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Criminal Justice Update - June 2022

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Criminal Justice Update - June 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:

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CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBF Fellow at Gettysburg College

June 2022

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

*Comments or questions?
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Updates from PA Governor's Office

Gov. Wolf Announces New Violence Intervention and Prevention Technical Assistance Project to Support Grassroots Programs
May 2, 2022

<https://www.governor.pa.gov/newsroom/gov-wolf-announces-new-violence-intervention-and-prevention-technical-assistance-project-to-support-grassroots-programs/>

“In January 2022, PCCD announced the availability of up to \$750,000 in state funds to support the Violence Intervention and Prevention (VIP) Technical Assistance Project. The competitive funding announcement sought proposals from eligible applicants with experience in delivering technical assistance and training, with an emphasis on supporting grassroots community organizations implementing community violence intervention strategies.”

Updates from the PA Legislature

HB 2125 – Removing Homosexuality from the Crimes Code

Referred to Judiciary: June 10, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=2125>

“In addition to removing references to “homosexuality”, this legislation further amends the definitions of “sexual activity” and “sexual conduct” by removing surplus language and incorporating references to other sexual acts defined elsewhere in the Crimes Code, thereby removing certain ambiguities in the current statute. Significantly, these changes do not expand the definitions in such a way as to encompass sexual activities not already proscribed by law.”

SB 569 – State Corrections Officers Bill of Rights

Referred to Judiciary: June 22, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=569>

“This legislation will ensure that Pennsylvania’s corrections officers maintain certain rights and will provide them with the ability to appeal during disciplinary proceedings.”

SB 814 – Evading Arrest or Detention by Foot

Referred to Appropriations: June 29, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=814>

Senate Bill 814 “will create a new offense of “Evading Arrest or Detention by Foot.” This legislation is modeled after a similar statute in the state of Texas. When individuals flee from police officers attempting to lawfully place them under arrest, they create a risk of harm not just to police but to innocent bystanders and themselves.”

HB 2039 – Victim’s Right to Testify at Bail Hearing

Signed in House: June 30, 2022

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=2039>

House Bill 2039 “amends the Crime Victims Act to add a provision which would require a victim of a crime of violence to be notified of any proceeding in which conditions for bail can be modified.”

Updates from the Courts

U.S. Supreme Court

KEMP V. UNITED STATES

DECIDED: June 13, 2022

https://www.supremecourt.gov/opinions/21pdf/21-5726_Siel.pdf

“In sum, nothing in the text, structure, or history of Rule 60(b) persuades us to narrowly interpret the otherwise broad term “mistake” to exclude judicial errors of law. Because Kemp’s Rule 60(b) motion alleged such a legal error, we affirm the Eleventh Circuit’s judgment that the motion was cognizable under Rule 60(b)(1), subject to a 1-year limitations period, and, therefore, untimely.”

GARLAND V. GONZALEZ

DECIDED: June 13, 2022

https://www.supremecourt.gov/opinions/21pdf/20-322_new_986b.pdf

Respondents dispute the correctness of these statements and point out that a nearby provision, §1252(e)(1)(B), expressly bars the certification of “a class under Rule 23 of the Federal Rules of Civil Procedure.” Because §1252(f)(1) lacks any express reference to class actions, respondents in- fer that

no preclusion of class-wide relief was intended. We are reluctant to give much weight to this negative inference. It is possible that §1252(f)(1) simply uses different language to bar class-wide injunctive relief and extends no further. But if the provision is not read that way, then the most plausible reading is not that it allows class-wide relief but rather that it permits injunctive relief only “with respect to the application of [a covered provision] to *an individual alien* against whom proceedings under such part have been initiated.” A literal reading of that language could rule out efforts to obtain any injunctive relief that applies to multiple named plaintiffs (or perhaps even rule out injunctive relief in a lawsuit brought by multiple named plaintiffs). The Government does not advocate that we adopt such an interpretation, see Reply Brief 11, and we have no occasion to do so in these cases. It is sufficient to hold that the class-wide injunctive relief awarded in these cases was unlawful. “

DENEZPI V. UNITED STATES

DECIDED: June 13, 2022

https://www.supremecourt.gov/opinions/21pdf/20-7622_ljgm.pdf

“Denezpi’s single act led to separate prosecutions for violations of a tribal ordinance and a federal statute. Because the Tribe and the Federal Government are distinct sovereigns, those “offence[s]” are not “the same.” Denezpi’s second prosecution therefore did not offend the Double Jeopardy Clause. We affirm the judgment of the Court of Appeals.”

SHOOP V. TWYFORD

DECIDED: June 21, 2022

https://www.supremecourt.gov/opinions/21pdf/21-511_o75p.pdf

“A transportation order that allows a prisoner to search for new evidence is not “necessary or appropriate in aid of” a federal court’s adjudication of a habeas corpus action, 28 U. S. C. §1651(a), when the prisoner has not shown that the desired evidence would be admissible in connection with a particular claim for relief. Because the District Court entered such an order despite Twyford’s failure to make the required showing, the judgment of the Court of Appeals affirming that order is reversed and the case is remanded for further proceedings consistent with this opinion.”

