




10-2020

Criminal Justice Updates - October 2020

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Recommended Citation

Shultz, Haley B., "Criminal Justice Updates - October 2020" (2020). *Criminal Justice Updates*. 2.
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Criminal Justice Updates - October 2020

Abstract

The Criminal Justice Update is a monthly newsletter created by the Adams County Bar Foundation Fellow providing updates in criminal justice policy coming from Pennsylvania's courts and legislature as well as the US Supreme Court.

Contents:

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 - Criminal Law & Procedure
 - Victims Issues

- Updates from the Courts
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Keywords

Criminal Justice Update, Adams County Bar Foundation, ACBF

Disciplines

Criminology and Criminal Justice | Public Affairs, Public Policy and Public Administration



CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBA Fellow at
Gettysburg College

October 2020

Keep up to date with developments in criminal law, criminal procedure, and victims issues via this monthly newsletter.

Comments or questions?
Contact Haley Shultz at
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Updates from the PA Legislature

Criminal Law & Procedure

House Bill 2175—Human Trafficking Package (Schroeder) Final Passage, Oct. 21, 2020 [Senate]

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&ind=0&body=H&type=B&bn=2175>

“This bill will amend Section 5920 of Title 42 to expand the list of offenses where an expert may testify about the dynamics of sexual violence and victim responses to sexual violence.

This legislation is necessary as a result of amendments to existing sexual offenses and the creation of additional sexual offenses (human trafficking) in the Crimes Code. Significantly, this legislation will strengthen the ability of

prosecutors to combat sexual violence and human trafficking throughout Pennsylvania by permitting experts to testify about the dynamics of victim behavior. Such testimony is critical in sexual violence cases as it assists the trier of fact in understanding the complexities of such behavior, including the reasons victims often refrain from reporting their experiences to law enforcement.”

House Bill 1538—Amending the Parole Code (White)

Final Passage, Oct. 21, 2020 [Senate]

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&ind=0&body=H&type=B&bn=1538>

This legislation requires “those convicted of rape, human trafficking, sexual assault, involuntary deviate sexual intercourse, incest, among other sex offenses, to wait three years before re-applying for parole. In addition, the bill provides that offenders required to register under the Sexual Offender Registration Act similarly wait three years to re-apply for parole.”

Senate Bill 976—Veterans Courts (Regan)

Presented to the Governor Oct. 26, 2020

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&ind=0&body=S&type=B&bn=976>

This legislation “will codify Veterans Courts into law, allow Veterans Courts to permit participation by Veterans from adjacent counties, and allow county common pleas courts that have other problem-solving courts to establish “Veterans Tracks” – programs that utilize some components of a Veterans Court.”

House Bill 440—Expungement Upon Pardon or Full Acquittal (Delozier) Approved by the Governor Oct. 29, 2020

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&ind=0&body=H&type=B&bn=440>

“An Act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in criminal history record information, further providing for expungement, for petition for limited access, for clean slate limited access and for effects of expunged records and records subject to limited access; and, in administration of justice, further providing for attachment and summary punishment for contempts.”

This legislation provides “an opportunity to expunge an individual’s record if they have been unconditionally pardoned or fully acquitted of all charges, based on the same conduct or arising from the same alleged criminal episode. The Commonwealth would receive notice of a potential expungement and would have an opportunity to object and conduct a hearing.”

Senate Bill 1075—Enhancing the Penalties for Child Pornography (Arnold) Final Passage, Oct. 6, 2020 [Senate]

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&ind=0&body=S&type=B&bn=1075>

“An Act amending Titles 18 (Crimes and Offenses), 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in minors, further providing for the offense of sexual abuse of children; in child protective services, providing for task force on child pornography; and, in sentencing, further providing for sentencing for offenses involving sexual abuse of children. “

Victims Issues

Senate Bill 530—Protecting Student Sexual Assault Victims (Martin)

Presented to the Governor, Oct. 26, 2020

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&ind=0&body=S&type=B&bn=530>

“An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, in pupils and attendance, providing for students convicted or adjudicated delinquent of sexual assault; in safe schools, further providing for safe schools advocate in school districts of the first class; and, in educational tax credits, further providing for school participation in program.”

