

February 5, 2002

Allison L. Peters
Deputy Attorney General
Carvel State Office Building
820 North French Street
Wilmington, Delaware 19801

Vernon G. Bailey
3104 N. Market Street
Wilmington, Delaware 19802

Re: *Bailey v. State*, I.D. 0010007932

Dear Ms. Peters and Mr. Bailey:

The Court is in receipt of the above-captioned appeal from the Court of Common Pleas. Appellant and Defendant below, Vernon Bailey, has appealed his convictions for several traffic violations in that court. The appeal has been briefed and is currently before the Court for decision.

In his opening brief, Bailey raises numerous grounds in support of his argument that his convictions should be reversed. In response, the State has filed a six-page answering brief. In its answering brief, the State argues that Bailey's appeal should be dismissed because his appeal was untimely and because his convictions fail to meet the jurisdictional requirements for appeal. The State also argues that the decision of the Court below is not clearly erroneous and should be affirmed.

The Court finds that the State's initial arguments would have been more appropriately raised in a motion to dismiss the appeal and should be considered separately from the merits of Bailey's appeal. The Court has considered the State's arguments in

support of dismissal, as well as Bailey's response, and has determined that the appeal should not be dismissed.

Initially, the State argues that Bailey was tried, convicted and sentenced by the Court of Common Pleas on April 19, 2001. Bailey's appeal was filed on July 2, 2001, well outside the fifteen day appeal period set forth in Super. Ct. Crim. R. 39(a). In fact, the docket shows the appeal as having been filed on that date and the appeal bears a time stamp of July 2, 2001. However, Bailey has provided to the Court evidence that he in fact filed a Notice of Appeal on May 4, 2001, within the fifteen day appeal period. The discrepancy appears to be the result of clerical error rather than Bailey's delay. Therefore, the Court will not dismiss Bailey's appeal as untimely.

Next, the State argues that Bailey's sentences for his convictions in the Court of Common Pleas did not entitle him to appeal his convictions to this Court. Pursuant to the Delaware Constitution, art. IV, § 28, "there shall be an appeal to the Superior Court in all cases which the sentence shall be imprisonment exceeding one (1) month, or a fine exceeding One Hundred Dollars (\$100.00)." Despite Bailey's arguments to the contrary, separate penalties imposed on "distinct convictions may not be aggregated so as to meet the jurisdictional threshold." *Harris v. State*, Del. Super., C.A. No. K94-05-0392AC and -0393AC, Ridgely, J. (December 2, 1994) at 3 (citing *Marker v. State*, Del. Supr., 450 A.2d 397, 399 (1982)).

Bailey was convicted of four distinct traffic violations. The court below sentenced Bailey for Driving an Unsafe Motor Vehicle to pay a fine of twenty-five dollars, for Operating a Motorcycle Without a Helmet/Glasses to pay a fine of twenty-five dollars, and for Operating an Unregistered Vehicle, to pay a fine of fifty dollars. Finally, for Failure to Have Insurance Identification in Possession, the court imposed a \$1,500 fine. The court suspended \$1,350 of that fine, leaving a balance of \$150.

Bailey's convictions for Driving an Unsafe Motor Vehicle, Operating a Motorcycle Without a Helmet/Glasses, and Operating an Unregistered Vehicle fail to meet the constitutional requirement to file an appeal in this Court. However, Bailey's sentence for Failure to Have Insurance Identification in Possession exceeds the minimum requirement of a one hundred dollar fine. As a result, the Court hereby **DISMISSES** the portions of Bailey's appeal that relate to his convictions other than for Failure to Have Insurance Identification.

Upon review of Bailey's opening brief in support of his appeal, the Court finds that Bailey's grounds identified as Argument III, Argument IV, and Argument V address his conviction for Failure to Have Insurance Identification. Therefore, the Court

will address only those arguments on their merits. Bailey's other arguments on appeal relate to his other convictions and the Court will not consider those arguments.

In its answering brief, the State devotes approximately three-quarters of one page to the merits of Bailey's arguments. Specifically, the State argues that, "Defendant's opening brief appears to present to the Court a request for reversal based on a review of the evidence presented below. This argument is interpreted to be a review of the findings of fact below and therefore subject to a clearly erroneous standard in the instant court." Without further elaboration, the State concludes that the court's decision below was not clearly erroneous and that the convictions below must stand.

After reading Bailey's Argument III, Argument IV, and Argument V, the Court finds that these arguments are, in fact, allegations of legal error by the court below; specifically, Bailey argues that the court below misinterpreted the applicable statutes and improperly shifted the burden of proof. The State does not address these arguments in its brief. By this letter, the Court hereby orders the State to address Bailey's Argument III, Argument IV, and Argument V on their merits. The State's revised answering brief is to be filed with the Court no later than January 4, 2002. Bailey will then have until January 18, 2002 to file a revised reply brief if he chooses to do so.

IT IS SO ORDERED.

Very truly yours,

CG:mwa

pc: Prothonotary