

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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Submitted: May 12, 2003
Decided: May 27, 2003

RE: *State of Delaware v. Ronald C. White*
Cr. A. No. IS02-12-0184W
ID #0211013852

Dear Counsel:

This is my decision on defendant's Motion for Sentence Modification. The motion is denied for the reasons set forth herein.

FACTS

On May 7, 2003, defendant was sentenced after pleading guilty to attempted possession of marijuana with intent to deliver. The sentencing order imposed a statutory loss of driving license privileges pursuant to 21 *Del. C.* § 4177K (a). Defendant's signed plea agreement and truth-in-sentencing guilty plea forms indicate a loss of license. Defendant also signed a revocation of privilege to drive form reflecting a two year loss of license pursuant to 16 *Del. C.* § 4752.

ISSUE PRESENTED

Should the court grant defendant's motion for sentence modification on the grounds that

the offense of attempted possession with intent to deliver marijuana does not carry a statutory loss of license?

DISCUSSION

Defendant seeks to have his sentence modified to restore driving license privileges. Defendant argues that there is no statutory loss of license for attempted possession of marijuana with intent to deliver. This Court may correct a sentence pursuant to Superior Court Criminal Rule 35. *Super. Ct. Crim. R. 35*. Defendant was charged with violating Section 4752 of Title 16 of the Delaware Code, possession of marijuana with intent to deliver. 16 *Del. C.* § 4752. Persons violating Section 4752 are guilty of a class E felony. 16 *Del. C.* § 4752 (a). Persons pleading guilty to Section 4752 shall have their driver's license revoked for a period of two years from the date of sentencing. 21 *Del. C.* § 4177K (a).

Here, defendant pled guilty to attempted possession of marijuana with intent to deliver. An “[a]ttempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting.” 11 *Del. C.* § 531. Since defendant pled guilty to attempted possession of marijuana with intent to deliver, defendant is guilty of violating Section 4752 and should be sentenced accordingly. 11 *Del. C.* § 531; 16 *Del. C.* § 4752. Persons found guilty of violating Section 4752 are subject to a two-year driver's license revocation. 21 *Del. C.* § 4177K (a). Therefore, defendant's license was properly revoked pursuant to statute. Moreover, defendant's signed plea agreement form, truth-in-sentencing form and revocation of privilege to drive form represent that defendant understood that pleading guilty to this offense would result in a loss of license for two years. Accordingly, defendant is not entitled to have his driving license privileges restored.

CONCLUSION

Defendant's motion for modification of his sentence is denied since the offense of attempted possession of marijuana with intent to deliver includes a statutory loss of license. In addition, and independently of this point, this risk was known to defendant, and the Court imposed it as part of the sentencing plan. The Court has the authority to do so.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary