



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MASHAWN LEWIS,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 26, 2026
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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I. ERLINGER PERMITS A JUDGE TO FIND THE DATE OF A PRIOR OFFENSE ONLY TO ASCERTAIN WHAT ELEMENTS COMPRISE THAT OFFENSE—NOT WHETHER THE OFFENDER BEING SENTENCED ACTUALLY COMMITTED THE PRIOR OFFENSE ON THAT DATE, WHICH IS THE JURY’S REQUIRED FUNCTION.

Merits of Argument

The State’s Answering Brief argues that language in *Erlinger v. United States*¹ authorizes a sentencing judge to find the date on which a prior enhancing offense took place and, therefore, the Trial Court here did not err by doing so in the instant case:

“More specifically, the Court noted that ‘[t]o determine what legal elements attached to [Erlinger’s] decades-old offenses, the court might have needed to consult *Shepard*² documents to ascertain the jurisdiction in which they occurred and the date on which they happened. But the court had no need or authority to go any further.’”³

The State, however, is mistaken that the language it quotes from *Erlinger* stands for the proposition that *Shepard* documents may constitutionally be used to establish the date of a prior offense for the purpose of sentence enhancement. To the contrary, the Court merely authorizes a judge’s use of documents for the limited purpose of determining what the elements of an offense may have been in a specific jurisdiction

¹ 602 U.S. 821 (2013).

² See *Shepard v. United States*, 544 U.S. 13 (2005).

³ *Erlinger*, 602 U.S. at 840; Ans. Br. at 19.

at a particular time. While *Shepard* documents may permit a judge to determine what elements as a matter of law apply to a given offense, the Supreme Court forbade their use “for any other purpose.”⁴ It explicitly envisioned “straightforward” determinations being left to a jury.⁵ And it rejected *amicus*’s suggestion and argument that jurisdiction and date as a matter of fact for the purpose of sentence enhancement could be determined by a trial judge and not a jury:

If *Almendarez-Torres*⁶ permits a judge to find what crime, with what elements, the defendant was convicted of, *amicus* reasons, that necessarily implies a judge may also find the jurisdiction in which the underlying offense occurred and the date it happened. And, *amicus* continues, in at least some (but admittedly not all) cases, knowing those facts will make the occasions inquiry so straightforward that sending it to a jury would be pointlessly inefficient.

Again, we disagree.⁷

Lest anyone mistake their meaning, the Supreme Court repeated its mandate that while date and jurisdiction may be found by a judge in order to ascertain what legal elements comprise an offense, no more was permitted, making it clear the function of finding the date of offense for purposes of mandatory sentence enhancement is different and must be decided by a jury beyond a reasonable doubt:

To ensure compliance with the Fifth and Sixth Amendments, a sentencing judge may use the information he gleans from *Shepard* documents for the limited function of determining the fact of a prior

⁴ *Id.* at 839.

⁵ *Id.*

⁶ See *Almendarez-Torres v. United States*, 523 U.S. 224 (1998)

⁷ *Id.*

conviction and the then-existing elements of that offense. No more is allowed.⁸

The Trial Court below erred when it went beyond those limited and explicit parameters.

⁸ *Id.*

II. CONTRARY TO THE STATE’S ASSERTION, THE JUDGE’S FINDING THE DATE OF LEWIS’ PRIOR OFFENSE PREJUDICED LEWIS.

Merits of Argument

The State argues (without citing any legal authority or caselaw) that any error below was not prejudicial to Lewis at sentencing because even if he should have faced a 3- to 15-year sentencing range instead of 5 to 15, the Trial Court went above the minimum mandatory 5 and sentenced him to 6.⁹ It is unclear upon what principle of law the State’s claim is made.

Harmless error analysis for sentencing turns on whether the error contributed to the sentence.¹⁰ In order for the error to be considered harmless, it must have made no difference to the sentence.¹¹ Such cannot be said for Lewis in this case.

Lewis faced a violation of probation along with his sentencing for the PFBPP charge that carried (according to the Trial Court finding) a 5-year minimum mandatory. It is clear from the Trial Judge’s comments at sentencing that the extra year imposed on the PFBPP charge was in lieu of a separate sentence for Violation of Probation since the latter was discharged.¹²

⁹ Ans. Br. at 42.

¹⁰ *United States v. Lewis*, 802 F.3d 449, 456 (3rd Cir. 2015), citing *Sochor v. Florida*, 504 U.S. 527, 539 (1992).

¹¹ *Parker v. Dugger*, 498 U.S. 303, 319 (1991).

¹² A287-288.

Had Lewis faced a 3-year minimum mandatory sentence would likely have imposed the extra year as punishment for the VOP, amounting to a 4-year sentence with the PFBPP—not the 6 years that was imposed by the Trial Court below. The 2-year difference between the 4 years and 6 years constitutes concrete harm and prejudice to Lewis.

CONCLUSION

For the reasons and authorities cited in Lewis' Reply and Opening Briefs, Lewis' 5-year sentence should be vacated and the case remanded for resentencing.

Respectfully submitted,

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