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Criminal Justice Update - January 2021

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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.

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Keywords

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Disciplines

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CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBA Fellow at
Gettysburg College

January 2021

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 PA Governor's Office

**No updates this month*

Updates from the PA Legislature

Criminal Law & Procedure

Senate Bill 87—Enhancing the Penalties for Child Pornography / Establishment of the 'Task Force on Child Pornography'

Final passage, Jan. 27, 2021 [Senate]

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&sind=o&body=S&type=B&bn=87>

“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.”

This legislation will:

1. “Increase penalties for those convicted of child pornography, where those images or videos depict a victim that is younger than 10 years of age, or prepubescent; and
2. Permit the Pennsylvania Commission on Sentencing to provide a sentence enhancement for those convicted of the sexual abuse of children, when the person depicted is known to the defendant; and
3. Establish a two-year, 23-member Task Force on Child Pornography. Several of the members have experience in the treatment of victims and prevention of child pornography and child sexual abuse. The Task Force will develop a report with guidance, tools, and actionable items for sexual abuse prevention and intervention mechanisms.”

Updates from the Courts

U.S. Supreme Court

**No updates this month*

PA Supreme Court

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. STEVEN WINFIELD COCHRAN, II

DECIDED: January 20, 2021

<http://www.pacourts.us/assets/opinions/Supreme/out/J-112-2019m0%20-%20104664765125448607.pdf?cb=1>

"In this appeal by allowance, we are asked to decide whether a line of Superior Court cases dating back to 2004 has eroded the procedural requirements of Section 1106 of the Judicial Code requiring restitution be set at the time of sentencing. Because the facts of the instant matter are distinguishable from the line of cases cited by Appellant, we conclude that the Superior Court in the instant matter erred in vacating Appellant's judgment of sentence and remanding for resentencing."

COMMONWEALTH OF PENNSYLVANIA v. NOEL MATOS MONTALVO

DECIDED: January 20, 2021

<http://www.pacourts.us/assets/opinions/Supreme/out/J-59A-2020m0%20-%20104664641125438669.pdf?cb=2>

"Before our Court in this capital case is the Commonwealth's appeal of the order of the York County Court of Common Pleas granting the petition of Noel Matos Montalvo (hereinafter, "Noel") for relief under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. [J-59AB-2020] - 2 §§ 9541 et seq., in the form of a new guilt-phase trial. Also before us is Noel's crossappeal, in which he challenges the trial court's rejection of a myriad of additional bases for granting him a new guilt-phase trial. For the reasons that follow, we affirm the trial court's grant of a new guilt-phase trial."

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. JOSEPH WILLIAMS

FILED: January 26, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-A26016-200%20-%20104671798126278603.pdf?cb=1>

"Joseph Williams appeals from the judgment of sentence, entered in the Court of Common Pleas of Bucks County, following his convictions by a jury of two counts of first-degree murder and one count each of criminal attempt to commit homicide, firearms not to be carried without a license, recklessly endangering another person (REAP), possessing an instrument of crime (PIC), and tampering with or fabricating physical evidence."

"Williams' second claim on appeal fails. Judgment of sentence affirmed."

COMMONWEALTH OF PENNSYLVANIA v. DARYL WILLIAMS

FILED: January 25, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-S53030-200%20-%20104670565126171687.pdf?cb=1>

"Daryl Williams appeals from the order, entered in the Court of Common Pleas of Philadelphia County, dismissing, as untimely, his fourth petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we vacate and remand for an evidentiary hearing."

COMMONWEALTH OF PENNSYLVANIA v. VINCENT BENNETT

FILED: January 21, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-S48010-200%20-%20104666689125929386.pdf?cb=1>

"The Court of Common Pleas of Philadelphia County entered a pre-trial order denying a motion to dismiss all charges against Vincent Bennett, and it certified that order for interlocutory appeal. Bennett contends the trial court should have barred the Commonwealth from prosecuting him for various gun-related offenses, under the compulsory-joinder

rule, 18 Pa.C.S.A. § 110. He bases this theory on the fact that his lawyer pleaded guilty on his behalf in the Municipal Court to a traffic ticket, without informing the district attorneys. Thus, Bennett seeks to trap the Commonwealth into dismissing his trial-court-level felony and misdemeanor charges by paying a summary fine.