This legislation requires “a student who is convicted or adjudicated delinquent of sexual assault to be expelled at the victim’s request, if they are enrolled in the same K-12 school district.”

House Bill 1984—Protecting Victims of Rape and their Children (Benninghoff)

Approved by the Governor, Oct. 29, 2020

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&ind=0&body=H&type=B&bn=1984>

“An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, in proceedings prior to petition to adopt, further providing for petition for involuntary termination and providing for special provisions when child conceived as a result of rape or incest. “

This legislation removes the “requirement that a victim of rape present a “replacement” adoptive parent for their child.”

Updates from the Courts

PA Supreme Court

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. ROD L. JONES, JR.

DECIDED: October 30, 2020

<http://www.pacourts.us/assets/opinions/Supreme/out/J-17-2020mo%20-%20104591185118425750.pdf?cb=1>

"In this appeal by allowance, we consider whether opinion testimony from a detective concerning the behavior of child victims in response to sexual abuse, informed by that detective's training and experience, constitutes lay or expert testimony under our rules of evidence. As a necessary corollary, we also address the continued validity of our decision in Commonwealth v. Dunkle, 602 A.2d 830 (Pa. 1992), in light of the legislature's enactment of 42 Pa.C.S. § 5920 (permitting expert testimony concerning victim behavior in response to sexual abuse in certain criminal proceedings involving sexual offenses). For the reasons that follow, we reverse the Superior Court's order and remand for a new trial."

COMMONWEALTH OF PENNSYLVANIA v. DAVID CHMIEL

DECIDED: October 21, 2020

<http://www.pacourts.us/assets/opinions/Supreme/out/J-63-2020mo%20-%20104580075116495049.pdf?cb=1>

"In this serial, capital post-conviction appeal, Appellant challenges the validity of expert testimony based upon microscopic comparison of hair samples."

"Ultimately, we agree with the PCRA court that Appellant has failed to demonstrate a reasonable probability that the verdict against him would be different in a trial in which Mr. Surma's testimony would be excluded. The order of the post-conviction court is affirmed"

COMMONWEALTH OF PENNSYLVANIA v. RUSSELL COX

DECIDED: October 21, 2020

<http://www.pacourts.us/assets/opinions/Supreme/out/J-41-2020mo%20-%20104580139116503334.pdf?cb=1>

"On March 26, 2019, we remanded this capital appeal to the PCRA court for further consideration of Russell Cox's claim that, due to his intellectual disability,² the Eighth Amendment to the United States Constitution and the Supreme Court of the United States' decision in Atkins v. Virginia, 536 U.S. 304 (2002), precluded him from being sentenced to death. Upon remand, the PCRA court reconsidered the record and again determined that Cox had failed to establish that he was entitled to relief. We vacate that ruling, and we remand the case to the PCRA court for further proceedings."

COMMONWEALTH OF PENNSYLVANIA v. DENNIS ANDREW KATONA

DECIDED: October 21, 2020

<http://www.pacourts.us/assets/opinions/Supreme/out/J-83-2019mo%20-%20104580109116496628.pdf?cb=1>

"We granted discretionary review in this case to consider the Superior Court's application of the Independent Source Doctrine as a basis for upholding the trial court's order denying the suppression motion filed by appellant Dennis Andrew Katona. We also granted review to consider, as a secondary matter, the validity of an intercept order issued under Section 5704(2)(iv) of the Wiretapping and Electronic Surveillance Control Act ("Wiretap Act"),² which permits the recording of in-home conversations when only one party consents, so long as the intercept is approved by an authorized prosecutor and the president judge of a court of common pleas finds that probable cause supports the order. Upon review, we conclude the Superior Court properly invoked the Independent Source ¹ This matter was reassigned to this author. ² 18 Pa.C.S. §§5701-5782. [J-83-2019] - 2 Doctrine, and therefore do not reach the various statutory and constitutional challenges appellant raises relative to the Wiretap Act."

COMMONWEALTH OF PENNSYLVANIA v. LAVELLE JOHNSON**DECIDED: October 21, 2020**<http://www.pacourts.us/assets/opinions/Supreme/out/J-20-20200ajc%20-%20104580097116496240.pdf?cb=1>

"We recently explained that, where law enforcement seeks to search a cell phone seized incident to arrest, the applicable rule is "exceedingly simple: . . . get a warrant." Commonwealth v. Fulton, 179 A.3d 475, 489 (Pa. 2018); accord Riley v. California, 573 U.S. 373, 403 (2014). We granted discretionary review in this case of first impression to consider an issue that is not so simple: the permissible scope of such a warrant, under Article I, Section 8 of the Pennsylvania Constitution, to search an individual's cell phone for evidence relating to illegal narcotics activity and firearms possession. But, as it turns out, our task in this case is less complicated than the question suggests, because we conclude the search warrant was so lacking in probable cause that it failed to justify any search of appellant's cell phone. We thus reverse and remand."

COMMONWEALTH OF PENNSYLVANIA v. HENRY DANIELS**DECIDED: October 15, 2020**<http://www.pacourts.us/assets/opinions/Supreme/out/739CAPpco.pdf?cb=1>

"AND NOW, this 15th day of October, 2020, the appeal is QUASHED. See Commonwealth v. Reid, 235 A.3d 1124 (Pa. 2020) (quashing serial appeal after concluding Williams v. Pennsylvania, ___ U.S. ___, 136 S.Ct. 1899 (2016), does not provide exception to timeliness requirements of Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§9541-9546, and thus PCRA court lacked jurisdiction to reinstate appellate rights nunc pro tunc)."

COMMONWEALTH OF PENNSYLVANIA v. ANTHONY REID**DECIDED: October 15, 2020**<http://www.pacourts.us/assets/opinions/Supreme/out/J-16-2019pco%20-%20104576394116190743.pdf?cb=1>

"AND NOW, this 15th day of October, 2020, the appeal is QUASHED. See Commonwealth v. Reid, 235 A.3d 1124 (Pa. 2020) (quashing serial appeal after concluding Williams v. Pennsylvania, ___ U.S. ___, 136 S.Ct. 1899 (2016), does not provide exception to timeliness requirements of Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§9541-9546, and thus PCRA court lacked jurisdiction to reinstate appellate rights nunc pro tunc). Appellant's "Application for Leave to File Post-Submission Communication" filed February 15, 2019 is DENIED as moot. Appellant's "Application for Leave to File Post-Submission Communication" filed May 12, 2020 is GRANTED"

COMMONWEALTH OF PENNSYLVANIA v. CRAIG MURPHY**DECIDED: October 15, 2020**<http://www.pacourts.us/assets/opinions/Supreme/out/741CAPpco%20-%20104576444116191132.pdf?cb=1>

"AND NOW, this 15th day of October, 2020, the appeal is QUASHED. See Commonwealth v. Reid, 235 A.3d 1124 (Pa. 2020) (quashing serial appeal after concluding Williams v. Pennsylvania, ___ U.S. ___, 136 S.Ct. 1899 (2016), does not provide exception to timeliness requirements of Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§9541-9546, and thus PCRA court lacked jurisdiction to reinstate appellate rights nunc pro tunc). Appellant's "Application for Leave to File Post-Submission Communication" is GRANTED. Appellant's "Application for Leave to File Supplemental Briefing Addressing the Jurisdiction of the Court in Light of [Reid]" is DENIED."

