IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL BROWN,	§	
	§	No. 196, 2002
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN00-03-1530
Plaintiff Below,	§	through 1532
Appellee.	§	

Submitted: September 10, 2002
Decided: October 10, 2002

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 10th day of October, 2002, on consideration of the briefs of the parties, it appears to the Court that:

1) Michael Brown was convicted, following a jury trial, of possession of a deadly weapon by a person prohibited (PDW) and related offenses. The Superior Court sentenced him to the minimum mandatory term of one year at Level V pursuant to 11 *Del.C.* § 1448(e). Brown contends that, because his enhanced sentence was based on a

judicial determination of predicate facts, the sentence was unconstitutional under *Apprendi v. New Jersey*.[1]

2) In 1995, Brown was convicted of attempted first degree burglary. In 2000, he was a passenger in a car stopped by the police on suspicion that the car was stolen. As a police officer approached Brown's side of the car, Brown got out and tried to flee. The officer chased Brown and, while in pursuit, saw him fumble with his jacket and make a throwing motion. Later, an officer inspected the area and found a black handgun. Brown was charged with PDW and was convicted.

3) PDW is a class D felony that carries a maximum sentence of eight years.[2] If a person "is a prohibited person …because of a conviction for a felony involving physical injury or violence to another," then the minimum sentence is one year at Level V.[3] The Superior Court decided that Brown's prior conviction for attempted robbery was "a

[1] 530 U.S. 466 (2000).

[2] 11 *Del.*C. §§ 1448(c), 4205(b)(4).

[3] 11 *Del. C.* § 1448(e).

felony involving physical injury or violence to another" and imposed the minimum mandatory one year sentence.

4) In *Apprendi*, the United States Supreme Court held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."[4] *Apprendi* did not address the question presented here – whether facts that increase the minimum sentence, but not the statutory maximum, also must be decided by a jury and proved beyond a reasonable doubt.

5) This year, in *Harris v. United States*,[5] the United States Supreme Court decided that exact point. It held that a jury need not consider facts that impact the length of a sentence that is less than the statutory maximum:

> Whether chosen by the judge or the legislature, the facts guiding judicial discretion below the statutory maximum need not be alleged in the indictment, submitted to the jury, or proved beyond a reasonable doubt. When a judge sentences the defendant to a mandatory minimum, no less than when the judge chooses a sentence within the range, the grand and petit juries already have found all the facts necessary to authorize the Government to impose the sentence. The judge may impose the minimum, the maximum, or any other sentence within the range

[4] 530 U.S. at 490.

[5] ___ U.S.___; 122 S. Ct. 2406 (2002).

without seeking further authorization from those juries – and without contradicting *Apprendi*.[6]

6) The *Harris* decision controls the result here. Accordingly, we affirm the trial court's determination that Brown's sentence was not unconstitutional under *Apprendi*.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

By the Court:

/s/ Carolyn Berger
Justice

[6] 122 S.Ct. at 2418.