence violated the Eighth Amendment. We held that McCleaf's claim under the Eighth Amendment is not subject to summary affirmance in light of our recent decision in *Crosby v. State*.¹

¹ 824 A.2d 894 (Del. 2003).

Accordingly, we appointed counsel for the limited purpose of addressing McCleaf's Eighth Amendment claim.

4. We address whether McCleaf's sentence, pursuant to the habitual offender statute, violated his Eighth Amendment rights. Sentences are unconstitutional if they are grossly disproportionate to the conduct being punished.² We have established a two-step analysis to determine whether a habitual offender's sentence is grossly disproportionate to the conduct being punished. First, we compare the sentence imposed to the crime committed.³ Only if this comparison leads to an inference of gross disproportionality will the Court then proceed to the second step; a comparison of defendant's sentence with similar cases.⁴

5. Here, McCleaf's conviction for Forgery in the Second Degree triggered his status as a habitual offender. While that conviction by itself carries a maximum sentence of two years, McCleaf received a ten-year sentence because of his habitual offender status pursuant to DEL. CODE ANN., tit. 11, § 4214. Habitual offender statutes protect society and allow Courts to punish more severely "those who by repeated criminal acts have shown that they are simply incapable of

² *Id.* at 908.

³ *Id.* at 907.

⁴ *Id.* at 906.

conforming to the norms of society as established by its criminal law.”⁵ We recognized, in *Crosby*, that Delaware has a “legitimate public-safety interest in incapacitating and deterring habitual offenders.”⁶ Crosby faced a minimum of thirty-six years incarceration on a life sentence (a forty-five year term) for the same triggering crime as the one committed by McCleaf. McCleaf’s ten-year sentence, therefore, was at the low end of the sentencing spectrum. When considering good time credit, McCleaf is likely to serve a minimum of eight years in prison. In *Crosby*, we stated, “if the trial judge had chosen to accept the State’s recommendation and impose a sentence ‘close to a ten year range,’ then this case would be controlled by *Rummel*,⁷ and there would be no valid constitutional claim.”⁸ McCleaf’s sentence falls within the parameters we discussed in detail in *Crosby*.

6. Therefore, when we consider Delaware’s legitimate public-safety interest in punishing and deterring habitual offenders, the sentencing judge’s discretion to sentence within the maximum statutory range applicable to habitual offenders, and McCleaf’s actual sentence relative to the maximum sentence available under the statute, we find it clear that there can be no inference of disproportionality.

⁵ 824 A.2d. at 906.

⁶ *Id.* at 907.

⁷ *Rummel v. Estelle*, 445 U.S. 263 (1980).

⁸ *Crosby*, 824 A.2d at 910.

NOW, THEREFORE, IT IS ORDERED that the Superior Court judge's Order denying Postconviction Relief and McCleaf's sentence are AFFIRMED.

/s/ Myron T. Steele
Justice