UNITED STATES V. TAYLOR

DECIDED: June 21, 2022

https://www.supremecourt.gov/opinions/21pdf/20-1459_n7ip.pdf

“Congress tasked the courts with a much more straightforward job: Look at the elements of the underlying crime and ask whether they require the government to prove the use, attempted use, or threatened use of force. Following that direction in this case, the Fourth Circuit correctly recognized that, to convict a defendant of attempted Hobbs Act robbery, the government does not have to prove any of those things. Accordingly, Mr. Taylor may face up to 20 years in prison for violating the Hobbs Act. But he may not be lawfully convicted and sentenced under § 924(c) to still another decade in federal prison. The judgment of the Court of Appeals is *Affirmed.*”

VEGA v. TEKOH

DECIDED: June 23, 2022

https://www.supremecourt.gov/opinions/21pdf/21-499_gfbh.pdf

“Because a violation of Miranda is not itself a violation of the Fifth Amendment, and because we see no justification for expanding Miranda to confer a right to sue under §1983, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.”

NANCE v. WARD

DECIDED: June 23, 2022

https://www.supremecourt.gov/opinions/21pdf/21-439_bp7c.pdf

“Section 1983 remains an appropriate vehicle for a prisoner’s method-of-execution claim where, as here, the prisoner proposes an alternative method not authorized by the State’s death-penalty statute.”

CONCEPCION v. UNITED STATES

DECIDED: June 27, 2022

https://www.supremecourt.gov/opinions/21pdf/20-1410_1an2.pdf

“Section 841’s “knowingly or intentionally” mens rea applies to the statute’s “except as authorized” clause. Once a defendant meets the burden of producing evidence that his or her conduct was “authorized,” the Government must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner.”

OKLAHOMA v. CASTRO-HUERTA

DECIDED: June 29, 2022

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

“The Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.”

PA Supreme Court

COMMONWEALTH V. THORNE SR.

DECIDED: June 22, 2022

<https://www.pacourts.us/assets/opinions/Supreme/out/J-12-2022mo%20-%20105182558189228758.pdf?cb=1>

“While we recognize that the issue of whether the lifetime registration requirement set forth in Revised Subchapter H of SORNA constitutes an illegal sentence may be inextricably intertwined with the issue of whether Revised Subchapter H constitutes punishment, our decision today does not in any way establish that Revised Subchapter H is punitive in nature and/or that Appellant’s underlying claims will be successful on the merits. Rather, our decision today is confined to the issue of waiver and the applicability of this Court’s legality of sentencing jurisprudence to constitutional challenges to Revised Subchapter H. The question of whether the lifetime registration requirement of Revised Subchapter H is punitive in nature and, therefore, part of Appellant’s criminal sentence subject to various constitutional protections

applicable to criminal sentences currently remains open. Moreover, nothing in this opinion should be construed as undermining our decision in *Commonwealth v. Lacombe*, not to prescribe any one procedural mechanism as the exclusive means of challenging the individual application of sexual offender registration statutes. Accordingly, we reverse, in part, the order of the Superior Court and remand the matter to the Superior Court for further proceedings consistent with this opinion.”

Dissenting Opinion by Justice Baer: <https://www.pacourts.us/assets/opinions/Supreme/out/J-12-2022do%20-%20105182558189228760.pdf?cb=1>

COMMONWEALTH V. MARK ALLEN PRINKEY

DECIDED: June 30, 2022

<https://www.pacourts.us/assets/opinions/Supreme/out/J-31-2022mo%20-%20105194198190206081.pdf?cb=1>

“We reverse the order of the Superior Court affirming the PCRA court’s dismissal of Prinkey’s timely PCRA petition. Because the narrow question presented asks only that we address the scope of the PCRA and the continued vitality of the Superior Court’s decision in *Robinson*,²³ we remand the matter to the Superior Court with instructions to consider, in the first instance, the merits of Prinkey’s Pearce claim. If the Superior Court concludes that the PCRA court’s factual determinations are insufficient to permit a decision on the merits, the Superior Court shall remand the matter to the PCRA court to address further Prinkey’s challenge to the legality of his sentence under Pearce.”

Dissenting Opinion by Justice Mundy: <https://www.pacourts.us/assets/opinions/Supreme/out/J-31-2022do%20-%20105194198190206023.pdf?cb=1>

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. RAYMOND TAYLOR

FILED: June 3, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A14043-22o%20-%20105164996187602993.pdf?cb=1>

“We find no abuse of discretion in the trial court’s imposition of consecutive sentences. The record reveals the trial court imposed an individualized sentence consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community, and the rehabilitative needs of Appellant. The trial court gave ample reasons for imposing the sentences consecutively. Although Appellant asserts his aggregate sentence is manifestly excessive since the charges allegedly rose out of the same criminal incident, we note Appellant is not entitled to a “volume discount” in the form of concurrent sentences. Rather, the imposition of consecutive sentences was within the trial court’s discretion. *Id.* Thus, Appellant’s final claim is meritless.”

