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Criminal Justice Update - April 2022

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Criminal Justice Update - April 2022

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:

- Updates from PA Governor's Office: No new updates this month
- Updates from the PA Legislature
- Updates from the Courts
 - U.S. Supreme Court
 - PA Supreme Court
 - PA Superior Court

Keywords

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Disciplines

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CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBF Fellow at Gettysburg College

April 2022

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

*Comments or questions?
Contact Autumn Chassie at
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Updates from PA Governor's Office

*No new updates this month

Updates from the PA Legislature

SB 704 – Expanding the crime of institutional sexual assault

Final Passage: April 5, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=704>

SB 704 is an act that amends Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes (in sexual assault) and “would expand institutional sexual assault to include assaults by caregivers on care dependent individuals, thereby eliminating the loophole that permits perpetrators to falsely claim that the victim consented.”

SB 118 – Adding Sex Traffickers to Megan's Law Registry

Final Passage: April 12, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=118>

SB 118 is an act that amends Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes (in sentencing) and “would subject offenders convicted of any sex trafficking-related offenses to Megan's Law Registry.”

HB 934 – Repealing the Pennsylvania Crime Commission Act

Referred to Judiciary: April 26, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=934>

HB 934 re-introduces “House Bill 1832 to repeal Act 169 of 1978, the Pennsylvania Crime Commission Act. The act is now obsolete.”

HB 2275 – Cracking Down on Illegal Gun Use in Philadelphia

Referred to Judiciary: April 28, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=2275>

Under HB 2275, “the Attorney General shall have the authority to investigate and institute criminal proceedings for a violation of certain firearm laws within Philadelphia. Among other provisions, the legislation gives the Attorney General authority to prosecute straw purchases of firearms in Philadelphia. It also grants the Attorney General jurisdiction to prosecute the illegal possession of firearms by previously convicted felons and others in Philadelphia.”

HB 2525 – Crime Victim Access to Criminal History Information

Referred to Judiciary: April 28, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=2525>

HB 2525 will “create a simple process by which crime victims can request dissemination of criminal history investigative information which is relevant to a civil action arising out of the crime, provided the victim swears under penalty of law that the information is material and necessary to the civil action. The information can then only be used for the civil lawsuit; any harassing, intimidating or threatening use of the information would be punishable as a crime. Meanwhile, law enforcement would be able to share the relevant information only if doing so does not threaten a person or public safety, adversely affect a current investigation, or will cause substantial emotional distress to a victim of child abuse, domestic abuse, or sexual abuse. The civil defendants will have access to the same information for use in the civil case, as the crime victim will be obligated to share that information as part of the civil lawsuit with all parties.”

HB 1929 – Amend the Prohibited Offensive Weapons Statute

Regarding Automatic Knives

Referred to Judiciary: April 28, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=1929>

HB 1929 amends Title 18 (Crimes Code) “to eliminate the antiquated criminalization of automatic knives in Pennsylvania.”

HB 2271 – Lindsey’s Law

Referred to Judiciary: April 28, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=2271>

HB 2271 amends Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in sexual offenses, “further providing for the offense of sexual extortion.”

Updates from the Courts

U.S. Supreme Court

THOMSON V. CLARK ET AL.

DECIDED: April 4, 2022

https://www.supremecourt.gov/opinions/21pdf/20-659_3ea4.pdf

“We hold that a Fourth Amendment claim under §1983 for malicious prosecution does not require the plaintiff to show that the criminal prosecution ended with some affirmative indication of innocence. A plaintiff need only show that the criminal prosecution ended without a conviction. Thompson has satisfied that requirement here. We express no view, however, on additional questions that may be relevant on remand, including whether Thompson was ever seized as a result of the alleged malicious prosecution, whether he was charged without probable cause, and whether respondent is entitled to qualified immunity. On remand, the Second Circuit, or the District Court as appropriate may consider those and other pertinent questions. We reverse the judgment of the U. S. Court of Appeals for the Second Circuit and remand for further proceedings consistent with this opinion.”

