

SUPREME COURT OF THE STATE OF DELAWARE

Basher v. State

Basher · No. No. 47, 2019 · Decided February 20, 2020

SUMMARY

The Delaware Supreme Court affirmed Joseph Basher’s conviction and sentence for possession of a firearm by a person prohibited and his sentencing as a habitual offender. The Court rejected his claims concerning the firearm charge enhancement, habitual-offender eligibility, coercion of his guilty plea, sentencing, and disparity with his co-defendant, while declining to consider ineffective-assistance claims on direct appeal. The Court granted no relief under Supreme Court Rule 26(c) and affirmed the Superior Court’s judgment.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	James T. Vaughn, Jr.; Seitz, Chief Justice; Valihura, Justice; Vaughn, Justice
JURISDICTION	Delaware
DECIDED	February 20, 2020
DOCKET	No. 47, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the Superior Court's denial of Basher's motion to withdraw his guilty plea, declaration that he was an habitual offender, and sentence for possession of a firearm by a person prohibited.
STANDARD OF REVIEW	Under Delaware Supreme Court Rule 26(c), the court determines whether appellate counsel conscientiously examined the record and law for arguably appealable claims and independently reviews whether the appeal is wholly devoid of at least arguably appealable issues. Review of a sentence is extremely limited and generally ends when the sentence is within statutory limits, subject only to review for false or impermissible factual predicates, lack of a minimal indicia of reliability, judicial vindictiveness or bias, or a closed mind.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion/order; precedential status is indicated by the provided metadata.
PARTIES	Joseph Basher v. State of Delaware

TOPICS

criminal procedure

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PRACTICE AREAS

Criminal procedure

Appellate procedure

Sentencing

Plea bargaining

QUESTIONS PRESENTED

1. Whether ineffective-assistance-of-counsel claims could be considered for the first time on direct appeal when the trial court had not decided them on the merits.
2. Whether Basher's prior drug-dealing conviction properly qualified as a violent felony for purposes of the enhanced firearm-possession penalty under 11 Del. C. § 1448(e)(1).
3. Whether the enhanced firearm-possession conviction properly constituted a first Title 11 violent felony triggering habitual-offender eligibility under 11 Del. C. § 4214(b).
4. Whether Basher's guilty plea was coerced, involuntary, or unknowingly entered.
5. Whether the sentence exceeded the State's recommendation or was disproportionate to the codefendant's sentence.
6. Whether the appeal presented any arguably appealable issue under Delaware Supreme Court Rule 26(c).

HOLDINGS

1. The Supreme Court will not consider ineffective-assistance claims on direct appeal when the issue was not decided on the merits in the trial court.
2. A prior conviction for drug dealing qualifying as a Title 16 violent felony makes a prohibited person's firearm-possession offense eligible for the enhanced penalty under 11 Del. C. § 1448(e)(1); the offense is then treated as a Class C felony for sentencing purposes under § 1448(c).
3. A § 1448(e) firearm-possession conviction that is a violent Title 11 felony constitutes the first Title 11 violent felony necessary to trigger eligibility for habitual-offender sentencing under 11 Del. C. § 4214(b).
4. Basher failed to show that his guilty plea was coerced, involuntary, or unknowingly entered.
5. Basher's sentence was lawful because the nine years of unsuspended Level V incarceration fell within the statutory sentencing range, and the record showed no impermissible factual basis, vindictiveness, bias, or closed-mindedness.
6. The appeal was wholly without merit and devoid of any arguably appealable issue, and appointed counsel satisfied the required conscientious review.

KEY QUOTATIONS

“this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.” (¶ 6)

“Our review of a sentence is extremely limited and typically ends upon a determination that the sentence falls within the statutory limits prescribed by the legislature.” (¶ 11)

“The Court has reviewed the record carefully and has concluded that Basher’s appeal is wholly without merit and devoid of any arguably appealable issue.” (¶ 12)

FACTUAL BACKGROUND

Basher pleaded guilty to possession of a firearm by a person prohibited under a plea agreement that dismissed several pending charges and contemplated habitual-offender eligibility. His prior drug-dealing conviction was treated as a violent felony, making the firearm offense subject to enhanced sentencing and triggering eligibility for habitual-offender sentencing. After the Superior Court denied his motion to withdraw the plea, it imposed fifteen years of Level V incarceration, suspended after nine years and successful completion of the Key Program.

PROCEDURAL HISTORY

Basher pleaded guilty to possession of a firearm by a person prohibited. The Superior Court denied his motion to withdraw the plea, later declared him an habitual offender, and sentenced him to fifteen years of Level V incarceration, suspended after nine years and completion of the Key Program. On direct appeal, appointed counsel filed a Delaware Supreme Court Rule 26(c) motion to withdraw, and the Supreme Court independently reviewed the record and affirmed.

DISPOSITION

affirmed

CASES CITED

- Penson v. Ohio, 488 U.S. 75, 83 (1988)
- McCoy v. Court of Appeals of Wisconsin, 486 U.S. 429, 442 (1988)
- Anders v. California, 386 U.S. 738, 744 (1967)
- Desmond v. State, 654 A.2d 821, 829 (Del. 1994)
- Kruzmann v. State, 903 A.2d 702, 714 (Del. 2006)