

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH COBLE,	§
	§ No. 384, 2011
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1004005380
	§
Plaintiff Below,	§
Appellee.	§

Submitted: April 20, 2012

Decided: May 30, 2012

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

ORDER

This 30th day of May 2012, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Kenneth Coble, filed an appeal from the Superior Court's July 6, 2011 sentencing order. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in January 2011, Coble entered a plea of guilty to a single count of Assault in the Second Degree as a lesser-included offense of Assault in the First Degree. On July 6, 2011, following a determination that Coble qualified as an habitual offender under Del. Code Ann. tit. 11, § 4214(a), the Superior Court sentenced him to life in prison.

(3) In this appeal, Coble asserts various claims that may fairly be summarized as follows: (a) the State failed to prove the existence of the required number of predicate felonies for purposes of applying the habitual offender statute; (b) the certified records from North Carolina were insufficient to establish the existence of a conviction in that state; (c) the sentence imposed constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution; and (d) the sentencing hearing was defective because the prosecutor made prejudicial comments, the judge acted with a closed mind, the judge failed to recuse herself, and the presentence report failed to include information regarding events that occurred during the period 2000-2010.

(4) Coble's first claim is that the State failed to prove the existence of the required number of predicate felonies under the habitual offender statute. For purposes of a defendant's habitual offender status under Section 4214(a), the State must prove the existence of three separate prior convictions, each of which arose after sentencing on the previous offense, with some chance for rehabilitation after each sentencing.¹

(5) The State's motion to declare Coble an habitual offender listed six prior convictions, several of which would not have served as a proper

¹ *Hall v. State*, 473 A.2d 352, 356-57 (Del. 1984); *Buckingham v. State*, 482 A.2d 327, 330 (Del. 1984).

basis for habitual offender status. However, the State relied only on the following three prior convictions as the basis for its habitual offender motion: (a) the conviction of Burglary in the First Degree for which Coble was sentenced on April 23, 1982; (b) the conviction of Felonious Breaking and Entering for which he was sentenced on March 11, 1987; and (c) the twin convictions of Unlawful Sexual Contact in the Second Degree for which he was sentenced on May 28, 1993. Because the record reflects that the State proved the existence of the three felony convictions required for habitual offender status under Section 4214(a), Coble's first claim of error is without merit.

(6) Coble's second claim is that the certified records from North Carolina were insufficient to establish a conviction in that state because they did not include a copy of the reverse side of the plea form, which contained his signature. The transcript of Coble's sentencing hearing shows that, when asked by the sentencing judge whether he acknowledged his conviction of Felonious Breaking and Entering in North Carolina, Coble stated, "Yes." When asked by the judge if the documentation tendered by the State was accurate, Coble stated, "Yes, ma'am." Moreover, when asked by the judge if he acknowledged that he was eligible to be sentenced as an habitual offender, Coble stated, "Yes, ma'am."

(7) In reviewing the Superior Court’s determination that a defendant qualifies for habitual offender status, this Court must conclude that that determination is supported by substantial evidence in the record and is free from legal error and abuse of discretion.² On a motion to declare a defendant an habitual offender, the State must prove beyond a reasonable doubt that each predicate offense satisfies the requirements of Section 4214.³ In satisfying its burden of proof, the State is not required to offer any particular or exclusive type of documentary evidence.⁴ In this case, while the signature page of the plea agreement apparently was missing, Coble himself confirmed that he had been convicted in North Carolina of Felonious Breaking and Entering. He also confirmed that he was eligible to be sentenced as an habitual offender. We therefore find that there was substantial evidence supporting Coble’s North Carolina conviction, and conclude that Coble’s second claim of error is without merit.

(8) Coble’s third claim is that his sentence constitutes cruel and unusual punishment under the Eighth Amendment of the United States Constitution. The Eighth Amendment prohibits those punishments that are

² *McNeill v. State*, Del. Supr., No. 147, 2011, Ridgely, J. (Sept. 27, 2011) (citing *Morales v. State*, 696 A.2d 390, 394 (Del. 1997)).

³ *Id.* (citing *Hall v. State*, 788 A.2d 118, 127 (Del. 2001)).

⁴ *Id.* (citing *Hall v. State*, 788 A.2d at 128).

either disproportionate to the crime committed or excessive.⁵ In *Crosby v. State*,⁶ this Court set forth the analysis to be employed when reviewing an habitual offender sentence for disproportionality. In that case, we restricted proportionality review to the “rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.”⁷

(9) The General Assembly has determined, in Section 4214(a), that an habitual offender may be sentenced to life in prison. Given the circumstances of this case, including Coble’s extensive prior record of violent felonies, his repeated probation violations, as well as the judge’s expressly-stated opinion that Coble was a danger to the community, there can be no inference of disproportionality.⁸ Therefore, Coble’s third claim of a constitutional violation also is without merit.

(10) Coble’s fourth claim is that his sentencing hearing was defective in several respects—specifically, that the prosecutor made prejudicial comments, the judge acted with a closed mind and failed to recuse herself and that the presentence report failed to include information regarding events during the period 2000 to 2010. The transcript of the sentencing

⁵ *Atkins v. Virginia*, 536 U.S. 304, 311 n. 7 (2002).

⁶ 824 A.2d 894 (Del. 2003).

⁷ *Crosby v. State*, 824 A.2d at 908 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1005 (1991)).

⁸ *Id.*

hearing reflects that the prosecutor recounted the factual circumstances of Coble's brutal sexual attack on the 63 year-old female victim, his discussions with the victim as well as Coble's history of sexual assaults. None of these descriptions was inappropriate or misleading, as Coble argues. Nor is there anything in the record showing that the judge acted with a closed mind or that the judge's recusal was required.⁹ Nor, finally, is there any basis for Coble's contention that certain information omitted from the presentence report was not considered by the judge. The record reflects that Coble himself told the judge that he had been out of prison since 2000 and had a supportive fiancée. We conclude that Coble's fourth and final claim also is without merit.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁹ *Stevenson v. State*, 782 A.2d 249, 255-56 (Del. 2001) (*en Banc*).