BROWN V. DAVENPORT

DECIDED: April 21, 2022

https://www.supremecourt.gov/opinions/21pdf/20-826_p702.pdf

“Even assuming Mr. Davenport met his burden under Brecht, he cannot do so under AEDPA. And a federal court cannot grant habeas relief unless a state prisoner like Mr. Davenport satisfies both this Court’s equitable precedents and Congress’s statute. The judgment of the Court of Appeals is Reversed.”

PA Supreme Court

COMMONWEALTH OF PENNSYLVANIA v. DERRICK EDWARDS

DECIDED: April 12, 2022

<https://www.pacourts.us/assets/opinions/Supreme/out/J-53-2021oajc%20-%20105108810168098722.pdf?cb=1>

“While reprehensible and certainly worthy of the grant of a new trial, the prosecutorial misconduct that occurred herein in the form of a Batson violation does not constitute the most egregious prosecutorial misconduct warranting double jeopardy relief under Article I, Section 10 of the Pennsylvania Constitution. The prosecutor’s Batson violation does not constitute a prosecutorial tactic designed specifically to provoke Appellant into seeking a mistrial. Further, the prosecutor’s Batson violation does not demonstrate that the prosecutor intentionally deprived Appellant of his right to a fair trial. Finally, the prosecutor’s Batson violation was not undertaken recklessly with a conscious disregard for a substantial risk that Appellant would be denied a fair trial. Accordingly, we affirm the judgment of the Superior Court, which affirmed the trial court’s order denying Appellant’s motion to dismiss the criminal charges against him on double jeopardy grounds.”

Concurring Opinion by Justice Mundy: <https://www.pacourts.us/assets/opinions/Supreme/out/J-53-2021co%20-%20105108810168150933.pdf?cb=1>

Concurring and Dissenting Opinion by Justice Donohue: <https://www.pacourts.us/assets/opinions/Supreme/out/J-53-2021cdo%20-%20105108810168124029.pdf?cb=1>

COMMONWEALTH OF PENNSYLVANIA v. RAHMAEL SAL HOLT

DECIDED: April 28, 2022

<https://www.pacourts.us/assets/opinions/Supreme/out/J-64-2021mo%20-%20105126181176035849.pdf?cb=1>

“The Commonwealth correctly notes that Holt participated fully in jury selection without asserting partiality or prejudice on the part of any juror. We add that Holt did not challenge the composition of the panel. At its core, Holt’s primary contention is that the jury deliberated too quickly, and thus it defies logic to conclude that the decision was not a result of passion, prejudice, or arbitrary factors. However, this Court has found that the length of jury deliberations by itself is not enough to demonstrate passion or prejudice. Our review of the record reveals that this decision was solemnly rendered and in accordance with the jury’s duty to follow the law. We do not find that the sentence was the product of passion, prejudice, or any other arbitrary factor. Accordingly, we affirm all convictions and the sentence of death.”

COMMONWEALTH OF PENNSYLVANIA v. MICHAEL JOHN PARRISH

DECIDED: April 28, 2022

<https://www.pacourts.us/assets/opinions/Supreme/out/J-75-2021mo%20-%20105126296176053088.pdf?cb=1>

“Parrish is entitled to a remand to present evidence and argument to substantiate his claim that he is entitled to reinstatement of his direct appeal rights *nunc pro tunc*. Upon the PCRA court’s grant or denial of this relief, if either Parrish or the Commonwealth appeal that determination, the PCRA court should file a supplemental opinion to address that decision. Parrish’s ineffectiveness claims raised in the appeal from the PCRA court’s denial of his previously-filed PCRA petitions will then be considered.”

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. TROY DAVID LEHNERD

FILED: April 5, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A06038-22o%20-%20105101648167482085.pdf?cb=1>

“Because Appellant’s mother lacked actual or even apparent authority to permit entry into Appellant’s house, the troopers’ warrantless entry violated Appellant’s Fourth Amendment rights and the trial court erred in failing to grant Appellant’s motion to suppress the blood alcohol breath test results, evidence of Appellant’s performance on the field sobriety tests, and other evidence obtained solely as a result of the entry into Appellant’s house. The blood alcohol breath test results and Appellant’s performance on the

field sobriety tests were admitted at trial, N.T. Trial at 42- 48, and were a substantial portion of the evidence supporting the DUI charges against Appellant. Accordingly, we vacate Appellant’s DUI convictions and sentence, reverse the order denying suppression, and remand for a new trial on the DUI charges.”

