

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID M. WILLIAMS,	§
	§ No. 28, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9803018202A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 22, 2006

Decided: October 27, 2006

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

ORDER

This 27th day of October 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, David M. Williams, filed an appeal from the Superior Court's December 15, 2005 order denying his motion for sentence modification pursuant to Superior Court Criminal Rule 35.¹ We find no merit to the appeal. Accordingly, we affirm.

(2) In August 1999, Williams was found guilty by a Superior Court jury of two counts of Attempted Burglary in the Second Degree and one

¹ Williams also appeals the Superior Court's May 11, 2006 denial of his request for a free transcript of his 1999 sentencing hearing for purposes of the instant appeal.

count each of Possession of Burglar's Tools and Criminal Mischief. He was sentenced as a habitual offender² to a total of twenty-seven years of Level V incarceration, to be suspended after twenty-six years for probation.³ His sentence included twelve years of Level V time on each of his attempted burglary convictions. Williams' convictions and sentences were affirmed by this Court on direct appeal.⁴ The record reflects that, between June 2000 and November 2005, Williams filed approximately ten motions for postconviction relief and/or sentence modification, all of which were unsuccessful.

(3) In this appeal from his latest motion for sentence modification, Williams claims that the Superior Court improperly: a) failed to provide him with a transcript of his sentencing hearing; and b) sentenced him as a habitual offender to twelve years of Level V time on each of his attempted burglary convictions.

(4) A defendant is not constitutionally entitled to a free transcript in connection with an appeal from the denial of a postconviction motion.⁵ Moreover, the record reflects that the transcript of Williams' sentencing

² Del. Code Ann. tit. 11, § 4214(a).

³ Williams was sentenced at the same time for Possession of a Deadly Weapon by a Person Prohibited, Forgery in the Second Degree and Attempted Escape in the Third Degree, charges to which he had pleaded guilty.

⁴ *Williams v. State*, Del. Supr., No. 507, 1999, Walsh, J. (May 30, 2000).

⁵ *United States v. MacCollom*, 426 U.S. 317, 323-24 (1976).

hearing was filed in the Superior Court on November 22, 1999. In its answering brief, the State attached a copy of that portion of the transcript relevant to Williams' habitual offender claim. To the extent that Williams needed to rely on the transcript as support for his claim, it was available to him.⁶ We, therefore, conclude that Williams' first claim is without merit.

(5) As to Williams' second claim, we have reviewed the relevant portion of the sentencing hearing transcript. The transcript reflects that the State presented sufficient evidence pursuant to the habitual offender statute in support of its motion to have Williams declared a habitual offender.⁷ Moreover, the Superior Court acted within its discretion when it accordingly enhanced the sentence for each of Williams' two attempted burglary convictions to twelve years at Level V.⁸ Thus, because the Superior Court properly declared Williams to be a habitual offender and imposed sentences within the statutory limits, we conclude that Williams' second claim also is without merit.

⁶ Williams did not file a reply brief, but instead filed a letter in the Court again stating, without record support, that the State produced insufficient evidence to declare him a habitual offender.

⁷ Del. Code Ann. tit. 11, § 4214(a); *Hall v. State*, 788 A.2d 118, 125-29 (Del. 2001).

⁸ Del. Code Ann. tit. 11, §§ 4201(c) and 4205.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice