

SUPREME COURT OF DELAWARE

Benge v. State

945 A.2d 1099 (Del. 2008) · No. No. 262, 2007 · Decided January 25, 2008

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s denial of John H. Benge, Jr.’s motions for postconviction relief and correction of an illegal sentence. The court held that Benge’s challenges to his guilty plea, double-jeopardy claim, and alleged plea-agreement violation were procedurally defaulted, and that his Apprendi claim was untimely and meritless. The court also concluded that Benge had waived any multiplicity defect by entering a voluntary guilty plea.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Holland, Justice; Steele, Chief Justice; Berger, Justice
JURISDICTION	Delaware
DECIDED	January 25, 2008
DOCKET	No. 262, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court's denial of a motion for postconviction relief under Superior Court Criminal Rule 61 and for correction of an illegal sentence under Superior Court Criminal Rule 35(a).
STANDARD OF REVIEW	The Supreme Court reviewed the Superior Court's denial of Benge's Rule 61 and Rule 35(a) claims for legal error and determined whether the claims were procedurally barred, time-barred, waived, or meritless.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion; precedential.
PARTIES	John H. Benge, Jr. v. State of Delaware

TOPICS

- post-conviction relief
- state post-conviction relief
- criminal procedure
- plea bargaining
- double jeopardy

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure
- sentencing

QUESTIONS PRESENTED

1. Whether Bengé's challenge to the validity of his guilty plea was procedurally defaulted and, absent demonstrated prejudice from the plea-colloquy error, properly denied.
2. Whether Bengé's double-jeopardy or multiplicity claim was procedurally defaulted and waived by his voluntary guilty plea and counsel's express waiver.
3. Whether Bengé's Apprendi-based illegal-sentence claim was time-barred and meritless under Delaware's sentencing scheme.
4. Whether the prosecutor breached the plea agreement by explaining the rationale for the recommended fifteen-day contempt sentences.

HOLDINGS

1. The guilty-plea challenge was procedurally defaulted because it was not raised on direct appeal, and Bengé failed to overcome the default because he presented no evidence of prejudice from the erroneous maximum-sentence information.
2. The double-jeopardy or multiplicity claim was procedurally defaulted and waived because it was not raised on direct appeal and counsel expressly waived the multiplicity argument during the plea proceedings.
3. The Apprendi claim was time-barred under Rule 35(b) and was meritless because Apprendi and its progeny do not invalidate Delaware's sentencing scheme based on the voluntary and nonbinding character of the Truth in Sentencing guidelines.
4. The plea-agreement claim was procedurally defaulted and meritless; the prosecutor's explanation that the fifteen-day contempt sentences documented Bengé's disobedience of a court order did not breach the agreement.

KEY QUOTATIONS

“Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea, including a multiplicity defect.” (1101)

“Thus, for all of the above reasons, we conclude that the Superior Court properly denied this claim.” (1102)

FACTUAL BACKGROUND

Bengé pleaded guilty to two counts of criminal contempt of a domestic violence protective order and one count of possession of a deadly weapon by a person prohibited. His guilty plea form and statements by the sentencing judge incorrectly reflected a possible maximum sentence of two rather than eight years at Level V, but he received only two years at Level V on the weapon conviction, suspended after six months for probation. Before the plea, counsel had challenged the charges as multiplicitous, but expressly waived that issue during the plea colloquy and sentencing hearing. The State recommended the sentences contemplated by the plea agreement and explained that the fifteen-day contempt sentences reflected Bengé's disobedience of a court order.