IN THE INTEREST OF: K.B., A MINOR

APPEAL OF: R.H., MOTHER

FILED: April 8, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S09031-22o%20-%20105105926167867167.pdf?cb=1>

“Even if waiver did not apply, we would find Mother made no case for the optional accommodation available under Rule 1129, such that the trial court committed no error in its application of the rule in light of the “good cause shown” standard under 237 Pa. Code § 1406 and the President Judge Administrative Order No 34, ¶ 2 (15 May 2020) in effect at the time. In this regard, the court was aware that Mother had elected to flee with Child to Florida in contravention of the trial court’s order and, thereafter, had offered no indication of record that economic hardship prevented her from attending the hearing in person. In reaching our decision upholding the court’s ruling denying her accommodation under Rule 1129, we find persuasive the trial court’s Rule 1925(a) opinion excerpted above and adopt it for purposes of disposing Mother’s second issue. For the foregoing reasons, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. RIVER GARRETT STONE

FILED: April 12, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-E03005-21o%20-%20105109115168119249.pdf?cb=1>

“In sum, marijuana remains a Schedule I controlled substance under current Pennsylvania law and, therefore, the Commonwealth is not required to prove that the marijuana in an individual’s bloodstream is non-medical marijuana for purposes of proving DUI. For these reasons, we conclude that the trial court committed an error of law when it denied the Commonwealth’s challenge to Appellee’s proposed jury instruction. Accordingly, we reverse the order denying the Commonwealth’s challenge to Appellee’s proposed jury instructions and remand this matter for further proceedings.”

COMMONWEALTH OF PENNSYLVANIA v. JASON ALLEN LIPPINCOTT

FILED: April 12, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-E03009-21o%20-%20105109257168134961.pdf?cb=1>

“Therefore, it is Subchapter I of Act 29 that properly applies to Lippincott. Although the trial court ordered registration through Megan’s Law II, and we note that the assessment provisions of Megan’s Law II and Subchapter I of Act 29 are practically identical, a remand is necessary to ensure the proper application of SORNA. Accordingly, we remand this case, yet again, for further proceedings in order for the trial court to apply Subchapter I. Lastly, if Lippincott again applies for an independent psychological expert to assist him at his SVP hearing, the trial court must hold a hearing to determine if Lippincott is currently indigent.”

COMMONWEALTH OF PENNSYLVANIA v. FREDDIE SALVATOR GARCIA

FILED: April 12, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A26021-21o%20-%20105109046168159844.pdf?cb=1>

“In conclusion, we have determined that Appellant asserted a consent defense that is at least plausible. We find no basis upon which to conclude that withdrawal of Appellant’s plea will result in substantial prejudice to the Commonwealth. And while we do not condone Appellant’s reliance on a poorly developed record, we conclude, mindful of the policy of liberal granting of presentence plea withdrawal motions, that Appellant’s first motion to withdraw his plea should have been granted. In finding otherwise, the trial court misapplied the liberal standard applicable to presentence plea withdrawals. Given our disposition of Appellant’s first plea withdrawal motion, we need not consider the second.”

COMMONWEALTH OF PENNSYLVANIA v. D’ANGELO THOMAS

FILED: April 12, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S09043-22o%20-%20105109013168154032.pdf?cb=1>

“In viewing the totality of the circumstances surrounding the incident herein, we find the initial interaction did not escalate beyond a mere encounter which did not require any level of suspicion. Because the trial court’s factual findings are supported by the record, its ruling on Appellant’s suppression motion was proper. Accordingly, we affirm Appellant’s judgement of sentence.”

IN THE INTEREST OF: E.L.W., A MINOR

APPEAL from the Dispositional Order

FILED: April 13, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S08005-22o%20-%20105110559168268224.pdf?cb=1>

“We conclude that, because the juvenile court misapprehended the requirements of a determination of recklessness, and instead adjudicated Appellant delinquent upon a factual finding supporting only negligence, Appellant’s adjudication of delinquency for acts which, if committed by an adult, would constitute a violation of 18 Pa.C.S. § 2706(a)(3) cannot stand. Consequently, we vacate the juvenile court’s November 3, 2020, order in its entirety.”

