

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CECIL L. HALL (SALIH),	§
	§ No. 649, 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. 0506014139
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 24, 2007
Decided: October 30, 2007

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

ORDER

This 30th day of October 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) On August 8, 2006, the defendant-appellant, Cecil L. Hall (Salih), entered a plea of guilty to two counts of Burglary in the Third Degree, in exchange for which the State dismissed additional charges of felony theft, criminal mischief, attempted burglary and attempted felony theft.¹ On December 1, 2006, the Superior Court declared Hall to be a

¹ The record reflects that, in two separate incidents in April and May 2005, Hall broke into Joseph A. Bank men's clothing store in Greenville, Delaware, and stole a number of leather coats and men's suits.

habitual offender² and sentenced him to a total of 12 years at Level V, to be suspended after 10 years for decreasing levels of supervision. This is Hall's direct appeal.³

(2) The transcript of Hall's plea colloquy reflects that the Superior Court judge reviewed with Hall his signed Truth-in-Sentencing Guilty Plea form and his signed Plea Agreement. Hall stated that he understood what the documents contained and that he had signed them voluntarily. Hall also acknowledged that he was satisfied with his counsel's representation in connection with the plea agreement. When asked by the judge if he understood that he could be sentenced to the maximum penalty permitted under the law, despite the prosecutor's recommendation, Hall stated that he was. Hall also acknowledged that he was a habitual offender and, as such, could be sentenced to a life term on each of the two burglary charges.

(3) The transcript of the sentencing hearing reflects that, prior to the hearing, Hall filed a pro se motion seeking dismissal of his charges on double jeopardy grounds. Specifically, Hall argued that the Delaware charges were invalid because the Pennsylvania Court of Common Pleas previously had ordered him to pay restitution to Joseph A. Bank for

² Del. Code Ann. tit. 11, §4214(a).

³ Following an evidentiary hearing in the Superior Court, this Court permitted Hall to proceed pro se in his direct appeal. Supr. Ct. R. 19(c) and 26(d) (iii).

burglarizing stores in Pennsylvania and Delaware. Hall filed the motion pro se because his attorney found no legal basis for it and refused to file it. The Superior Court judge declined to consider Hall's pro se motion. The sentencing transcript also reflects that Hall's attorney offered evidence of Hall's relapse into drug addiction in mitigation of his crimes. The Superior Court judge was not persuaded to lessen Hall's sentence on that basis.

(4) In this appeal, Hall claims that a) the restitution order issued in Pennsylvania precludes his Delaware burglary convictions on double jeopardy grounds; and b) his sentence as a habitual offender constitutes cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

(5) Hall claims that his Delaware burglary convictions violate principles of double jeopardy. Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.⁴ The transcript of Hall's guilty plea colloquy clearly reflects that his guilty plea was voluntary. As such, Hall has waived his claim of a double jeopardy violation.

(6) There is no merit to Hall's claim in any case. The record reflects that Hall burglarized a Joseph A. Bank men's store in Glen Eagle

⁴ *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

Shopping Center in Pennsylvania between April and June 2005. The Pennsylvania Court of Common Pleas judge ordered Hall to pay restitution to Joseph A. Bank for the total amount of its property loss, including the losses incurred in Delaware.⁵ However, the judge stressed that Pennsylvania did not have jurisdiction over the Delaware crimes.⁶ Because Hall was not charged with or convicted of the Delaware burglaries in Pennsylvania, and was not subject to criminal punishment for the Delaware burglaries in Pennsylvania, double jeopardy is not implicated.⁷

(7) Hall also claims that his sentence as a habitual offender constitutes cruel and unusual punishment. Sentences are unconstitutional if they are grossly disproportionate to the crime being punished.⁸ This Court utilizes a two-step analysis to determine whether a habitual offender's sentence is grossly disproportionate to the crime being punished. First, we compare the sentence imposed to the crime committed.⁹ Only if that comparison leads to an inference of gross disproportionality will the Court

⁵ The purpose of restitution is to compensate the victim of a crime, not to "punish" the perpetrator of the crime. *Pratt v. State*, 486 A.2d 1154, 1158 (Del. 1983).

⁶ Conversely, the Delaware Superior Court did not order restitution because the Pennsylvania restitution order covered all of Joseph A. Bank's losses.

⁷ *Green v. United States*, 355 U.S. 184, 187-88 (1957) (The double jeopardy clause protects against successive prosecutions and multiple punishments for the same offense.)

⁸ *Crosby v. State*, 824 A.2d 894, 908 (Del. 2003).

⁹ *Id.* at 907.

proceed to the second step -- i.e., a comparison of the defendant's sentence with those in similar cases.¹⁰

(8) At his plea colloquy, Hall acknowledged that he qualified as a habitual offender and that the Superior Court could sentence him to two separate life sentences on that basis. Instead, the judge sentenced him to 10 years at Level V on his first burglary conviction and to 2 years of suspended Level V time on his second burglary conviction. Considering Delaware's legitimate public policy interest in punishing and deterring habitual offenders,¹¹ the sentencing judge's discretion to sentence within the maximum statutory range, and Hall's actual sentence relative to the maximum sentence available under the statute, we do not find that Hall's sentence raises an inference of disproportionality.

(9) Hall argues in his reply brief that his guilty plea was involuntary because he believed that the judge would excuse his crimes based on his relapse into drug dependency. He claims that, at sentencing, the Superior Court prevented him from presenting these mitigating circumstances. Hall is factually incorrect. The sentencing transcript reflects that Hall's attorney made a lengthy presentation regarding the mitigating factors in the case, including Hall's relapse into drug addiction, but that the

¹⁰ Id. at 906.

¹¹ Id. at 907.

Superior Court, within its discretion, simply did not accept those arguments. Based on all of the above factors, we conclude that Hall's second claim is without merit.

(10) This Court has reviewed the record carefully and has concluded that Hall's appeal is wholly without merit and devoid of any arguably appealable issue.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice