

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID M. WILLIAMS,	§	
	§	
Defendant Below-	§	No. 159, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 9803018202A
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: June 1, 2004
Decided: August 13, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 13th day of August 2004, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) Defendant-appellant, David M. Williams, filed an appeal from the Superior Court's April 14, 2004 order denying his motion for modification of sentence. Plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Williams' opening brief that the appeal is without merit.¹ We agree and AFFIRM.

¹ Supr. Ct. R. 25(a).

(2) In August 1999, Williams was found guilty by a Superior Court jury of two counts of Attempted Burglary in the Second Degree, Possession of Burglar's Tools, and Criminal Mischief. In October 1999, Williams pleaded guilty to the additional charges of Forgery in the Second Degree, Attempted Escape in the Third Degree, and Possession of a Deadly Weapon by a Person Prohibited. Williams was sentenced as an habitual offender to 12 years incarceration at Level V on each of his attempted burglary convictions.² Williams' convictions and sentences for burglary, possession of burglar's tools and criminal mischief were affirmed by this Court on direct appeal.³

(3) In this appeal, Williams claims that: a) the State did not prove he had the requisite number of predicate offenses necessary to be declared an habitual offender on his attempted burglary convictions; and b) his sentences for attempted burglary constitute cruel and unusual punishment under the Eighth Amendment.⁴

(4) Williams' first claim is without merit. The record reflects that the State satisfied all the requirements for having Williams declared an habitual

² Del. Code Ann. tit. 11, § 4214(a) (2001).

³ *Williams v. State*, Del. Supr., No. 507, 1999, Walsh, J. (May 30, 2000).

⁴ *Crosby v. State*, 824 A.2d 894, 907 (Del. 2003) (in reviewing a sentence for a possible Eighth Amendment violation, the Court first compares the crime committed with the sentence imposed to see if a gross disproportionality can be inferred).

offender at the 1999 hearing and that the Superior Court's determination of Williams' habitual offender status was supported by substantial evidence and was free from abuse of discretion or legal error.⁵

(5) Williams' second claim was not presented to the Superior Court in the first instance. This Court will not review any question not fairly presented to the trial court unless required by the interests of justice.⁶ We do not find that the interests of justice require our review of this claim in this appeal.

(6) It is manifest on the face of Williams' opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 25(a), that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁵ *Walker v. State*, 790 A.2d 1214, 1221-22 (Del. 2002). The record reflects that, in addition to his 1999 convictions, Williams previously had been convicted of attempted felony theft, escape after conviction, two counts of burglary in the third degree, and attempted escape in the second degree.

⁶ Supr. Ct. R. 8.