PROCEDURAL HISTORY

Benge was convicted by a Superior Court jury in August 2003, and those convictions were affirmed on direct appeal. After charges severed from the original indictment were set for trial, Benge pleaded guilty to two counts of criminal contempt and one count of possession of a deadly weapon by a person prohibited; he did not directly appeal those convictions. The Superior Court denied his subsequent Rule 61 and Rule 35(a) motion on May 2, 2007, and the Delaware Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Benge v. State, No. 544, 2003, 2004 WL 2742314 (Del. Nov. 15, 2004)
- Apprendi v. New Jersey, 530 U.S. 466, 490 (2000)
- Harris v. United States, 536 U.S. 545, 563-64 (2002)
- Hall v. State, No. 649, 2006, 2007 WL 3170467 (Del. Oct. 30, 2007)
- Downer v. State, 543 A.2d 309, 312 (Del. 1988)
- Brown v. State, No. 196, 2002, 2002 WL 31300027 (Del. Oct. 10, 2002)
- Quandt v. State, No. 28, 2007, 2007 WL 2229017 (Del. Aug. 3, 2007)
- Benge v. State, No. 137, 2004, 2004 WL 2743431 (Del. Nov. 12, 2004)
- United States v. Queensborough, 227 F.3d 149, 157-58 (3d Cir. 2000)

OPINION

HOLLAND, J.

945 A.2d 1099 (2008) John H. BENGE, Jr., Defendant Below-Appellant, v. STATE of Delaware, Plaintiff Below-Appellee. No. 262, 2007. Supreme Court of Delaware. Submitted: December 7, 2007. Decided: January 25, 2008. Reargument Denied April 4, 2008. John H. Benge, Jr., pro se. Loren C. Meyers, Esquire, Department of Justice, Wilmington, Delaware, for appellee.

Before STEELE, Chief Justice, HOLLAND and BERGER, Justices. HOLLAND, Justice. The defendant-appellant, John H. Benge, Jr., filed an appeal from the Superior Court's May 2, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 and for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a).

We find no merit to the appeal. Accordingly, we affirm. Facts In August 2003, Benge was found guilty by a Superior Court jury of Assault in the Second Degree, Offensive Touching, and Criminal Trespass in the First Degree.

The convictions were affirmed on direct appeal.[1] Three charges that had been severed from the original indictment were set for trial in January 2004. On the day of trial, Benge pleaded guilty to

all three charges, consisting of two counts of Criminal Contempt of a Domestic Violence Protective Order and one count of Possession of a Deadly Weapon by a Person Prohibited.

Benge was sentenced to fifteen days at Level V on each of the criminal contempt convictions. On the weapon conviction, he was sentenced to two years at Level V, to be suspended after six months *1101 for probation. Benge did not file a direct appeal from those convictions. Issues on Appeal In this appeal from the Superior Court's denial of his Rule 61 and Rule 35(a) claims, Benge argues that the Superior Court improperly determined that: first, his challenge to his guilty plea was procedurally defaulted and there was no evidence that he had been prejudiced by error committed at the plea colloquy; second, his double jeopardy claim was procedurally defaulted and had been waived at the time the guilty plea was entered; third, his claim of an illegal sentence under *Appendi v. New Jersey*,^[2] was time-barred and meritless; and fourth, his claim that the prosecutor breached the plea agreement was procedurally defaulted and meritless.

Guilty Plea Benge's first claim is that the Superior Court improperly ruled that his challenge to his guilty plea was procedurally defaulted and that the procedural default could not be overcome in the absence of any evidence that Benge was prejudiced by error committed during the plea colloquy.

The Superior Court correctly determined that Benge's challenge to his guilty plea was procedurally defaulted because it had not been raised on direct appeal.^[3] Moreover, the Superior Court correctly determined that Benge had failed to overcome the procedural default. While it is true that the guilty plea form and statements by the sentencing judge erroneously reflected a possible maximum sentence of two, rather than eight, years at Level V, Benge, in fact, was sentenced to only two years at Level V. Thus, in the absence of any evidence of prejudice as a result of the error, the Superior Court properly denied this claim.^[4] Double Jeopardy Benge's second claim is that Superior Court improperly ruled that his double jeopardy claim was procedurally defaulted and had been waived at the time he entered his guilty plea.

Again, the Superior Court correctly determined that Benge's double jeopardy claim was procedurally defaulted because it had not been raised on direct appeal.^[5] Moreover, the record reflects that, prior to trial, Benge's attorney filed a motion to dismiss the criminal contempt and weapon charges on the ground of multiplicity. When the judge raised the issue during the guilty plea colloquy, Benge's attorney stated, "... we're waiving that...."

