

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

DAMMEYIN A. JOHNSON

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Cr. ID No. 9709009665

ORDER

By Order dated October 14, 2019, this Court denied Dammeyin A. Johnson's motion for re-designation of his Tier Level.

On October 21, 2019, Mr. Johnson requested re-argument/review of the October 14, 2019 Order denying his re-designation of his Tier Level.

IT IS HEREBY ORDERED this fourth day of December, 2019, that Mr. Johnson's request for re-argument/review is denied.

The sex offender registration statute, set forth at 11 *Del. C.* §4120 et seq., provides a "compulsory approach" to tier assignments. Tier assignments are mandatory and are based solely on the charge of which the sex offender was convicted without regard to the facts and circumstances of a particular case. *Wilkerson v. State*, 2006 WL 822733, *2 (Del.)

Mr. Johnson is a Risk Assessment Tier III sex offender stemming from convictions in 1999. Tier III registration is for life, but a petitioner may petition the

Superior Court for redesignation to Risk Assessment Tier II if 25 years has elapsed from the last day of any Level IV or Level V sentence imposed at the time of the original conviction. However, if the petitioner has been convicted of any subsequent offense (other than a motor vehicle offense), no petition for redesignation shall be permitted until 25 years has elapsed from the date of the subsequent conviction. See, 11 *Del. C.* § 4121(e)(1) & (2).

Mr. Johnson was subsequently convicted of drug dealing charge(s) and is currently incarcerated. His petition for a redesignation to Tier II is not yet ripe, since the 25-year period that must elapse before he is eligible to seek a redesignation of his tiering level has not yet started to run because he is still incarcerated. Mr. Johnson's motion for re-designation was therefore denied by Order dated October 14, 2019.

Mr. Johnson filed a motion requesting re-argument/review of the denial of his re-designation of his tiering level. Mr. Johnson is under the misimpression that the sex offender registration statute somehow provides the Superior Court with discretion in assigning an individual to a tier level.

The sex offender registration statute is retroactively applied to all persons convicted of a registering offense. 11 *Del. C.* § 4122(a). Before the sex offender registration statute was amended in June 2018, the Board of Parole was tasked with assigning those persons previously convicted of a registering offense to a tiering level. The Board of Parole when tasked with the responsibility for assigning tiering levels to

previously convicted sex offenders had been given some discretion in that regard. See, 11 Del. C. § 4122(e) (prior to the June 27, 2018 amendment).

The sex offender registration statute was amended, effective June 27, 2018, and the Board of Parole was removed from its role of assigning those persons previously convicted of a registering offense to a tiering level and that responsibility was placed with the Superior Court. See, 11 Del. C. § 4122, amended by 81 Del. Laws, chapter 277, effective June 27, 2018.

When the statute was amended, removing the Board of Parole from the tier designation role and replacing that role with the Superior Court instead, any discretion which once existed in making the redesignation decisions was removed from the redesignation process. Pre-amendment 11 Del. C. § 4122(e), expressly provided the Board of Parole with discretion in making the redesignation tiering decisions. That subsection was repealed in its entirety when the statute was amended and the Superior Court stepped into that role.


The Delaware Supreme Court has made it abundantly clear that the Superior Court has no discretion in assigning an individual designated as a sex offender to a risk assessment tier level. *Helman v. State*, 784 A.2d 1058, 1066 (Del. 2001); *State v. Selleck*, 2002 WL 431983 (Del.) (the court has no discretion in assigning an individual designated as a sex offender to a risk assessment tier level); *Wilkerson v. State*, 2006 WL 822733, *2 (Del.). The statute specifies what offenses will result in designation to

each separate tier level. The statute clearly delineates the tier to which a sex offender is to be assigned based on the particular offense for which that individual was convicted and mandates assignment to that Tier level without any regard to the facts or circumstances of the particular case. *Helman v. State*, 784 A.2d 1058, 1066 (Del. 2001). In essence, the statute is offense driven without regard to mitigating factors of the offender or the offense. *Helman v. State*, 784 A.2d 1058, 1066 (Del. 2001);

The Superior Court has no discretion in the designation or redesignation of Mr. Johnson's tiering level. Mr. Johnson is a Tier III sex offender. He may seek redesignation to Tier II after 25 years has elapsed from the current sentence he is serving unless he is subsequently convicted of new offenses which will reset the 25 year waiting period.

The court has no discretion in this regard. Mr. Johnson's motion for re-argument/review is hereby **DENIED**.

IT IS SO ORDERED.



Commissioner Lynne M. Parker

cc: Original to Prothonotary
Mr. Dammeyin A. Johnson
Domenic Carrera, Deputy Attorney General