

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE :  
V. : Case No.0302014689  
HOWARD M. PUSEY :

**ORDER**

1). In this DUI case, Appellant Pusey appeals from the Justice of the Peace Court’s Denial of Appellant’s Motion to Withdraw Guilty Plea.

2). Appellant elected the First Offender’s Program (FOP), pro se, on March 7, 2003 pursuant to 21 *Del C.* § 4177(B).

3). Appellant subsequently hired counsel and moved to withdraw his guilty plea and FOP election, which Motion was denied by the Magistrate on June 3, 2003 after oral argument.

4). In *State v. Curtis*, Del. Com. Pl., C.A. No. 0304007852, Clark, J., (May 10, 2004), this Court addressed almost identical legal and procedural issues as those presented in this appeal.

5). In *Curtis*, this Court held that the Appellate jurisdiction of the Court of Common Pleas in Motor Vehicle offenses is governed by 21 *Del. C.* § 708(b), which requires a conviction of a Title 21 offense to invoke Appellate review.

6). Since election of the First Offender's Program does not result in a conviction at the time of election, there is no conviction to appeal from.

7). Appellant's only avenue of review in this context may be limited to filing a Writ of Certiorari in the Superior Court. *Curtis, supra; Brandywine Apartments Assoc. v. Justice of the Peace*, 1999 WL 33255921 @\*2(Del. Com. Pl.)

NOW, THEREFORE, for the reasons stated above, IT IS ORDERED this \_\_\_\_\_ day of MAY, 2004, THAT:

- (1) The State's Motion to Dismiss the Appeal is GRANTED.
- (2) The Appellant's appeal is DISMISSED.

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Rosemary Betts Beauregard,  
JUDGE