Likewise, at the sentencing hearing, Benge's attorney stated, "... my client has waived... those arguments premised upon what he believes is a fair sentencing recommendation by the State...." Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea, including a multiplicity defect.^[6] In the absence of any evidence that his plea was involuntary, and in light of his attorney's express waiver of any multiplicity defect, we conclude that the Superior Court properly denied this claim.

Apprendi Claim Bengé next argues that the Superior Court improperly rejected his claim of an Apprendi violation on the grounds of *1102 untimeliness and lack of merit. The Superior Court correctly determined that Bengé's Apprendi claim, which was a claim that his sentence was imposed in an illegal manner, was time-barred[7] and correctly determined that Bengé's Apprendi claim was without merit in any case.

In Apprendi, the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." [8] In *Harris v. United States*, the Court refined that principle by holding that a jury need not consider facts that impact the length of a sentence that is within the statutory range. [9] In addition, this Court has ruled that Apprendi and its progeny do not impact the Delaware sentencing scheme due to the voluntary and nonbinding character of the Truth in Sentencing guidelines. [10] Thus, for all of the above reasons, we conclude that the Superior Court properly denied this claim.

Plea Agreement Bengé's fourth, and final, claim is that the Superior Court improperly ruled that his claim of a violation of the plea agreement by the prosecutor was procedurally defaulted and meritless. The Superior Court correctly determined that Bengé's claim of a violation of the plea agreement by the prosecutor was procedurally defaulted because it had not been raised on direct appeal. [11] Moreover, the record reflects that, in exchange for Bengé's guilty plea, the State agreed to recommend, and did recommend, a Level V sentence of two years, to be suspended for one year at Level III, on the weapon charge and a Level V sentence of one year, to be suspended after fifteen days at Level III, on each of the criminal contempt charges.

At the sentencing hearing, the prosecutor stated that the purpose of the fifteen-day criminal contempt sentences was to place upon the record the fact that Bengé had disobeyed a court order. While Bengé argues that the statement violated the plea agreement by placing an "aggravating factor" before the judge, the record more reasonably reflects that the statement merely served to explain to the judge the rationale behind the State's sentencing recommendation. [12] Thus, we conclude that the Superior Court judge also properly denied Bengé's fourth, and final, claim.

Conclusion The judgment of the Superior Court is affirmed. NOTES [1] *Bengé v. State*, No. 544, 2003, 2004 WL 2742314 (Del. Nov.15, 2004). [2] *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

[3] Super. Ct.Crim. R. 61(i)(3). [4] Super. Ct.Crim. R. 61(i)(3)(A) and (B). [5] Super. Ct.Crim. R. 61(i)(3). [6] *Hall v. State*, No. 649, 2006, 2007 WL 3170467 (Del. Oct.30, 2007) (citing *Downer v. State*, 543 A.2d 309, 312 (Del.1988) (holding that a curable defect may be waived by a voluntary guilty plea)).

[7] Super. Ct.Crim. R. 35(b). [8] *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). [9] *Harris v. United States*, 536 U.S. 545, 563-64, 122 S.Ct. 2406, 153 L.Ed.2d 524 (2002); *Brown v. State*, Del.Supr., No. 196, 2002, 2002 WL 31300027, Berger, J. (Oct. 10, 2002) (citing *Harris v. U.S.*, 536 U.S. 545, 122 S.Ct. 2406, 153 L.Ed.2d 524 (2002)).

[10] *Quandt v. State*, No. 28, 2007, 2007 WL 2229017 (Del. Aug.3, 2007) (citing *Benge v. State*, No. 137, 2004, 2004 WL 2743431 (Del. Nov. 12, 2004)). [11] Supr. Ct.Crim. R. 61(i)(3). [12] *United States v. Queensborough*, 227 F.3d 149, 157-58 (3d Cir.2000).