

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CANDIDO A. FELIX,	§
	§ No. 150, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0506010024
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 22, 2008

Decided: March 5, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 5th day of March, 2008, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Candido A. Felix, filed an appeal from the Superior Court's March 5, 2007 order denying his fifth motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

(2) In October 2005, Felix pleaded guilty to Driving Under the Influence of Alcohol (“DUI”) as a fourth-time offender,¹ Driving Without Proof of Insurance, Driving an Unsafe Motor Vehicle, Displaying a Fictitious/Cancelled Registration Plate, Operating a Motor Vehicle Without Possessing a Registration Card, Driving While License Suspended or Revoked, and Driving After Judgment Prohibited.² Felix was sentenced in December 2005. On the DUI conviction, he was sentenced to 5 years of Level V incarceration, to be suspended after 6 months and successful completion of the Greentree Program for Level IV Crest. Felix’s convictions and sentences were affirmed by this Court on direct appeal.³

(3) Felix claims that the 1995 legislative amendments to § 4177 (d) (4) constitute an unconstitutional enhancement of the punishments for multiple DUI convictions because they include as part of the calculation those convictions that pre-date the enactment of the amendments. Thus, according to Felix, his 2005 sentence as a fourth-time offender violates the Delaware and federal constitutional prohibitions on ex post facto laws because it takes into account his two pre-1995 DUI’s.

¹ Del. Code Ann. tit. 21, § 4177(d) (4).

² The conviction of Driving While License Suspended or Revoked was later vacated.

³ *Felix v. State*, Del. Supr., No. 14, 2006, Berger, J. (July 14, 2006).

(4) Felix' claim fails on both procedural and substantive grounds. First, a voluntary guilty plea operates as a waiver of any alleged errors occurring prior to the entry of the plea.⁴ Felix provides no evidence that his guilty plea was involuntary. As such, he has waived his claim of a constitutional violation as a procedural matter. To the extent that Felix attempts to argue that his plea was involuntary because he did not understand that, as a fourth-time offender, he would be sentenced under an ex post facto law, that attempt fails on substantive grounds.

(5) Two elements must be satisfied before a statute can be considered an ex post facto law---it must be retrospective and its application must be a disadvantage to the offender affected by it.⁵ This Court has ruled that § 4177(d) (4) does not operate as an ex post facto law for a defendant such as Felix because his punishment for his previous DUI's is not enhanced. "The sentence as a fourth offender . . . is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes. It is a stiffened penalty for the latest crime, which is considered to be an

⁴ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

⁵ *Roberts v. State*, 494 A.2d 156, 159 (Del. 1985) (citing *Weaver v. Graham*, 450 U.S. 24, 29 (1981)).

aggravated offense because a repetitive one.”⁶ As such, Felix’ claim of an ex post facto violation is without merit.

(6) It is manifest on the face of Felix’ opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

Carolyn Berger
Justice

⁶ Id.