IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE :

V. : Case No.0302014689

HOWARD M. PUSEY :

ORDER

- 1). In this DUI case, Appellant Pusey appeals from the Justice of the Peace Court's Denial of Appellant's Motion to Withdraw Guilty Plea.
- 2). Appellant elected the First Offender's Program (FOP), pro se, on March 7, 2003 pursuant to 21 *Del C*. § 4177(B).
- 3). Appellant subsequently hired counsel and moved to withdraw his guilty plea and FOP election, which Motion was denied by the Magistrate on June 3, 2003 after oral argument.
- 4). In *State v. Curtis*, Del. Com. Pl., C.A. No. 0304007852, Clark, J., (May 10, 2004), this Court addressed almost identical legal and procedural issues as those presented in this appeal.
- 5). In *Curtis*, this Court held that the Appellate jurisdiction of the Court of Common Pleas in Motor Vehicle offenses is governed by 21 *Del*. *C.* § 708(b), which requires a conviction of a Title 21 offense to invoke Appellate review.

- 6). Since election of the First Offender's Program does not result in a conviction at the time of election, there is no conviction to appeal from.
- 7). Appellant's only avenue of review in this context may be limited to filing a Writ of Certiorari in the Superior Court. *Curtis, supra; Brandywine Apartments Assoc. v. Justice of the Peace*, 1999 WL 33255921 @*2(Del. Com. Pl.)

NOW, THEREFORE, for the reasons stated above, IT IS ORDERED this _____ day of MAY, 2004, THAT:

- (1) The State's Motion to Dismiss the Appeal is GRANTED.
- (2) The Appellant's appeal is DISMISSED.

Rosemary Betts Beauregard, JUDGE