

February 11, 2003

Veronica O. Faust, Esquire  
Department of Justice  
114 East Market Street  
Georgetown, DE 19947

Jerry A. Hurst  
12015 Courthouse Road #534  
Arlington, Virginia 22204

RE: Jerry A. Hurst v. State of Delaware  
ID# 0104005136

Date Submitted: December 3, 2002

Dear Ms. Faust and Mr. Hurst:

This is the Court's decision on the State's Motion to Dismiss Jerry A. Hurst's ("Hurst") appeal from his convictions in the Court of Common Pleas. The State's Motion to Dismiss is granted for the reasons stated herein.

#### FACTS

Hurst was convicted in the Court of Common Pleas of one count of resisting arrest, one count of falsely reporting an incident, and one count of disorderly conduct. On the resisting arrest charge, Hurst was sentenced to a fine of \$100<sup>1</sup> and supervision at Level V for a term of 30 days, suspended for supervision at Level I for a term of six months. Hurst received two \$100 fines for the falsely reporting an incident and disorderly conduct charges.

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<sup>1</sup>Hurst was ordered to pay videophone and VCF fees for each fine. These assessments are not considered in the determination of whether a sentence meets this Court's jurisdictional requirements. See Brookens v. State, 466 A.2d 1218 (Del. 1983).

Hurst filed an appeal of his convictions in the Court of Common Pleas with the Superior Court.<sup>2</sup> The State's Motion to Dismiss alleges Hurst's convictions cannot be appealed to this Court because the sentences fail to meet the relevant jurisdictional requirements. Hurst opposes the State's Motion and argues he is entitled to certiorari review and a trial de novo.<sup>3</sup>

## DISCUSSION

A defendant may appeal a criminal conviction and sentence in the Court of Common Pleas to the Superior Court. 11 Del. C. § 5301(c). The right to appeal is limited by the Delaware Constitution's command that: "there shall be an appeal to the Superior Court in all cases in which the sentence shall be imprisonment exceeding one (1) month, or a fine exceeding One Hundred Dollars (\$100.00)." Del. Const. art. IV, § 28. When a sentence falls below these minimums, the defendant cannot seek an appeal in this Court. See State v. Campbell, 190 A.2d 610, 611 (Del. 1963). The combination of a fine not exceeding \$100 and a prison term not exceeding 30 days does not entitle a defendant to an appeal under Del. Const. art. IV, § 28. Marker v. State, 450 A.2d 397, 399 (Del. 1982). The Supreme Court has held that a defendant convicted of multiple offenses "may not aggregate penalties for the purposes of meeting the jurisdictional requirement." Id.; see also Harris v. State, Del. Super., K94-05-0392, K92-05-0393, Ridgely, P.J. (Dec. 2, 1994).

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<sup>2</sup>Hurst argues the Court of Common Pleas' denial of his motions to dismiss, to quash, to compel, to impose sanctions against the state, to continue, to suppress, and other pre-trial and trial requests violated the federal and state constitutions, judicial ethics, and court rules.

<sup>3</sup>The relevance of these arguments to the State's Motion to Dismiss is unclear. Hurst apparently contends that his appeal should not be dismissed because he is eligible for a writ of certiorari. Hurst's assertions and demands are not pertinent since his appeal has been dismissed.

The sentences imposed on Hurst by the Court of Common Pleas fall below the jurisdictional threshold created by Del. Const. art. IV, § 28. None of Hurst's fines exceeds \$100. The provision sentencing Hurst to supervision at Level V for a term of 30 days suspended for supervision at Level I for a term of six months is not a sentence exceeding 30 days imprisonment. See Weaver v. State, 779 A.2d 254 (Del. 2001) (holding that a Level V sentence exceeding a month suspended entirely for probation entitles a defendant to an appeal in this Court). Thus, this Court does not have jurisdiction to hear Hurst's appeal.

#### CONCLUSION

For the reasons stated above, Hurst's convictions in the Court of Common Pleas do not entitle him to an appeal in this Court. Therefore, the State's Motion to Dismiss is granted.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office  
Court of Common Pleas