

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR SUSSEX COUNTY**

<b>STATE OF DELAWARE,</b>	:	<b>Case No. 0304007852</b>
<i>Appellee</i>	:	
<b>VS.</b>	:	
<b>RICKY F. CURTIS,</b>	:	
<i>Appellant</i>	:	

Decided May 10, 2004

Eric G. Mooney, Esquire, appearing for Defendant below, Appellant.

Carole E. L. Davis, Esquire, Deputy Attorney General, appearing for the State, Appellee.

***DECISION ON APPEAL OF THE DENIAL OF DEFENDANT’S MOTION  
TO WITHDRAW A GUILTY PLEA***

This is an appeal by Defendant Ricky F. Curtis (hereinafter “Curtis”) from a Justice of the Peace Court order denying Defendant’s Motion to Withdraw Guilty Plea. Curtis appealed the Court’s decision on August 8, 2003. On December 5, 2003, the State moved to dismiss the appeal. For the reasons set forth below, the appeal is dismissed.

## Facts

Defendant Curtis was arrested and charged with Driving under the Influence of Alcohol under 21 *Del. C.* § 4177(a), and was arraigned in Justice of the Peace Court 14. He appeared *pro se*, pled guilty to DUI and elected to enter into the First Offender's Program. The defendant subsequently retained counsel, who filed a Motion to Withdraw Guilty Plea. The Justice of the Peace Court heard oral arguments on the motion, and denied the motion. Curtis subsequently appealed the denial to this Court. At the time of the filing of the appeal, Curtis continued to be on probation under the First Offender's Program.

## Standard of Review

A motion to withdraw a guilty plea after sentence is imposed is reviewable only for manifest injustice. *Del. J. Peace Crim. R. 32(d)*; see also *Fox v. State*, 2001 WL 34075506 (Del. Com. Pl.). The burden of proving manifest injustice is on the defendant, *State v. Insley*, 141 A.2d 619, 622 (Del. 1958); *State v. Richards*, 1998 WL 732960 (Del. 1972). Further, "the decision [to deny a motion to withdraw a guilty plea] rests in the sound discretion of the trial court, and is only reviewable for abuse of discretion." *State v. Insley, supra* at 622.

This Court, acting in its capacity as an intermediate appellate court, is obligated to "correct errors of law and to review actual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process." *State v. Richards, supra*.

Further, Defendant's appeal from the Justice of the Peace Court's denial of a motion to withdraw a guilty plea is a collateral attack. The appropriate standard of review for a collateral attack is an abuse of discretion standard, and the review should be on the record found below. *Vergara v. State*, 2001 WL 34083562 at \*1 (Del. Super. Ct.).

### **Appellate Jurisdiction of the Court of Common Pleas**

The Court of Common Pleas is a statutory court empowered only with that jurisdiction expressly conferred upon it by statute. DE. CONST. art. IV. § 28. This Court's limited statutory jurisdiction to hear criminal appeals from the Justice of the Peace Court is authorized by 11 *Del. C.* § 5920 for Title 11 violations, and by 21 *Del. C.* § 708 for Title 21 motor vehicle violations. Each statute contains specific jurisdictional requirements that limit the right to an appeal. If these requirements are not met, then this Court is without jurisdiction to hear the appeal.

#### *Appeals From Title 11 Offenses*

Section 5920 of Title 11 of the Delaware Code applies specifically to appeals from the JP Court regarding Title 11 criminal actions. It grants a criminal defendant a right of appeal to this Court "[f]rom any order, ruling, decision, judgment or sentence of the Court entered in a Justice of the Peace Court in a criminal action pursuant to this title [11] in which the sentence shall be imprisonment exceeding 1 month or a fine exceeding \$100." This Court lacks

jurisdiction to hear an appeal of a Title 11 matter if the sentence imposed is less than the required amount of fine or length of imprisonment. See *Marsh v. Justice of the Peace Court No. 2*, 1998 WL 960739 at \*1 (Del. Super. Ct.); *Freeman v. State*, 1998 WL 278395 at \*1 (Del. Super. Ct.); *Lynch v. State*, 1994 WL 750314 at \*1 (Del. Super. Ct.); *Sinagra v. State*, 1995 WL 108662 at \* 1 (Del. Super. Ct.). This Court has jurisdiction to hear an appeal under 11 *Del. C.* § 5920 even when the lower court suspends a Level V sentence of more than a month entirely for probation. *Weaver v. State*, 779 A.2d 254, 259 (Del. 2001).

#### *Appeals From Title 21 Offenses*

Appeals from Title 21 offenses are governed by 21 *Del. C.* § 708(b). Subsection (b) states that “any person **convicted** under this title shall have the right of an appeal to the Court of Common Pleas only in those cases in which the sentence imposed was imprisonment, or a fine exceeding \$100.” (*Emphasis added.*)

There are two important differences between this statute and 11 *Del. C.* § 5920. First, for Title 21 appeals, the imposition of *any* imprisonment will meet the jurisdictional requirement, while Title 11 appeals are only available for sentences exceeding one month.

Second, only a **conviction** of a Title 21 offense may be appealed under 21 *Del. C.* § 708(b). In contrast, Title 11 appeals may be from “any order, ruling, decision, judgment or sentence” that results in the minimum threshold sentence.

