

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	
v.)	
)	Cr. A. Nos. K96-09-0147I,
MING PATTEN,)	K96-09-0148I
a\k\ a PATEN,)	
)	
Defendant.)	
ID No. 9608016007)	

Submitted: March 20, 2003
Decided: March 25, 2003

ORDER

Upon consideration of the defendant's Petition for Release from Obligation to Register as Sex Offender, the Commissioner's Report and Recommendation, the defendant's appeal from the Commissioner's Finding of Fact and Recommendation, and the record in this case, it appears that:

(1) The defendant, Ming Patten, ("Patten") has petitioned the Court to be relieved of his obligation to register as a sex offender. On October 28, 1996, he was convicted of two counts of Unlawful Sexual Contact III and sentenced to two years at Level V, suspended for one year at Level II, followed by one year at Level I. He contends that he is entitled to petition for relief from the obligation to register because the law in effect at the time of his conviction allowed him to file such a petition at any time after sentencing. The Court ruled that Patten could petition for relief by Order

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on August 31, 1999.¹ In its Order, the Court made no ruling on the merits of Patten's petition.

(2) The Court referred this motion to Superior Court Commissioner Andrea M. Freud pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62 for proposed findings of facts and conclusions of law. A hearing was held on November 26, 2002. At the conclusion of the evidence, briefing was scheduled. After considering the evidence presented, the Commissioner filed a Report and Recommendation concluding that Defendant's Petition for Release from Obligation to Register as Sex Offender should be denied.

(3) Patten, through his attorney, has filed an appeal from the Commissioner's Finding of Fact and Recommendation. Pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62, the Court has conducted a careful and *de novo* determination. After reviewing the transcript and Patten's record, the Court is not persuaded at this time that Patten would not pose a risk if released from his obligation to register.

NOW THEREFORE, after careful and *de novo* review of the record in this action, and for the reasons stated in the Commissioner's Report and Recommendation dated January 30, 2003,

¹ *State v. Patten*, 1999 WL 1227919 (Del. Super. Ct. 1999).

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IT IS ORDERED that:

(A) The well-reasoned Commissioner's Report and Recommendation is adopted by the Court;

(B) The defendant's Petition for Release from Obligation to Register as Sex Offender is ***DENIED***.

/s/ Henry duPont Ridgely

President Judge

cmh

oc: Prothonotary

xc: Hon. Andrea M. Freud

Stephen R. Welch, Jr., Esq.

Sandra W. Dean, Esq.

Order Distribution (w/Report & Recommendations)

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IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
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v.)	K96-09-0147I
)	K96-09-0148I
)	
MING PATTEN,)	
a/k/a PATEN,)	
(ID No. 9608016007))	
)	
Defendant.)	

Stephen Welch, Esq., Dover, Delaware. Attorney for the State.

Sandra W. Dean, Esq., Dover, Delaware. Attorney for Defendant.

COMMISSIONER’S REPORT AND RECOMMENDATION

*Upon Consideration of Defendant’s Petition
For Release From Obligation To Register As Sex Offender*

FREUD, Commissioner
January 30, 2003

The defendant, Ming Patten, (“Patten”) has petitioned the Court to be relieved of his obligation to register as a sex offender. On October 28, 1996, he was convicted of two counts of Unlawful Sexual Contact III and sentenced to two years at Level V, suspended for one year at Level II, followed by one year at Level I. He contends that he is entitled to petition for relief from the obligation to register because the law in

effect at the time of his conviction allowed him to file such a petition at any time after sentencing. The Court ruled that Patten could petition for relief by Order on August 31, 1999.² In its Order, the Court made no ruling on the merits of Patten's petition and instructed Patten's counsel to request a hearing. Due to a variety of circumstances, counsel did not request a hearing at the time. Ultimately the matter was referred to the Court Commissioner in September 2002. A hearing was subsequently scheduled.

On November 26, 2002 the hearing was held. At the hearing the State opposed Patten's petition and submitted copies of Patten's criminal history. The highlight of Patten's criminal history, subsequent to his guilty plea in the instant matter, was a conviction on December 30, 1999 on a felony Conspiracy in the Second Degree. This conviction arose out of Patten's involvement in an armed robbery at the Taco Bell in Dover, Delaware on March 8, 1999. During this robbery three masked men entered the Taco Bell, held the employees up at gunpoint and escaped with approximately \$2,500.00 in cash. Patten's role was the "get-away" driver. Patten's record also included several motor vehicle offenses in 2000 and 2002.

Patten testified at the hearing that since his brush with the law in 1999 he had been attending Delaware State University and was planning on enrolling in January 2003 at Delaware Technical College. He stated he intended to pursue a degree in business administration. He is currently employed by Blockbuster Video in Bear, Delaware. At the conclusion of the evidence, briefing was scheduled.

² *State v. Patten*, 1999 WL 1227919 (Del. Super. 1999).

In the defense submission to the Court counsel argued that Patten had successfully completed his probationary period, has only had motor vehicle arrests since 1999, is continuing his education and is gainfully employed. The State countered noting the seriousness of the 1999 conviction and his recent motor vehicle offenses. The State argued that Patten remained a significant risk to violate the law.

This Court should not release a defendant from his obligation to register as a sex offender unless it determines that the person will not pose a threat to the safety of others if released from the registration obligations.³ I have thoroughly considered the evidence presented and cannot conclude with any degree of certainty that Patten would not pose a risk if released from his obligation to register. While I commend Patten for his efforts to better himself and wish him well in his endeavors, the glaring fact of his felony conviction resulting from an armed robbery within the past few years weighs heavily against granting his petition. Therefore, with regret, I recommend that the Court *deny* Patten's petition.

/s/ Andrea M. Freud
Commissioner Andrea M. Freud

oc: Prothonotary
xc: Hon. Henry duPont Ridgely
Stephen Welch, Esq.
Sandra W. Dean, Esq.
File

³ 11 *Del. C.* § 4120(a)(3) as in effect at the time of Patten's conviction.