

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. Henley Graves  
Resident Judge

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
(302) 856-5257

January 11, 2005

N440  
Gary L. Wilkerson  
Sussex Correctional Institution  
P. O. Box 500  
Georgetown, DE 19947

**RE: Defendant ID No. 9603005035**

Dear Mr. Wilkerson:

You have complained that the sentencing order imposed by Judge William Swain Lee on July 3, 1996 makes no mention of the sex registration requirements imposed by the Delaware Code. Further you advised that you were not informed of the sex registration requirements at the time of your plea.

You have informed the Court that you have been threatened with being detained past your release date in the event you do not submit to sex registration and complete the necessary paperwork.

I have been advised that you have completed the necessary registration paperwork, but under protest, in order that your release in February would not be negatively impacted.

You have continued to complain to the Court that this was inappropriate and you seek relief from the Court.

The following cases do not support your position. In other words, this ground has been plowed before with rulings contrary to your present position.

In *Modi v. State*, 1999 WL 167835 (Del. Super.), Judge Alford ruled on exactly the same fact pattern. Mr. Modi claimed that he should have been permitted to withdraw his guilty plea because the Superior Court failed to advise him he was required to register as a sex offender. The Court determined it was not an affirmative obligation of the Court to make him aware of the sex registration requirements as those requirements are collateral consequences to his guilty plea. This decision was subsequently affirmed by the Delaware Supreme Court by Order of December 20, 1999.

Gary L. Wilkerson  
Page 2  
January 11, 2005

In *State v. Scott*, 2003 WL 21204469 (Del. Super.), the Court likewise determined that since the defendant did not have rights and privileges taken away, this was a collateral consequence and therefore even if one was not informed of the registration requirements, the plea was not defective.

In *State v. Boston*, 2003 WL 22285601 (Del. Super.) Judge Carpenter ruled that there was no duty to inform the defendant at sentencing or at his plea of the consequences of the sexual registration and community notification requirements of the Code.

Finally, I note that the United States Supreme Court has ruled that the State sex registration and notification requirements are more civil in nature and are not criminal sanctions. Therefore, such requirements could be imposed on persons who were sentenced prior to the enactment of the sexual registration statute. *Smith v. Doe*, 538 U.S. 84 (2003). The statute was not *ex post facto*.

Therefore, for these reasons, your request that the Court order that the Department of Correction not require that you be registered as a sex offender, is denied.

**IT IS SO ORDERED.**

Yours very truly,

T. Henley Graves

THG:baj  
cc: Prothonotary  
Melanie C. Withers, Esquire  
Karl Haller, Esquire