AQUIL JOHNSON v. JOHN WETZEL, SECRETARY PA, D.O.C., MARK GARMAN, SUPER., S.C.I. ROCKVIEW ET. AL., OFFICERS, AGENTS, SERVANTS, EMPLOYEES AND ATTORNEYS,**DECIDED: October 1, 2020**<http://www.pacourts.us/assets/opinions/Supreme/out/J-99-2020mo%20-%20104562057114991316.pdf?cb=1>

"This is a direct appeal from a Commonwealth Court order dismissing Appellant's amended petition for review. In the petition, Appellant claimed he was entitled to a refund of monies deducted from his inmate account pursuant to Act 84 because no procedural safeguards were in place when the deductions began. Recent decisions by this Court and the Third Circuit Court of Appeals confirm that, under the Due Process Clause of the Fourteenth Amendment, certain safeguards must be applied before the first Act 84 deduction is made in connection with a given criminal sentence. See Bundy v. Wetzel, 646 Pa. 248, 261, 184 A.3d 551, 558-59 (2018); Montanez v. Secretary Pa. DOC, 773 F.3d 472, 486 (3d

Cir. 2014). The issue here is whether relief is available where the first deduction was made before those decisions were announced.”

COMMONWEALTH OF PENNSYLVANIA v. ELWOOD SMALL

DECIDED: October 1, 2020

<http://www.pacourts.us/assets/opinions/Supreme/out/J-116-2019mo%20-%20104562041114989408.pdf?cb=1>

“In this appeal, we consider the continued viability of what our jurisprudence has dubbed the “public record presumption,” which precludes a petitioner from establishing the existence of new facts that would support collateral review of an underlying conviction. See *Commonwealth v. Burton*, 158 A.3d 618 (Pa. 2017). Ordinarily, a petitioner seeking relief under the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S. §§ 9541-46, must file the petition within one year of the date upon which his or her judgment of sentence becomes final. The PCRA sets forth three exceptions to this one-year limitation. Among these is the “newly discovered fact” exception, which renders a petition timely when the petitioner establishes that “the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence.” 42 Pa.C.S. § 9545(b)(1)(ii). Interpreting this provision, this Court has held that the newly discovered fact exception is limited by a presumption relating to matters of public record, [J-116-2019] - 2 pursuant to which a court may find that information available to the public is not a fact that is “unknown” to the petitioner. See, e.g., *Commonwealth v. Chester*, 895 A.2d 520, 523 (Pa. 2006); *Commonwealth v. Lark*, 746 A.2d 585, 588 n.4 (Pa. 2000). In *Burton*, however, we reasoned that, due to unrepresented inmates’ diminished access to such records, the public record presumption “does not apply to pro se prisoner petitioners.” *Burton*, 158 A.3d at 620.

In this case, the Superior Court reversed the PCRA court’s order granting relief to Appellant Elwood Small, reasoning, inter alia, that our holding in *Burton* did not apply to Small because he was represented by counsel some years earlier, in separate postconviction proceedings, and thus could not be considered pro se for purposes of *Burton*. Although we ultimately conclude that Small is not entitled to relief, we nonetheless are persuaded by Small’s frontal challenge to the public record presumption.”

COMMONWEALTH OF PENNSYLVANIA v. CHRISTOPHER ROBERT WEIR

DECIDED: October 1, 2020

<http://www.pacourts.us/assets/opinions/Supreme/out/J-26-2020mo%20-%20104561716114967511.pdf?cb=1>

“We granted discretionary review to determine whether a challenge to the amount of restitution imposed pursuant to Section 1106 of the Pennsylvania Crimes Code, 18 Pa.C.S. § 1106, implicates the discretionary aspects of sentencing or the legality of the sentence, a dichotomy relevant to the need for issue preservation. Upon review, we conclude that a challenge to the sentencing court’s determination as to the amount of restitution sounds in sentencing discretion and, therefore, must be preserved. Accordingly, we affirm the Superior Court’s ruling that Weir’s restitution challenge implicates a discretionary aspect of the sentence that was not properly preserved and, therefore, was waived.”

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. RODNEY DERRICKSON

FILED: October 30, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S39002-200%20-%20104590740118397851.pdf?cb=1>

“Rodney Derrickson appeals from the judgment of sentence, entered in the Court of Common Pleas of Delaware County, following his resentencing subsequent to the decisions of the United States Supreme Court in *Montgomery v.*

Louisiana, 136 S. Ct. 718 (2016), and Miller v. Alabama, 132 S. Ct. 2455 (2012), which required resentencing for juveniles originally sentenced to life in prison without the possibility of parole (LWOP). After careful review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. CHARLES WILLIAM LYNCH

FILED: October 28, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A11020-200.pdf?cb=2>

“A jury found Charles William Lynch, III, guilty of Possession with Intent to Deliver (“PWID”), Corrupt Organizations, Dealing in Proceeds of Unlawful Activities, Criminal Use of a Communication Facility, conspiracy to commit PWID, and conspiracy to commit Corrupt Organizations. He has appealed from the judgment of sentence and raises several sentencing issues, makes two arguments against the admission of a recorded phone call, and challenges the sufficiency and weight of the evidence. We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. JEFFREY LYNN CLEMENS

FILED: October 28, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S30018-200%20-%20104588461118167138.pdf?cb=1>

“Jeffrey Lynn Clemens appeals from the judgment of sentence entered following his jury trial conviction for Resisting Arrest and bench trial convictions for Driving Under the Influence of Alcohol (“DUI”)-General Impairment, Careless Driving, and Restrictions on Alcoholic Beverages. Clemens challenges the sufficiency and weight of the evidence. We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. BRANDON EUGENE DAVIS

FILED: October 23, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A26032-200%20-%20104584280117810071.pdf?cb=1>

“Appellant, Brandon Eugene Davis, appeals from the judgment of sentence entered in the Court of Common Pleas of Bucks County following his conviction by a jury on, inter alia, robbery, burglary, and conspiracy.¹ After a careful review, we affirm.”

“We find no abuse of discretion. The record reveals the trial court imposed four consecutive sentences for the robbery of Jonathan Nadav, C.N., Elle, and Many. The trial court imposed either concurrent sentences or no further penalty for Appellant’s remaining convictions, including imposing a concurrent sentence for the robbery of Jonathan’s wife, Emily. In so doing, the trial court considered the mitigating factors,¹⁴ along with the need to protect the public, the gravity of Appellant’s offenses on the victims and community, and Appellant’s rehabilitative needs. 42 Pa.C.S.A. § 9721(b). We agree with the trial court that Appellant was not entitled to a “volume discount” by having all of his sentences run concurrently. See Swope, supra. For all of the foregoing reason, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. MAXWELL LIAM DOLAN

FILED: October 23, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A08034-170%20-%20104584452117818445.pdf?cb=1>

“On April 1, 2016, the Commonwealth filed an interlocutory appeal to the Pennsylvania Supreme Court and asked it to exercise its exclusive appellate jurisdiction over any final order deeming a statute unconstitutional. According to the Commonwealth, the common pleas court necessarily declared Pa.R.Crim.P. 542(E)¹ unconstitutional when it rejected the magisterial district judge’s ruling allowing the Commonwealth to rely exclusively on hearsay testimony to make a prima facie case at the first preliminary hearing and remanded for a new preliminary hearing, at which testimony from the alleged rape victim would be required. The Supreme Court, however, declined to take up the matter directly and, instead, transferred the appeal to this Court.

On July 22, 2017, this panel filed an order and opinion reversing the trial court’s order and remanding the matter for further proceedings consistent with our decision. See Commonwealth v. Dolan, 167 A.3d 46 (Pa.Super. 2017). In so doing, we followed binding precedent set forth in Commonwealth v. McClelland, 165 A.3d 19 (Pa.Super. 2017), which held that both decisional law regarding a defendant’s due process rights at a preliminary hearing and Pennsylvania Rule

of Criminal Procedure 542(E) permit the Commonwealth to rely exclusively on hearsay evidence to establish a prima facie case at a preliminary hearing.

