

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE, )  
)  
Plaintiff, )  
) C.A. No. N12A-02-004 MMJ  
v. )  
)  
DANIEL G. BROWN, )  
)  
Defendant. )

**ORDER**

1. On January 14, 1983, Daniel G. Brown pled guilty to one count of attempted second degree rape. He was sentenced to 15 years at Level 5, suspended after 10 years for probation.

2. By letter dated September 2, 2009, Brown was informed by the Attorney General for State of Delaware that he was being assigned to Tier III on the Sex Offender Registration pursuant to 11 *Del. C.* §4121(d)(2).

3. Brown requested that the Board of Parole (“Board”) review the Tier III designation.

4. The Board held a “non-appearance hearing” on July 29, 2010. By letter dated August 3, 2010, the Board informed Brown:

Pursuant to statute 11, Del. C.§4121, the Board has reviewed your current tier designation and has determined that a Tier I designation is

the appropriate level of supervision. The Board's decision was based on the following reasons:

- Results of ABEL Assessment
  - Impact on family and employment status
5. The State requested reconsideration of the Board's determination.

6. By Order dated January 6, 2012, the Board stated that it conducted a hearing on April 20, 2010 pursuant to 11 *Del. C.* § 4122(d), at which Brown personally appeared and the State provided written and oral arguments. The Board determined: "The petition for reconsideration of sex offender tier designation is denied."

7. The State filed a Petition for Writ of Certiorari with this Court. The State and Brown filed briefs.

8. This Court finds that the Board does not have the power to exercise discretionary or equitable oversight over the Attorney General's determination pursuant to 11 *Del. C.* §4122. Rather, the Board may act as an administrative check for the requirements of 11 *Del. C.* §4121 to ensure that the Attorney General did not mistakenly place an offender in the wrong tier or require an offender to register after the registration period has expired.<sup>1</sup>

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<sup>1</sup>*Lane v. Board of Parole*, 2012 WL 5509711 (Del. Super.); *State v. Tenbusch*, 2010 WL 3447679, at \*2 (Del. Super.), *aff'd*, 21 A.3d 597 (Del. 2011).

9. Further, the Board failed to create a record sufficient to permit *certiorari* review of its findings. The January 6, 2012 Order states neither the standard of review applied, nor the facts supporting its decision.

**THEREFORE**, the Order of the Board of Parole dated January 6, 2012 is hereby **REMANDED FOR RECONSIDERATION** of the Board's conclusion consistent with Delaware law, and for the purpose of creating a record of the proceedings and the facts underlying the Board's determination.

**IT IS SO ORDERED** this 15<sup>th</sup> day of May, 2013.

/s/ *Mary M. Johnston*  
The Honorable Mary M. Johnston