In the case before the Court, Appellant entered a **guilty plea** in the Court below. A guilty plea is not a conviction. A conviction is defined as “a judicial determination of guilt after an assertion of innocence and not merely a judicial entry of an admission of guilt after a guilty plea.” *Martin v. State*, 116 A.2d 685, 687 (Del. Super. Ct. 1955). Further, pleading guilty in JP Court constitutes a waiver of the right to an appeal. *State v. Bundy*, 168 A. 677 (Del. 1933); *State v. Fisher*, 106 A.2d 766 (Del Super. Ct. 1954); *Martin v. State*, 116 A.2d 685 (Del. Super. Ct. 1985); *State v. Waters*, 128 A.2d 556 (De. Super. Ct. 1957). Therefore, 21 Del. C. § 708 does not provide the right to appeal where a guilty plea was entered in the court below and no subsequent conviction and sentencing at the threshold appealable amount has occurred.

### **DUI First Offenders Program Appeals**

Defendant elected to enroll in the First Offender’s Program. It is true that entry into the First Offender’s Program has the same effect as a conviction for purposes of enhancing penalties for subsequent offenses. *Tarr v. State*, 486 A.2d 672, 676 (Del. 1984). However, a defendant who elects the First Offender’s Program is not adjudicated guilty when he pleads guilty to the charge. While the plea of guilty is accepted by the court, further proceedings in the matter are stayed and the defendant is placed on probation with specials conditions, primary of which is completion of a DUI treatment program. Upon compliance with these conditions, the charge is dismissed by the Court with no conviction or

adjudication of guilt being entered. Under these procedural circumstances, there is no **conviction** for DUI unless and until the defendant breaches the terms of probation and is subsequently adjudicated guilty and sentenced. Thus, prior to such a violation of probation and conviction, there is no right to appeal under 21 Del. C. § 708(b), nor a right to post-conviction relief under this Court's Criminal Rule 61. There must first be a conviction to appeal or seek relief from. *See, e.g., Fox v. State*, 2001 WL 34075506 (Del. Com. Pl.). There is also no right to appeal once the defendant successfully completes the requirements of his probation. If an appeal is taken after the completion of the requirements of probation, a defendant no longer has standing to appeal. *State v. Beles*, 1997 WL 366899 at \*3 (Del. Super. Ct.). In the present case, defendant remained on probation, unadjudicated, at the time of this appeal. Thus, defendant has no conviction and minimal required sentence to appeal.

Defendant cites this Court's 1998 decision in *James v. State*, 1998 Del. C.P. LEXIS 39, as previous recognition by this Court of a right to appeal the denial of a withdrawal of a First Offender's guilty plea. The Court *did* address the merits of the appeal in affirming the J.P. Court's decision in *James*. However, this Court in *James* did not specifically consider the issue of whether it had jurisdiction to hear the appeal. We now determine that the Court of Common Pleas does not have statutory jurisdiction to hear an appeal of a denial of a motion to withdraw a DUI First Offender's guilty plea when the defendant

has not been adjudicated guilty on the plea and sentenced to imprisonment or at least a \$100.00 fine.

This decision does not mean that appellant has no procedural means of review of the Justice of the Peace Court's denial of his motion to withdraw his guilty plea. He continues to have available to him the right of a writ of certiorari. The statutory creation of a right of appeal to Court of Common Pleas of a Title 21 *conviction* did not abrogate a defendant's right to seek a writ of certiorari. On the contrary, 21 Del. C. § 708(b) specifically affords appellants the choice between filing an appeal in this Court or applying for a writ of certiorari in the Superior Court by providing that the taking of an appeal in this Court "shall constitute a waiver . . . of the appellant's right to file a writ of certiorari in Superior Court. See 21 Del. C. § 708(b). The statute specifically states that the alternate writ of certiorari is to be filed in the Superior Court. This is because the Court of Common Pleas lacks jurisdiction to issue a writ of certiorari to a lower court. *Brandywine Apartments Assocs. v. Justice of the Peace Court*, 1999 WL 33255921 at \*2 (Del. Com. Pl.) ("the Court of Common Pleas has neither constitutional or statutory authority to issue a writ of certiorari").

It is important to note that when an appeal to this Court is available, the Superior Court may refuse to entertain a writ of certiorari due to lack of jurisdiction. See *Wilkins v. The Court of the Justice of the Peace*, 1998 WL 281243 (Del. Super. Ct.). However, since the defendant has no right of appeal to this Court where no conviction has been entered below, a writ of certiorari to the

Superior Court may lie since there is “no other available basis for review.” *Wilkins, supra*, at \*2 (citing *Desantis v. Shahan*, 1995 WL 339175 at \*2 (Del. Super. Ct.)).

### **Conclusion**

In the case before the Court, defendant sought to appeal the denial of a motion to withdraw a DUI First Offender’s guilty plea entered in the court below. However, defendant has not been adjudicated guilty on his guilty plea, and thus has yet to be convicted of DUI and sentenced. This Court has jurisdiction to hear an appeal of a Title 21 matter only if it results in a conviction and sentence thereon of imprisonment or fine of greater than \$100.00, which has not occurred. Lacking an appealable conviction, the denial of the motion to withdraw may only be reviewed by writ of certiorari to the Superior Court. Thus, the State’s motion to dismiss Curtis’ appeal is hereby **GRANTED**, and the defendant’s appeal is **DISMISSED**.

***IT IS SO ORDERED.***

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**Kenneth S. Clark, Jr., Judge**