



IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYSHAUN REMBERT,

Defendant-Below,
Appellant

v.

STATE OF DELAWARE

Plaintiff-Below,
Appellee.

No. 436, 2024

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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I. THE TRIAL COURT IMPROPERLY FOUND THAT REMBERT’S TWO PRIOR CONVICTIONS FOR DRUG DEALING, AS DEFINED IN 16 Del. C. §4754 (1), CONSTITUTED PREDICATE VIOLENT FELONIES, AS DEFINED IN 11 DEL. C. §4201, WARRANTING THE ENHANCEMENT OF THE SENTENCE FOR HIS CONVICTION OF POSSESSION OF A FIREARM BY A PERSON PROHIBITED.

The State clearly asserts that the standard of review for this case is *de novo*. Yet, it later tries to “sneak in” a waiver argument by claiming, erroneously, that Rembert did not argue below that he “was never convicted under the version of Section 4754 that was codified at the time of his 2023 PFBPP violation, and that the enhancement provisions of the version of Section 4201(c) in effect at the time of his 2023 PFBPP violation (which included violation of Section 4754(1) as a “violent felony”) are somehow inapplicable.”¹ That is simply incorrect. While perhaps not the most clearly worded, trial counsel did argue that the “2023-2024 edition of the Delaware and Traffic Law Manual, which [sic] claims that 4754 (1) is a violent felony, but makes no mention of the former 4754. Under those terms Mr. Rembert is not a violent felon.”² Thus, Rembert has not waived any argument.

The State further incorrectly asserts that there is “no support” for Rembert’s argument that the 2019 amendment to 16 Del. C. § 4754 (after his

¹ State’s Resp. Br. at p.13.

²A21.

two prior drug convictions and before his 2023 PFBPP offense) render the enhancement provisions in §1448(e)(1)(c) inapplicable in this case.³ This assertion ignores three pages of argument and nine legal sources in Rembert’s opening brief which include cases and law review articles.⁴ In fact, the State failed to address any of that.

Finally, the State’s analysis of § 211 completely ignores this Court’s treatment of that statute in the context of §4201. In *Butcher v. State*, this Court concluded that it agreed that “the better view is that a criminal penalty for recidivist punishment is not “incurred” within the meaning of Section 211 until the person commits the most recent offense for which enhanced punishment is sought.”⁵ Therefore, Rembert’s argument does not run afoul of §211, it is consistent with this Court’s holding.

In sum,

- 11 Del. C. § 1448(e)(1)(c) imposes a mandatory sentence for possession of a firearm by persons convicted of two of more violent felonies;
- 11 Del. C. § 4201(c) defines “violent felonies;”

³ State’s Resp. Br.at p.14.

⁴ Opening Br. at pp. 8-10.

⁵ *Butcher v. State*, 171 A.3d 537, 543 (Del. 2017).

- the only violent felonies that can be properly used as predicates for an enhanced sentence are specific crimes *currently* listed in section 42[01](c);
- At the time Rembert committed PFBPP,
 - no crime of §4754(1) existed, only the crime of §4754 (a);
 - §4201(c)
 - defined a nonexistent “§4754(1) as a violent felony;
 - did not define the current §4754 (a) as a violent felony;
 - did not define a “prior” or “former” version of § 4754 (***a***) as a violent felony (as it similarly does in other cases);
- In 2014 and 2017, Rembert pled guilty to the currently non existent §4754 (1);
- Rembert’s primary argument is based on this Court’s decision in *Butcher* that “the convictions that are properly used as predicates for an enhanced sentence must ... be for the specific crimes *currently* listed in section 42[01](c).”⁶ Because Rembert was ***never convicted of §4754 (a), or a non-existent current § 4754 (1)*** he did not qualify for an enhanced sentence.

⁶*Butcher*, 171 A.3d at 541.

- Thus, at the time of Rembert's possession of a firearm, he was not a "prohibited person" who had been convicted of two violent felonies specifically listed in Section 4201(c).

Accordingly, Rembert's enhanced sentence for PFBPP must be vacated.

CONCLUSION

For the reasons and upon the authorities cited herein, Rembert's sentence must be vacated.

Respectfully submitted,

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