

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN WHITEMAN,	§	
	§	No. 207, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Def. ID No. 30901716DI
Appellee.	§	

Submitted: August 10, 2007
Decided: October 24, 2007

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

ORDER

This 24th day of October 2007, upon consideration of the parties' briefs and the Superior Court record it appears to the Court that:

(1) The appellant, Benjamin Whiteman, has appealed the Superior Court's April 16, 2007 denial of his April 10, 2007 "motion to correct an illegal sentence." Whiteman's appeal is without merit. Accordingly, we affirm the judgment of the Superior Court.

(2) The record reflects that Whiteman pleaded guilty in 1987 to Burglary in the Second Degree.¹ As part of the plea agreement, Whiteman

¹ *State v. Whiteman*, Del. Super., Cr. ID No. 30604628DI, Stiffler, P.J. (April 14, 1987) (accepting guilty plea).

stipulated that he was eligible for sentencing as a habitual offender under title 11, section 4214(a) of the Delaware Code.² At sentencing, the Superior Court declared Whiteman to be a habitual offender under section 4214(a) and sentenced him to ten years at Level V suspended after three years for probation.³

(3) In 1989, a Superior Court jury found Whiteman guilty of Unlawful Sexual Penetration in the Third Degree. The Superior Court sentenced Whiteman to life imprisonment pursuant to section 4214(a).⁴

(4) Whiteman has filed several unsuccessful motions to correct⁵ and/or to reduce/modify⁶ his life sentence. In all of the motions, Whiteman argued that he was improperly sentenced as a habitual offender. On appeal from the Superior Court's denial of Whiteman's motions, this Court affirmed.⁷

² See Del. Code Ann. tit. 11, § 4214(a) (Repl. 1987) (providing that any person three times convicted of specified felonies is, upon a fourth conviction or subsequent conviction, subject to a sentence of up to life imprisonment).

³ *Id.* *State v. Whiteman*, Del. Super., Cr. ID No. 306046428DI, Stiftel, P.J. (June 22, 1987 (sentencing)).

⁴ § 4214(a). On direct appeal, this Court affirmed Whiteman's conviction. *Whiteman v. State*, 1991 WL 12112 (Del. Supr.).

⁵ Del. Super. Ct. Crim. R. 35(a).

⁶ Del. Super. Ct. Crim. R. 35(b).

⁷ See *Whiteman v. State*, 2006 WL 1343637 (Del. Supr.) (affirming denial of motion to correct sentence); *Whiteman v. State*, 2005 WL 2709111 (Del. Supr.) (affirming denial of motion challenging legality of sentence); *Whiteman v. State*, 2005 WL 2179397 (Del. Supr.) (affirming denial of motion to correct sentence); *Whiteman v. State*, 2004 WL 692010 (Del. Supr.) (affirming denial of motion to correct sentence); *Whiteman v. State*, 2003 WL 1965411 (Del. Supr.) (affirming denial of motion to reduce sentence);

(5) In his “motion to correct an illegal sentence” and now on appeal, Whiteman claims that his life sentence was illegally imposed under the Truth-in-Sentencing Act. In support of his claim, Whiteman has submitted a letter dated December 11, 2006, from a Board of Parole administrative specialist (“the Board”), advising Whiteman that he was “[ineligible] for parole” because he was “sentence[d] under the Truth-in-Sentence Laws.”⁸

(6) Notwithstanding the Board’s letter,⁹ the record is clear that Whiteman was sentenced *prior* to the effective date of the Truth-in-Sentencing Act.¹⁰ The State maintains that if Whiteman intends to challenge the Board’s failure or refusal to consider his application for a parole hearing,¹¹ Whiteman will have to proceed in the Superior Court with a

Whiteman v. State, 2001 WL 1329693 (affirming denial of motion to reduce or modify sentence).

⁸ Under the Truth-in-Sentencing Act, a person sentenced to life imprisonment under section 4214(a) is not eligible for release on parole. *Evans v. State*, 872 A.2d 539, 554 (Del. 2005).

⁹ In the State’s view, the letter from the Board of Parole administrative specialist “simply appears to be incorrect.”

¹⁰ Whiteman was sentenced on October 27, 1989. The Truth-in-Sentencing Act became effective in 1990. See *Evans v. State*, 872 A.2d 539, 554 (Del. 2005) (discussing the Truth-in-Sentencing Act, “the most comprehensive legislative revision of the Delaware statutory sentencing system”).

¹¹ The Court commends the State for addressing the procedural vehicle by which Whiteman may litigate the question of his parole eligibility. The State’s thoughtful and thorough discussion of the relief available to Whiteman is in accordance with the highest tradition of a prosecutor’s duty to seek justice.

petition for a writ of mandamus.¹² For the purpose of Whiteman’s appeal, however, the Court concludes that Whiteman has not demonstrated a basis upon which to overturn the Superior Court’s summary denial of his “motion to correct an illegal sentence.”

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

BY THE COURT:

/s/ Carolyn Berger
Justice

¹² See Del. Code Ann. tit. 11, ch. 43, subch. IV (governing parole) (2001 & Supp. 2006). *E.g.*, *Bradley v. Delaware Parole Board*, 460 A.2d 532, 534 (Del. 1983) (providing, in decision affirming denial of mandamus petition, that the “task on review [of Board of Parole decision] is to determine whether the Board followed the procedures set forth in the parole statutes and in its own regulations”); *White v. State*, 2007 WL 1138470 (Del. Supr.). See also Delaware Board of Parole, Rules of the Delaware Board of Parole, available at <http://www.state.de.us/parole/rules.shtml> (last updated 3/21/07) (listing rules).