

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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December 9, 2015

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Re: *State of Delaware v. Troy C. Hudson*
Def. ID#s 0701011871 and 0702002862

Dear Counsel:

The Court is in receipt of Defendant, Troy C. Hudson's, Motion for Correction of Illegal Sentence filed on July 9, 2015. This Court asked both the Public Defender's Office and the State of Delaware to offer their positions on Mr. Hudson's claim. For the foregoing reasons, Defendant's Motion for Correction of Illegal Sentence is GRANTED.

Defendant's Motion claims the Ex Post Facto Clause prohibits retroactive application of a sentencing provision. The sentencing provision in question is 11 *Del. C.* § 1448(e), which was amended by House Bill 163. The amendment adds the following subsection: "Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection

shall be eligible for good time, parole or probation during the period of the sentence imposed.”¹ The amendment became effective on July 5, 2007, and is silent as to retroactive application.

Defendant was arrested on a charge of possession of a deadly weapon by a person prohibited (along with other charges) on January 16, 2007. The offense was alleged to have occurred on January 15, 2007. He was found guilty of this charge on June 12, 2007. He was sentenced on this charge on July 27, 2007, and the sentence was imposed in accordance with the newly amended statute.

Defendant argues he cannot be deprived of good time credit eligibility on the person prohibited offense because the provision prohibiting good time for that offense became law after the commission of the offense. Imposing that provision violates the Ex Post Facto Clause.²

The State argues that the fact that the good time provision was changed between Defendant’s date of conviction and date of sentencing does not create an illegal sentence. Defendant was sentenced to 14 years at Level 5 followed by probation, and the State claims Defendant’s sentence remains the same and was not illegally increased. The State claims Defendant has no constitutional right to good time credit³ because, when sentenced, the statute governing good time awards prevented Defendant from being awarded good time credit for his offense under 11 *Del. C.* § 1448(e).

¹11 *Del. C.* § 1448(e)(4).

²*Pleasanton v. State*, 817 A.2d 791 (Del. 2003)(“*Pleasanton*”).

³*Snyder v. Andrews*, 708 A.2d 237 (1998).

This case is identical to the case in *Pleasanton v. State*.⁴ The defendant was indicted in December 2000 for robbery and weapons charges. Ultimately, he pled guilty in December 2001 to one count of possession of a firearm during the commission of a felony ('PFDCF'). The defendant was sentenced by the Superior Court to five years imprisonment. In his appeal, the defendant argued that when he committed the crime in late 2000 a sentence for PFDCF could be reduced by good time under the then existing Delaware law. However, in July 2001, the PFDCF statute was amended to prohibit the reduction of any PFDCF sentence by good time. The defendant appealed the Superior Court's sentencing and argued that the amendment to the PFDCF statute violated the Ex Post Facto Clause because of its retroactive application to his case. In *Pleasanton*, the State conceded that the Superior Court's application of the amended statute to the defendant's case violated the Ex Post Facto Clause, and ultimately joined in the defendant's request that the judgment from the Superior Court denying his motion for corrected sentence be reversed.⁵

In the present case, if the amended statute were applied to Defendant's case, it would be a violation of the Ex Post Facto Clause because it would be operating retroactively. Also, as in *Pleasanton*, there is an increase in the punishment attached to his offense by prohibiting the reduction of his sentence through good time.⁶ Therefore, because the amended statute was applied retroactively in Defendant's case and there was an increase in the punishment through the elimination of good time credits, there is a violation of the Ex Post Facto Clause.

⁴*Pleasanton v. State*, 817 A.2d 791 (Del. 2003).

⁵*Id.*

⁶*Id.*

As the Public Defender's Office noted, the problem in this case is with the sentence, in that it contains the language, "This is a mandatory sentence pursuant to DE 11144800A3FD." In order to correct this illegal sentence, the Court will enter an amended order which removes this language from Cr. A. No. IS07-01-1078 and will provide the following information in the notes to the amended order:

This sentence is amended to omit from Cr. A. No. IS07-01-1078 the language "This is a mandatory sentence pursuant to DE 11144800A3FD." This clarifies that defendant may receive good time on the 3 years imposed on the charge of PDWBPP, Cr. A. No. IS07-01-1078, because 11 Del.C. Sec. 1148, as amended by 76 Del. Laws, c.101, does not apply to this sentence.

For the foregoing reasons, the Motion for Correction of Illegal Sentence is granted. IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary