



STATE OF DELAWARE
 THE COURTS OF THE JUSTICES OF THE PEACE
 820 NORTH FRENCH STREET, 11TH FLOOR
 WILMINGTON, DELAWARE 19801

NORMAN A. BARRON
 CHIEF MAGISTRATE

TELEPHONE: (302) 571-2485

LEGAL MEMORANDUM 82-94

TO: ALL JUSTICES OF THE PEACE
 STATE OF DELAWARE

FROM: NORMAN A. BARRON
 CHIEF MAGISTRATE

DATE: JULY 20, 1982

RE: APPEALS FROM JUSTICE OF THE PEACE COURT TRAFFIC CONVICTIONS

*Rescinded
 10-17-95*

House Bill No. 551, as amended by House Amendment No. 1 and Senate Amendment No. 1, was signed into law by the Governor on July 8, 1982.¹ As you know, prior to this amendment, any Title 21 traffic conviction could be appealed from the Justice of the Peace Courts to the Superior Court for a trial de novo irrespective of the amount of the fine imposed. Thus, a person convicted in a Justice of the Peace Court for running a red light and receiving a fine of \$10 could appeal to the Superior Court for an entire new trial.

House Bill No. 551, as amended by House Amendment No. 1 and Senate Amendment No. 1, restricts such appeal rights by amending 21 Del.C., §708 to read as follows:

¹63 Del.Laws, c. 342.

"§708. Appeal.

(1) Any person convicted under this Title, or under any Municipal Ordinance or other law, for a motor vehicle violation within the State of Delaware before an Alderman or Mayor of any incorporated City or Town, except the city of Wilmington, shall have the right of an appeal, unless otherwise stated in this Title, to the Superior Court, upon giving bond in the sum of \$500 to the State with surety satisfactory to the Mayor or Judge before whom such person was convicted, such appeal to be taken and bond given within 15 days from time of conviction. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of his right to a writ of certiorari in the Superior Court.

(2) Except as provided in paragraph (1) of this Section, any person convicted under this Title, shall have the right of an appeal to the Superior Court only in those cases in which the sentence imposed was imprisonment, or a fine exceeding one hundred dollars (\$100.00), upon giving bond with surety satisfactory to the Alderman, Justice of the Peace or a Judge before whom such person was convicted, such appeal to be taken and bond given within fifteen days from the time of conviction. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of his right to a writ by certiorari in the Superior Court."

Thus, with regard to Title 21 traffic offenses committed after July 8, 1982,² when there is a conviction, after trial, in

²Section 2 of House Bill No. 551 states that, "This Act shall apply only to crimes committed after the effective date hereof."

a Justice of the Peace Court, an appeal to the Superior Court for a trial de novo is allowed only if any period of incarceration was imposed as a part of the sentence,³ or if a fine exceeding \$100 was imposed as part of the sentence.⁴ Such appeal must be perfected within 15 days from the date on which the sentence is imposed. Included in this appeal procedure is the requirement that the defendant must give bond with surety satisfactory to the presiding Justice of the Peace. The amount of the bond and type of surety are determinations to be made by the Justice of the Peace utilizing sound judicial discretion.

House Bill No. 551 was supported primarily by the Department of Justice. You should be proud of the faith placed in you by the Attorney General, the General Assembly and the Governor in limiting, through passage and enactment of House Bill No. 551, traffic appeals from Justice of the Peace Courts. As the synopsis to House Bill No. 551 states, in part:

"This bill expands the right to appeal traffic convictions from Alderman's or Mayor's Courts and limits somewhat the right to appeal traffic convictions from Justice of the Peace Courts. . . .

³If a period of incarceration is imposed but said period is suspended, there is, nevertheless, a right to an appeal for a trial de novo in the Superior Court.

⁴The fine does not include Court costs or the Victim's Compensation Fund assessment. Thus, a person who is fined in the amount of \$80. plus Court costs of \$8.50 plus \$12 for the Victim's Compensation Fund for a total of \$100.50 has no right to appeal for a trial de novo in the Superior Court from a Justice of the Peace Court conviction and sentence regarding a Title 21 traffic offense.

The right of appeal from . . . Alderman's Courts . . . has been expanded by this bill because of the fact that these courts are not subject to the same type of administrative control and uniformity of procedure as that found in the Justice of the Peace Courts. . . ."

One final procedural note. You, as the Justice of the Peace presiding over a Title 21 traffic offender's initial appearance, must bring the jurisdictional form⁵ into conformity with the amended section 708 of Title 21 of the Delaware Code with regard to all traffic offenders whose offenses occur after July 8, 1982. Of course, when the Administrative Office orders a new supply of the jurisdictional forms, said forms will be amended to reflect the traffic appeal rights as mandated by House Bill No. 551.

⁵Criminal Form No. 34, Rev. 8/80.

NAB:pn

cc: The Honorable Daniel L. Herrmann
The Honorable Grover C. Brown
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred Fraczkowski
The Honorable Richard S. Gebelein
The Honorable Lawrence N. Sullivan
The Honorable Richard J. McMahon, State Prosecutor
Norman E. Veasey, Esquire, Pres., Delaware State Bar Assoc.
Professor William J. Conner, Delaware Law School
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NORMAN A. BARRON
 CHIEF MAGISTRATE

LEGAL MEMORANDUM 82-94 (SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE
 STATE OF DELAWARE

FROM: NORMAN A. BARRON
 CHIEF MAGISTRATE

DATE: DECEMBER 9, 1982

RE: APPEALS FROM JUSTICE OF THE PEACE COURT TRAFFIC CONVICTIONS

*Rescinded
10-17-95*

This memorandum supplements Legal Memorandum 82-94, dated July 20, 1982, Appeals From Justice of the Peace Court Traffic Convictions. In said Legal Memorandum, House Bill No. 551, as amended by House Amendment No. 1 and Senate Amendment No. 1, was discussed. This Bill, which became law on July 8, 1982, amended 21 Del.C., §708 so as to restrict appeals from Justice of the Peace Court traffic convictions "only in those cases in which the sentence imposed was imprisonment, or a fine exceeding one hundred (\$100.00) dollars" was imposed.

As stated in Legal Memorandum 82-94:

"Thus, with regard to Title 21 traffic offenses committed after July 8, 1982, when there is a conviction, after trial, in a Justice of the Peace Court, an appeal to the Superior Court for a trial de novo is allowed only if any period of incarceration was imposed as a part of the sentence, or if a fine exceeding \$100 was imposed as part of the sentence."

In a footnote regarding the above-quoted portion of Legal Memorandum 82-94, I indicated that if a period of incarceration is imposed but said period is suspended, there is a right to an appeal for a trial de novo in the Superior Court. In retrospect, perhaps a more detailed discussion regarding suspended sentences was warranted.

Recently, in the case of State v. Jones, Del.Super., N-82-08-0206-A, letter opinion by J. Walsh dated December 1, 1982, the Honorable Joseph T. Walsh was faced with the following factual situation: Jones elected to have his case heard in a Justice of the Peace Court and pleaded not guilty in Justice of the Peace Court No. 10 on a Title 21 traffic offense. He was tried and convicted. He was sentenced by the Justice of the Peace to pay a fine of \$10 and to be imprisoned for one day with the term of imprisonment suspended. He appealed to the Superior Court for a trial de novo. The State moved to dismiss the appeal. Judge Walsh concluded that the Motion To Dismiss should be granted:

"I have considered the State's Motion to Dismiss the above referenced appeal and have concluded that the motion should be granted.

It appears that the defendant was arrested for an offense which occurred after the effective date of 21 Del.C., §708(2) which limits appeals to the Superior Court to cases 'in which the Sentence imposed was imprisonment, or a fine exceeding one hundred dollars (\$100.00), . . .'. The defendant has appealed his conviction in Justice of the Peace Court No. 10 in which he was fined \$10.00 and imprisoned (suspended) for one day. The State has moved to dismiss the appeal contending that the sentence in this case does not satisfy the appellate threshold established by §708.

It is clear that the fine imposed in this case does not meet the statutory standard. I am equally satisfied that a suspended sentence of imprisonment of one day does not establish the alternative standard. I note that the defendant was not placed on probation and since the one day sentence of imprisonment was never served he is under no penal detriment as a result. Had the defendant been placed on probation the matter might be viewed differently, but the undisputed fact is that defendant did not serve the day of imprisonment and the Justice of the Peace no longer has jurisdiction to require that it be served. In short, then the suspended sentence of imprisonment is a nullity. Moreover, to the extent that the Justice of the Peace attempted to preserve an appellate right which the statute clearly seeks to limit, an interpretation supporting the appeal should be discouraged.

For the reasons stated, the motion to dismiss the appeal is granted. The record is remanded to Justice of the Peace Court No. 10." (Emphasis added.)

Although 11 Del.C., §4204(c) (4)¹ sanctions a suspended sentence without regard to a concomitant period of probation being connected with the suspension, it is clear that a suspended period of incarceration with no connected period of probation fails to satisfy the appellate threshold of 21 Del.C., §708(2). This is so because the defendant is under no penal detriment by such a sentence. Had the sentence, for example, been to pay a \$10 fine, to be incarcerated for 10 days, said period of incarceration suspended for a

¹Eleven Del.C., §4204(c) (4) states that:
"(c). When a person is convicted of any offense other than a class A felony the court may take the following action:
* * * *
(4) Suspend the imposition or execution of sentence . . ."

three month period of probation, the condition of probation being that the defendant take and complete successfully a defensive driving course during said probationary period, then an appeal to Superior Court for a trial de novo would lie since failure to complete the condition of probation could result in the reimposition of the 10 days of incarceration. In such a situation, in other words, the defendant remains under a penal detriment. Thus, the appellate threshold is satisfied.

The above is not to be construed as encouraging appeals from Justice of the Peace Court traffic convictions to the Superior Court for trials de novo. Obviously, the intent of House Bill No. 551, as amended by House Amendment No. 1 and Senate Amendment No. 1, was to reduce the number of traffic appeals being taken to the Superior Court for trials de novo.

If a defendant wishes to be tried with regard to a Title 21 traffic offense in Justice of the Peace Court, you, as the presiding judge, should ensure that the defendant understands that unless the facts warrant a sentence in excess of \$100 or of a period of incarceration or unless the statute mandates such a sentence, in all likelihood such a sentence will not be imposed.

The defense counsel or the defendant who, before or after the imposition of a non-appealable sentence, states a strong desire to appeal the conviction and requests, solely for the purposes preserving his appeal rights, a sentence falling within the appellate threshold of 21 Del.C., §708(2), should be reminded that he had an opportunity, at his initial appearance, to have the case transferred to and heard

in a higher court. Such a statement conforms to the intent of §706(2), to wit: To limit the appeal rights from Justice of the Peace Court traffic convictions. State v. Jones, supra.

WAB:pn

cc: The Honorable Daniel L. Herrmann
The Honorable Grover C. Brown
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred Fraczkowski
The Honorable Richard S. Gebelein
The Honorable Lawrence M. Sullivan
The Honorable Richard J. McMahon, State Prosecutor
E. Norman Veasey, Esquire, Pres., Delaware State Bar Assoc.
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NORMAN A. BARRON
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TELEPHONE (302) 571-2485

LEGAL MEMORANDUM 82-94 (2ND SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE
STATE OF DELAWARE

FROM: NORMAN A. BARRON
CHIEF MAGISTRATE

DATE: AUGUST 15, 1985

RE: APPEALS FROM JUSTICE OF THE PEACE COURT TRAFFIC CONVICTIONS

*Rescinded
10-17-95*

In the recent case of Santillo v. Justice of the Peace Court No. 15 and Ahern, Del. Super., Civil Action No. 84A-JN-17, informal letter opinion by J. Martin dated August 9, 1985, Judge Martin denied a defendant's appeal right from a speeding case where the fine imposed was \$91, but where the fine coupled with Court costs and the VCF totalled \$112.65. The Court agreed with the Justice of the Peace Court's handling of the case. A copy of J. Martin's decision is attached hereto.

NAB:pn

Attachment

cc: The Honorable Daniel L. Herrmann
The Honorable William T. Allen
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred R. Fraczkowski
The Honorable Charles M. Oberly, III
Lawrence M. Sullivan, Esquire
Eugene M. Hall, Esquire
Charles S. Crompton, Jr., Esq., Pres., Delaware Bar Assoc.
Professor William J. Conner, Delaware Law School
Michael E. McLaughlin, JP Court Administrator
John R. Fisher, Dir., Administrative Office of the Courts
Law Libraries: New Castle, Kent, and Sussex Counties
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SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOSHUA W. MARTIN, III Submitted: November 26, 1984
RESIDENT ASSOCIATE JUDGE Decided: August 9, 1985

COURT HOUSE
WILMINGTON, DE. 19801

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James J. Hanley, Esq.
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Wilmington, DE 19801

Dear Counsel:

RE: JOSEPH A. SANTILLO, III v. STATE OF
DELAWARE, JUSTICE OF THE PEACE COURT
NO. 15, THE HONORABLE A. G. AHERN
CIVIL ACTION NO. 84A-JN-17

This is the Court's decision on plaintiff, Joseph A. Santillo, III's ("Santillo") appeal from a judgment rendered by Justice of the Peace Court No. 15 ("J.P. Court") and petition for a writ of certiorari.

On March 30, 1984, Santillo was arrested and charged with driving 34 m.p.h. in a 25 m.p.h. zone. Santillo agreed to plead guilty to the charge, but on April 14, 1984 withdrew his guilty plea in favor of proceeding to trial. On May 24, 1984, Santillo appeared at J.P. Court to be arraigned and was informed that the arresting officer had, with the permission of the Judge, amended the charge to read 52 m.p.h. in a 25 m.p.h. zone. No counsel was present to represent Santillo at this time. Santillo was arraigned and was told at that time that the offense of driving 52 m.p.h. in a 25 m.p.h. zone was punishable by a fine of \$91.00 and/or imprisonment of not less than 10 or more than 30 days, a charge of five points on the driving record, and a mandatory interview by the Delaware Motor Vehicle Department. He was also told that if he was convicted of a traffic offense and a fine exceeding \$100.00 or imprisonment was imposed he had the right to appeal to Superior Court. The Justice of the Peace apparently did not fully explain that the total amount of the fine, itself, had to be \$100.00, excluding Court costs and statutory surcharge to the Victim Compensation Fund. Delaware Appellate Handbook §24.04(f), p. 24-18 (1984). It was explained to Santillo that he had the right to a speedy trial and the right

to be represented by counsel. As well he was told that he could be tried in the J.P. Court or the Court of Common Pleas. Santillo elected to remain in the J.P. Court.

In his brief, Santillo claims that he requested a continuance and it was denied, while in the affidavit Santillo claims that he was not informed that he had a right to a continuance and did not ask for one. When, during the course of the trial Santillo was not permitted to introduce evidence that his speedometer was not functioning properly, he requested a continuance which was denied. Santillo was convicted of driving 52 m.p.h. in a 25 m.p.h. zone and was fined \$91.00, plus costs and victim compensation surcharge, totalling \$112.65. On May 30, 1984, a motion for a new trial was filed on Santillo's behalf. The motion was denied by the Justice of the Peace. Santillo filed this writ of certiorari and appeals the denial of the motion for a new trial and the judgment of the J.P. Court.

The Court adopts the State's position with respect to Santillo's right of appeal. The only statutory provision providing for an appeal from a Title 21 traffic conviction requires that a fine exceeding \$100.00 or a sentence of imprisonment be imposed. 21 Del. C. §708(b). Neither are present in this case. Santillo's fine, excluding costs and the statutory victim compensation surcharge, was only \$91.00 and a term of imprisonment was not imposed.

Santillo's claim that he has been fatally prejudiced by the failure of the Justice of the Peace to adequately explain to him his right of appeal is unpersuasive. The explanation given to Santillo by the Justice of the Peace was adequate. One may not claim error on the part of a Court below simply because its judgment is deemed unsatisfactory. Therefore, Santillo's appeal must be dismissed for lack of jurisdiction.

In considering a petition for a writ of certiorari, this Court bears in mind that the purpose of such a writ is "to correct errors of law, to review proceedings not conducted according to law, and to restrain an excess of jurisdiction." 1 Woolley on Delaware Practice §896 at 624.

Under a writ of certiorari, a reviewing Court merely examines the record and the regularity of the proceedings below. Shoemaker v. State, Del. Supr., 375 A.2d 431 (1977). Review by certiorari is limited to errors which appear on the face of the record and does not embrace an evaluation of the evidence considered by the inferior tribunal. Mason v. Board of Pension Trustees, Del. Super., 468 A.2d 298 (1983). In an unusual case

the reviewing court may consider evidence outside of the record where it is necessary to complete or explain an otherwise incomplete or doubtful record. 1 Woolley on Delaware Practice §897 at 626.

In the case sub judice, the record fails to disclose that Santillo requested and was refused a continuance prior to trial. Based on the apparent agreement of the parties, however, this Court will assume that Santillo requested and was denied a continuance during the trial. The continuance was requested immediately after an adverse evidentiary ruling. Absent a finding that the Justice of the Peace unreasonably or capriciously denied such request, this Court will not disturb a discretionary ruling on a motion for a continuance. J.P. Crim. R. 9(b). This Court finds no such error by the Justice of the Peace on the face of the record.

Santillo's second contention in support of the writ is that the Justice of the Peace erred in not adhering to the requirements of J.P. Crim. R. 8 which states that the date of trial must not be less than five days from arraignment except in the circumstance that both parties agree. Thus Santillo is alleging a procedural error on the part of the Justice of the Peace rather than an error of law or lack of jurisdiction. Additionally, this Court finds no violation of J.P. Crim. R. 8 by the Justice of the Peace. By opting to remain in the J.P. Court rather than transferring the matter to the Court of Common Pleas, Santillo impliedly agreed to commence the trial.

Santillo's final contention is that the Justice of the Peace abused his discretion in failing to set forth his reasons for denial of the motion for a new trial. The motion for a new trial was submitted after the Justice of the Peace had rendered a decision in the case. Since all that is considered in a writ of certiorari is the record below, the fact that the Justice of the Peace failed to set forth reasons for its denial of the motion for a new trial is irrelevant to the issue of whether certiorari should be granted.

Based on the foregoing analysis, this Court finds that certiorari will not lie, as the face of the record fails to

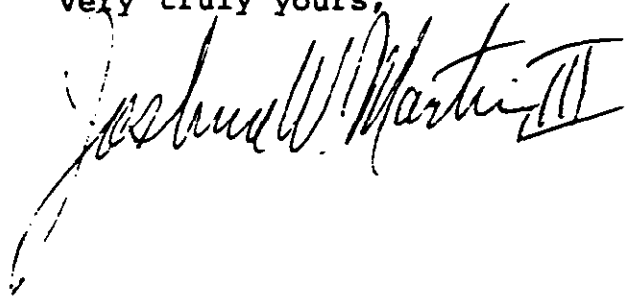
L. Vincent Ramunno, Esq.
James J. Hanley, Esq.

8/9/85

support Santillo's allegations of error on the part of the
Justice of the Peace. Certiorari is DENIED.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script, reading "Justus W. Martin III". The signature is written in dark ink and is positioned to the right of the typed text "Very truly yours,".

JWM, III:alw
xc: Prothonotary
Honorable A. G. Ahern