Appellee Dolan filed a timely petition for allowance of appeal with the Pennsylvania Supreme Court, which eventually granted his petition on August 20, 2020, in light of its treatment of the identical issue in *Commonwealth v. McClelland*, --- A.3d ---, 2020 WL 4092109 (Pa. July 21, 2020). Specifically, the Supreme Court in *McClelland* addressed: whether the Superior Court panel failed to properly apply and follow the legal precedent set forth in *Commonwealth ex rel. Buchanan v. Verbonitz*, [525 Pa. 413] 581 A.[2d]3d 172, 174–76 (Pa. 1990) in which five (5) Justices held that “fundamental due process requires that no adjudication be based solely on hearsay evidence.” *Commonwealth v. McClelland*, 179 A.3d 2, 3 (Pa. 2018). In reversing this Court, the Supreme Court held Rule 542(E)’s clause providing that “hearsay may establish the elements of any offense” at a preliminary hearing, could not be construed to mean that hearsay alone suffices to establish a prima facie case at a preliminary hearing, contrary to *Verbonitz*. The Court further clarified that the Commonwealth’s use of hearsay evidence alone to establish prima facie case at preliminary violated fundamental due process.

Consistent with its decision in *McClelland*, the Supreme Court issued the following per curiam order in the case sub judice. AND NOW, this 20th day of August, 2020, the Petition for Allowance of Appeal is GRANTED, and the order of the Superior Court is REVERSED. See *Commonwealth v. McClelland*, 2020 WL 4092109 (Pa. July 21, 2020). Pennsylvania Supreme Court Order, 8/20/2020.

In conformity with both our Supreme Court’s decision in *McClelland* and its subsequent order reversing our prior order in the case sub judice, we have no choice but to affirm the trial court’s interlocutory order entered below. Order affirmed.”

COMMONWEALTH OF PENNSYLVANIA v. TANISHA MUHAMMAD

FILED: October 23, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A16020-200%20-%20104584404117816213.pdf?cb=1>

“Appellant, Tanisha Muhammad, appeals from her judgment of sentence for interference with custody of children, false imprisonment, unlawful restraint, and conspiracy to commit these offenses. Based on Appellant’s convictions for interference with custody of children (“interference”) and conspiracy to interfere with custody of children (“conspiracy”), the trial court ordered Appellant to register as a sexual offender under Revised Subchapter H of the Sexual Offenders Registration and Notification Act (“SORNA”), 42 Pa.C.S.A. §§ 9799.10—9799.42, 2 as a Tier I offender. We hold that SORNA is unconstitutional as applied to Appellant, because it creates an irrebuttable presumption that her convictions for interference and conspiracy make her a risk to commit additional sexual offenses. Accordingly, we vacate the trial court’s order directing her to register as a sexual offender. Otherwise, we affirm the judgment of sentence.”

COMMONWEALTH OF PENNSYLVANIA v. DAVID SANTANA

FILED: October 20, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-E02005-190%20-%20104579532116438419.pdf?cb=1>

“In 2011, the General Assembly of Pennsylvania enacted the Sexual Offender Registration and Notification Act (“SORNA”), which adopted Title I of the federal Adam Walsh Act. 1 A primary goal of the Adam Walsh Act (and, therefore, of SORNA) is addressing the inconsistencies that arose when 50 states had 50 unique, registration procedures for sex offenders. Congress therefore incentivized states to establish a national, coordinated registry. The federal government thereby hoped to track and to publicize sex offenders’ residences, employment locations, and online identities with improved accuracy and predictability.

However, in 2017, the Supreme Court of Pennsylvania found SORNA’s registration requirements so injurious to reputation and individual liberty that they constitute a criminal punishment unto themselves. *Commonwealth v. Muniz*,

164 A.3d 1189 (Pa. 2017), cert. denied sub nom. Pennsylvania v. Muniz, ___ U.S. ___, 138 S.Ct. 925 (2018). Furthermore, Muniz barred retroactive application of SORNA's registration, because the General Assembly violates the federal and Pennsylvania constitutions whenever it increases the punishment for a crime after that crime has occurred. Hence, the registration requirements of SORNA are unconstitutional if the Commonwealth applies them to someone whose underlying sexual offense occurred prior to SORNA's effective date.

