

not believe that the defendant is eligible, under the provisions of RSA 651:5, I to have the record of his conviction annulled. "The plain meaning of RSA 651:5, I . . . does not provide for an application for annulment of a record of conviction when a court has imposed a fine as part of the sentence, and therefore, I would hold that the defendant herein cannot avail himself of the statute's application" and would accordingly dismiss the petition. *Id.*

SOUTER, J., concurring specially: I agree with the dissent written by Justice Bois in *State v. Roger M.*, 121 N.H. 19, 424 A.2d 1139 (1981). My approval may seem only natural, for I was the trial judge in that case, and the dissenters would have upheld the position I had reached. Personal considerations aside, I still believe those dissenters had the better of the analysis. If they had prevailed, the present case presumably would not be here, for the defendant would be ineligible to seek an annulment of this record.

Nonetheless, I accept the defendant's eligibility to do so on the basis of the majority opinion in *Roger M.* The consequences of what I believe was an unsound conclusion in that case are not serious enough to outweigh the value of *stare decisis*. Given the defendant's eligibility to seek an annulment, I concur with the majority today.

Hillsborough
No. 83-438

THE STATE OF NEW HAMPSHIRE

v.

ALFRED LAMBERT

August 13, 1984

[REDACTED]

[REDACTED]

[REDACTED]

Gregory H. Smith, attorney general (*Robert B. Muh*, attorney, on the brief and orally), for the State.

James E. Duggan, appellate defender, of Concord, by brief and orally, for the defendant.

DOUGLAS, J. The defendant pleaded guilty to a misdemeanor in the Nashua District Court (*Lynch, J.*) and after sentencing appealed to the superior court. The Superior Court (*Goode, J.*) limited the scope of its review to the sentence imposed on the defendant, and the defendant appealed from this decision. We affirm.

The defendant was charged with a misdemeanor, driving after suspension of his license. RSA 263:64 (Supp. 1983). He signed a waiver of counsel and acknowledgment of rights form, and pleaded guilty without the assistance of counsel in the district court. Following sentencing, the defendant appealed to the superior court and counsel was appointed.

On appeal, the defendant moved to dismiss the complaint because the complaint failed to allege a culpable mental state. The defendant argued that, because the complaint failed to allege a culpable mental state, the district court was without jurisdiction to accept his guilty plea. The superior court denied the defendant's motion and limited its review of the district court proceedings to consideration of the defendant's sentence.

■ The defendant contends that his appeal to the superior court is not limited to a review of his sentence but, rather, that he is entitled to a complete review of the district court proceedings by the superior court. Appeals from the district court to the superior court are provided for by statute and are constitutional. See RSA 502-A:11 and RSA 599:1 (Supp. 1983); *Jenkins v. Canaan Mun. Ct.*, 116 N.H. 616, 618, 366 A.2d 208, 209 (1976) ("We have held that our two-tier system is constitutional and does not violate a defendant's constitutional right to a jury trial."); see also *Justices of Boston Municipal Court v. Lydon*, 104 S. Ct. 1805, 1814-15 (1984).

■ RSA 599:1 (Supp. 1983) provides that: "A person sentenced by a district or municipal court for a misdemeanor or for any offense which provides the basis for enhanced penalties if the offender is subsequently convicted of the same offense may, at the time the sentence is declared, appeal therefrom to the superior court." We have previously had occasion to interpret the effect of this statute. In *State v. Green*, 105 N.H. 260, 197 A.2d 204 (1964), we stated that the statute entitled the defendant to "an absolute right of appeal from their convictions in the municipal court." *Id.* at 261, 197 A.2d at 205. We held that the effect of an appeal from the municipal court to the superior court was to "vacate that judgment and transfer the whole proceeding to the Superior Court, there to be tried *de novo* on the original complaint, unless amended . . ." *Id.*; see *State v. Cook*, 96 N.H. 212, 214, 72 A.2d 778, 779 (1950) ("It vacates that judgment and transfers the whole proceeding to the Superior Court, there to be tried *de novo* . . ."); see also *Jenkins v. Canaan Mun. Ct. supra*; *State v. Hennessey*, 110 N.H. 447, 447, 270 A.2d 613, 614 (1970).

■ The defendant, however, pleaded guilty and signed a standard "waiver of counsel and acknowledgment of rights" form on March 16, 1983. Provision number three of this form states: "I understand that by pleading guilty or nolo to the complaint I am waiving a trial by the Court *or* by jury on appeal . . ." (Emphasis added.) The defendant does not contend that this waiver was not knowingly and voluntarily executed. The defendant, therefore, waived any right to a *de novo* trial, either by judge or jury, while preserving only the right to appeal the sentence under RSA 502-A:12 (Supp. 1983); see DIST. & MUN. CT. RULE 2.9 (which provides that the waiver state that "by pleading guilty . . . I may appeal the sentence to the Superior Court.") The defendant's waiver contained this exact language.

Affirmed.

All concurred.