COMMONWEALTH OF PENNSYLVANIA v. ANVAR ISHANKULOV

FILED: April 20, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A03027-22o%20-%20105117469169545065.pdf?cb=1>

“The Commonwealth presented sufficient evidence to convict Appellant of a violation of Section 4902(a), the trial court correctly imposed a fine under section 4902(g)(1), and the imposed fine was not excessive nor unconstitutional.”

COMMONWEALTH OF PENNSYLVANIA v. CHARLES DAVIS

FILED: April 20, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S09037-22o%20-%20105117474169543606.pdf?cb=1>

“To the extent Appellant challenges the trial court’s supplemental instruction in response to the jury’s question regarding the breathalyzer, we note Appellant lodged no objection to the trial court’s supplemental instruction. Thus, he has waived any issue with regard thereto.”

COMMONWEALTH OF PENNSYLVANIA v. TODD MICHAEL REDMOND

FILED: April 21, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S13033-22o%20-%20105119216170455828.pdf?cb=1>

“We find no abuse of discretion in this regard. While Appellant requests this Court weigh the sentencing factors differently than the trial court, as indicated supra, ‘the weighing of factors under 42 Pa.C.S.A. § 9721(b) is exclusively for the sentencing court, and an appellate court may not substitute its own weighing of those factors.’”

COMMONWEALTH OF PENNSYLVANIA v. REINALDO FANTAUZZI

FILED: April 27, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S02008-22o%20-%20105125459175892626.pdf?cb=1>

“Because Fantauzzi’s July 3, 2014, PCRA petition, as amended, was untimely and without exception, the PCRA court did not have jurisdiction to grant Fantauzzi collateral relief in the form of a new sentencing proceeding that, ultimately, resulted in Fantauzzi’s February 20, 2015, judgment of sentence. Therefore, the PCRA court’s order granting Fantauzzi a new sentencing proceeding and Fantauzzi’s subsequent February 20, 2015, judgment of sentence was null and void ab initio because the PCRA court did not have jurisdiction to grant relief. It follows that Fantauzzi’s February 20, 2015, judgment of sentence was a legal nullity and Fantauzzi could not appeal from that determination. Moreover, the judicial decisions and orders granting, or denying, subsequent relief that flowed from the February 20, 2015, judgment of sentence are also null and void ab initio. As such, the trial court was without jurisdiction to resentence Fantauzzi on November 9, 2020, and Fantauzzi’s November 9, 2020, judgment of sentence is null and void ab initio. Accordingly, we vacate the judgment of sentence entered on November 9, 2020, and remand this matter for re-imposition of the original sentence imposed by the trial court on September 14, 2006, and affirmed by this Court on August 15, 2007.”

COMMONWEALTH OF PENNSYLVANIA v. DAVAUGHN HIPPS

FILED: April 29, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A08005-22o%20-%20105128156177335900.pdf?cb=1>

“This record convinces us that Hipps was not wholly denied his right to post-conviction collateral review. In Attorney Farrell’s amended petition, he set forth a newly-discovered-facts claim, detailed a factual basis for it, and provided a certification for the witness he intended to call at an evidentiary hearing. The PCRA court accepted this amended petition and conducted another review of the record. After doing so, the court dismissed Hipps’ petition on the basis that his claim lacked merit, reasoning that the ‘new fact’ that Hipps allegedly discovered was previously known to him and did not impact the validity of his conviction. In other words, the court did not dismiss Hipps’ petition on the basis that his claim was undeveloped and/or

waived, or frivolous in some other regard. Instead, it found that the merits of his claim did not constitute an after-discovered fact. Therefore, unlike the circumstances in *Rosado*, *Peterson*, and *Parrish*, Hipps was not completely deprived of his right to post-conviction review, and Attorney Farrell's conduct did not amount to per se ineffectiveness. Because *Peterson* did not disturb *Gamboa-Taylor's* rule that general ineffectiveness claims cannot satisfy a timeliness exception, the PCRA court lacked jurisdiction to grant Hipps relief."

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