In this appeal, we granted en banc review to determine whether, in light of the foregoing, the Commonwealth could constitutionally charge and convict Appellant David Santana with failing to register in Pennsylvania, under SORNA, for a pre-SORNA crime that occurred in New York. The trial court held SORNA's registration requirements were not ex post facto punishments for Mr. Santana, because he moved to Pennsylvania after SORNA had taken effect. By basing its decision on locality and not chronology, the trial court violated the precedents of the Supreme Court of the United States, the Supreme Court of Pennsylvania, and the federal and state constitutions. We therefore reverse its order denying Mr. Santana's post-sentence motions."

COMMONWEALTH OF PENNSYLVANIA v. ARDELL MATTHEW GROSS

FILED: October 14, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-A07031-200%20-%20104574266116010229.pdf?cb=1>

"ArdeLL Matthew Gross appeals from the judgment of sentence entered for his convictions for first-degree murder and aggravated assault. He challenges the grant of the Commonwealth's motion in limine and an evidentiary ruling. We affirm."

"Gross is not entitled to relief on this issue. If, as Gross contends, Detective Moore harbored some concern about Gross's drinking, the detective's testimony that he was not "overly concerned" was not misleading, as he also testified that Gross had been drinking to a point that he "wouldn't ride in a car with him." Moreover, the PBT results would not have allayed any misimpression about the degree of Detective Moore's "concern." Such evidence related strictly to the test results, not to Detective Moore's "concern." Furthermore, even assuming that Detective Moore's testimony created a false impression that he was in fact not concerned about Gross's alcohol use, and thus "opened the door," any error in precluding the PBT results at that point was harmless beyond a reasonable doubt. See Commonwealth v. Koch, 39 A.3d 996, 1003 (Pa.Super. 2011). The jury heard significant testimony that Gross was under the influence at the time of the crime, in addition to Detective Moore's testimony on the subject. The trial court did not abuse its discretion. Judgment of sentence affirmed."

COMMONWEALTH OF PENNSYLVANIA v. SAEED RASHEED JOHNSON

FILED: October 09, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S19011-200%20-%20104571333115766746.pdf?cb=1>

"Saeed Rasheed Johnson appeals from the aggregate judgment of sentence of ten to twenty years of imprisonment imposed after he was convicted of robbery and possessing an instrument of crime ("PIC"). Although we affirm Appellant's convictions, we are constrained to vacate Appellant's judgment of sentence and remand for resentencing."

"Since we find that Appellant's 2010 New Jersey aggravated assault conviction was not a "crime of violence" as defined in Pennsylvania, he did not qualify for an enhanced sentence under § 9714. Accordingly, we must vacate Appellant's sentence and remand for resentencing. However, we do not disturb Appellant's underlying convictions. Convictions affirmed. Judgment of sentence vacated. Case remanded for resentencing. Jurisdiction relinquished."

COMMONWEALTH OF PENNSYLVANIA v. RASHAWN DAVID WILLIAMS

FILED: October 08, 2020

<http://www.pacourts.us/assets/opinions/Superior/out/J-S28017-200%20-%20104569542115620762.pdf?cb=1>

"Appellant, Rashawn David Williams, appeals from the judgment of sentence entered on December 17, 2018, 1 following his jury trial convictions for first-degree murder, two counts of aggravated assault, tampering with physical evidence, and obstruction of administration of law. 2 Upon review, we affirm."

"We conclude that the trial court's instruction was a clear and accurate representation of the law pertaining to self-defense and the castle doctrine. Although Appellant urged the trial court to separate its instruction for the two defenses, it was unwarranted. As previously mentioned, Section 505 codified the law governing the use of defensive force into a single rule. Thus, it covers both self-defense generally and the castle doctrine specifically. Here, the trial court's single jury instruction closely tracked the statutory language of Section 505. Upon review, we conclude that the instruction was an adequate representation of the law. "It is well settled that the jury is presumed to follow the trial court's instructions." Commonwealth v. Cash, 137 A.3d 1262, 1280 (Pa. 2016). As such, we conclude that Appellant's final appellate issue does not entitle him to relief. Judgment of sentence affirmed."

*No updates from the governor this month

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