Our precedents prohibit such chicanery. The compulsory-joinder rule only applies if a criminal defendant has faced a former prosecution. Because that has yet to occur, we affirm and remand for Bennett to stand trial.”

COMMONWEALTH OF PENNSYLVANIA v. KYLE LITTLE

FILED: January 15, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-A23046-200%20-%20104662754125290612.pdf?cb=1>

“Kyle Little (Little) appeals the order of the Court of Common Pleas of Philadelphia County (PCRA court) denying his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. Following a jury trial in 2007, Little was found guilty of first-degree murder (18 Pa.C.S. § 2502(a)) and possession of an instrument of crime (18 Pa.C.S. § 907(A)). He was sentenced to a mandatory term of life without the possibility of parole on the murder count and a consecutive term of 1.5 years as to the possession count. The judgment of sentence was affirmed on direct appeal. See *Commonwealth v. Little*, 2556 EDA 2011 (Pa. Super. November 27, 2012).

Little subsequently filed a PCRA petition and argued in part that his counsel was ineffective in failing to preserve an issue for direct appeal relating to a restriction on questioning of a defense witness, Khaliyf “Chuck” Alston (Alston). The PCRA court awarded Little resentencing on an unrelated constitutional issue, but denied a new trial on the ineffectiveness ground. Little appealed, and a panel of this Court initially determined that Little was entitled to re-raise the unpreserved issue, *nunc pro tunc*, as a remedy for counsel’s ineffectiveness.

The Commonwealth applied for reconsideration, which the original panel granted. See *Commonwealth v. Little*, 2775 EDA 2019 (Pa. Super. Oct. 5, 2020) (order). This new panel has reviewed the appeal and agrees with the previous disposition that, after objecting and arguing a potentially meritorious evidentiary issue, but then waiving the issue after the court gave an adverse ruling, counsel was ineffective, entitling Little to raise the waived issue in a new appeal. As to that claim, we reverse the PCRA court’s order denying relief and remand with instructions.

COMMONWEALTH OF PENNSYLVANIA v. JAMAL WALLACE

FILED: January 8, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-A26024-200%20-%20104655472124707521.pdf?cb=1>

“Jamal Wallace appeals from the judgment of sentence, entered in the Court of Common Pleas of Montgomery County, after a jury convicted him of aggravated assault—serious bodily injury, criminal conspiracy, persons not to possess a firearm, and carrying a firearm without a license. Upon careful review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. CARLOS GENE MOOSE, JR.

FILED: January 4, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-E02004-190%20-%20104649827124209403.pdf?cb=1>

“Appellant Carlos Gene Moose, Jr. appeals from the order denying his motion to enforce a negotiated plea agreement and to enjoin any requirement that he register under the Sex Offender Registration and Notification Act1 (SORNA I). This Court granted en banc reargument to consider (1) whether Appellant’s claims must be decided under the Post Conviction Relief Act2 (PCRA); (2) whether *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017) applied retroactively; (3) whether *Commonwealth v. Fernandez*, 195 A.3d 299 (Pa. Super. 2018) (en banc), or *Commonwealth v. Johnson*, 200 A.3d 964 (Pa. Super. 2018), governed if *Muniz* applied in determining the retroactive application of SORNA. See Order, 1897 MDA 2014, 5/6/19, at 1- 2.

In his supplemental brief, Appellant asserts that the issues set forth in this Court’s order granting reargument are no longer relevant in light of the subsequent amendments to SORNA I in Acts 10 and 29 of 2018 3 (SORNA II), in particular, Subchapter I of SORNA II. In the alternative, Appellant asserts that his original plea agreement bars any obligation to

register as a sex offender. For the reasons that follow, we vacate the trial court's order and remand the matter for further proceedings to consider the applicability of SORNA II."

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