

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM G. SUMMERS,	§
	§
Defendant Below,	§
Appellant,	§ No. 563, 1999
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STATE OF DELAWARE,	§ for Kent County
	§ Cr. A. Nos. IK97-10-0448, 0451
Plaintiff Below,	§ and 0454
Appellee.	§

Submitted: September 12, 2000

Decided: September 15, 2000

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

O R D E R

This 15<sup>th</sup> day of September 2000, upon consideration of the briefs of the parties it appears to the Court that:

(1) In this appeal from the Superior Court the appellant, William G. Summers (“Summers”), alleges that the Superior Court erred in sentencing him as a habitual criminal pursuant to 11 *Del. C.* §4214(b) and in imposing a separate sentence for misdemeanor theft.

(2) Summers contends that the imposition of a habitual offender sentence is unconstitutionally disproportionate in view of the fact that his earlier convictions occurred, in part, while he was a juvenile. He does not contest the fact that he has been convicted in the Superior Court of the three felonies which are a necessary

predicate for the imposition of a life sentence under 11 *Del. C.* § 4214(b). This Court has previously upheld the constitutionality of the habitual offender statute and has ruled that a proportionality analysis is not required for review of a sentence under the statute. *Williams v. State*, Del. Supr., 539 A.2d 164, 180, *cert. denied*, 488 U.S. 969 (1988). Accordingly, we find no error in the imposition of a habitual offender sentence here.

(3) With respect to Summers' contention that the Superior Court erred in imposing a separate suspended sentence for misdemeanor theft as a lesser included offense under the first degree robbery conviction which triggered the habitual offender sentence, the State concedes that Summers cannot be separately sentenced for that offense. The State appears to suggest that the Court should nonetheless uphold the conviction for misdemeanor theft while striking the resulting sentence. We believe, however, that our holding in *Stigars v. State*, Del. Supr., 674 A.2d 477, 482-83 (1996) requires that both the conviction and the sentence be stricken. Accordingly, Summers' conviction for misdemeanor theft must be reversed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be AFFIRMED with respect to the imposition of his sentence of life imprisonment as a habitual offender and REVERSED as to the separate conviction of misdemeanor theft. This matter is REMANDED to the Superior Court for correction of the sentence. Jurisdiction is not retained.

BY THE COURT:

s/Joseph T. Walsh  
Justice