

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLTON GLASS,	§	
	§	No. 587, 2003
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County in IK02-01-
	§	0460 & 0464.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Def. ID Nos. 0201003617A
Appellee.	§	0201003617B

Submitted: May 28, 2004
Decided: September 13, 2004

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

ORDER

This 13th day of September 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) Carlton Glass filed an appeal from the Superior Court's December 3, 2003 order denying his motion for correction of illegal sentence. 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 Glass' opening brief that the appeal is without merit. We agree and AFFIRM.

(2) On October 8, 2002, Glass pleaded guilty to Possession of a Firearm by a Person Prohibited (PFBPP), Possession of Drug Paraphernalia, and Resisting Arrest. As part of the plea agreement, Glass agreed to be sentenced as a habitual criminal pursuant to title 11, section 4214(a) of the Delaware Code.¹ In turn, the State indicated in the plea agreement that it would file a habitual criminal motion and would recommend a sentencing “cap” of eight years.

(3) On October 28, 2002, the State filed the motion to declare Glass a habitual criminal pursuant to section 4214(a). On March 13, 2003, the Superior Court declared Glass a habitual criminal and, consistent with the plea agreement, sentenced him to five years at Level V pursuant to section 4214(a) for PFBPP and to an additional two years at Level V suspended for probation for the remaining two offenses.

(4) On July 28, 2003, Glass filed a motion for correction of illegal sentence. By order dated December 3, 2003, the Superior Court denied the

¹Title 11, section 4214(a) of the Delaware Code provides in pertinent part:

Any person who has been 3 times convicted of a felony . . . and who shall thereafter be convicted of a subsequent felony of this State is declared to be an habitual criminal, and the court in which such 4th or subsequent conviction is had, in imposing sentence, may in its discretion, impose a sentence of up to life imprisonment upon the person so convicted.

motion. On appeal, Glass contends, as he did in his sentence correction motion, that the State could not use the PFBPP guilty plea conviction as the fourth qualifying offense to sentence him as a habitual criminal because at the time the habitual criminal motion was filed in October 2002, Glass had yet to be sentenced for the PFBPP conviction. Moreover, Glass claims that he was denied due process because the Superior Court did not hold a hearing to declare him to be a habitual criminal.

(5) Glass' claims are without merit and misinterpret the requirements of the statute. First, Glass' status as a habitual criminal was provided for in the plea agreement that he accepted. Thus, it was not necessary for the Superior Court to hold a hearing to determine his status as a habitual criminal.² Second, title 11, section 4214(a) of the Delaware Code states that upon a conviction of a fourth felony offense, a defendant is subject to sentencing as a habitual criminal.³ The record supports the Superior Court's conclusion that Glass had

²*Whiteman v. State*, 2001 WL 1329693 (Del. Supr.); *Parker v. State*, 2000 WL 1152406 (Del. Supr.).

³Del. Code Ann. tit. 11, § 4214(a).

three prior felony convictions before the Superior Court declared him to be a habitual criminal upon his conviction of PFBPP.⁴

(6) It is manifest on the face of Glass' opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. 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/ Myron T. Steele
Chief Justice

⁴See *Johnson v. State*, 1992 WL 397464 (Del. Supr.) (concluding that defendant's conviction in present matter was his fourth qualifying felony for sentencing as habitual offender).