COMMONWEALTH OF PENNSYLVANIA v. DESMOND SMITH

FILED: June 6, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-E01005-22ro.pdf?cb=1>

“Here, the suppression judge wholly failed to satisfy the requirements of Rule 581(I). That judge then left the bench and a different judge presided over Appellant’s trial. In the court’s Rule 1925(a) opinion, it offers no discussion of this issue, simply referring this Court to the portion of the record containing the above-quoted ruling by the suppression judge. Accordingly, we have no factual findings or legal determinations by any trial judge — let alone findings of fact by the suppression judge who actually viewed the witnesses and ruled on the issues raised herein — to enable us to complete our task of “determining whether the suppression court’s factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct.” Clearly, there are factual issues to be determined in this matter. For instance, a finding must be made about whether Appellant was aware he could be questioned about the assault, even though the Miranda warnings pertained only to the homicide. Additionally, findings of fact are necessary regarding the parties’ disputes on several of the Bennett factors, including whether Appellant’s afternoon statements were materially different from his initial remarks to the detectives, what transpired during the hours-long breaks in Appellant’s written statement, and the impact of interruptions on the continuity of Appellant’s statement (including when a detective pretended to be a DNA analyst). Thus, remanding for the trial court to make such factual findings is necessary. Moreover, because the instant trial judge did not have the benefit of viewing the witnesses firsthand, a whole new suppression hearing is warranted.”

[Concurring/Dissenting Opinion by McCaffery: https://www.pacourts.us/assets/opinions/Superior/out/J-E01005-22rcdo.pdf?cb=1](https://www.pacourts.us/assets/opinions/Superior/out/J-E01005-22rcdo.pdf?cb=1)

COMMONWEALTH OF PENNSYLVANIA v. JEFFREY COOPER

FILED: June 8, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A03026-22o%20-%20105170162188080079.pdf?cb=1>

“We find that the trial court lacked the authority to anticipatorily revoke Appellant’s sentence of probation because Appellant engaged in criminal conduct while on parole, and not probation. We, therefore, vacate the portion of the order revoking Appellant’s probation. We otherwise affirm the remaining portions of the Order.”

[Concurring Opinion by Stabile: https://www.pacourts.us/assets/opinions/Superior/out/J-A03026-22co%20-%20105170162188080578.pdf?cb=1](https://www.pacourts.us/assets/opinions/Superior/out/J-A03026-22co%20-%20105170162188080578.pdf?cb=1)

COMMONWEALTH OF PENNSYLVANIA v. GRANT SKIPPER

FILED: June 9, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S07042-22o%20-%20105139041185213226.pdf?cb=1>

“Instantly, our review, as highlighted above, reveals that the Commonwealth did not challenge Skipper’s expectation of privacy until after the trial court had already granted the suppression motion. At the suppression hearing and in its memorandum of law, the Commonwealth focused solely on the legality of the police conduct and, thus, the Commonwealth did not properly challenge Skipper’s expectation of privacy... Based upon the foregoing, we conclude that the Commonwealth has waived its claim on

appeal because it failed to meet its initial burden and, instead, conceded the expectation of privacy by focusing exclusively on the legality of the police conduct.”

COMMONWEALTH OF PENNSYLVANIA v. BUCHANAN AUTOMOTIVE

FILED: June 14, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A10028-22o%20-%20105176269188598124.pdf?cb=1>

“As applied to this case, the trial court found that Ms. Flohr signed three documents required to sell a car to Ms. Chamberlain—a certificate of title, a PennDOT Form MV-4ST, and a bill of sale. Ms. Flohr did not meet or interact with Ms. Chamberlain. Importantly, there was no evidence that Ms. Flohr ever presented any facts about the car to Ms. Chamberlain. Therefore, we find that Ms. Flohr’s conduct was not “representing” the car, and that Buchanan did not employ Ms. Flohr “as a salesperson.” As such, we vacate Buchanan’s judgment of sentence and reverse its conviction.”

COMMONWEALTH OF PENNSYLVANIA v. RONNIE LEHMAN

FILED: June 23, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A29019-21o%20-%20105185815189475605.pdf?cb=1>

“The legislative intent behind the most recent enactment of Section 6138(2.1) is further evidenced by other revisions to relevant statutes, including 61 Pa.C.S. § 5006 (effective June 30, 2021), which provides that a parolee living in a community corrections center “while in good standing on parole shall not be deemed to be in official detention under 18 Pa.C.S. § 5121.” Because this statute definitively precludes parolees today from being treated as inmates under 18 Pa.C.S. § 5123(a.2), the dissent’s interpretation would impose criminal liability on Lehman for acts, even under its view, which are no longer criminalized. This approach is not warranted in the instant case because, again, the above-mentioned amendments are merely further recognition of statutes and decisional law which were in force at the time of Lehman’s overdose.”

Dissenting Opinion by Bowes: <https://www.pacourts.us/assets/opinions/Superior/out/J-A29019-21do%20-%20105185815189475859.pdf?cb=1>

COMMONWEALTH OF PENNSYLVANIA v. TROY ANTHONY ROBINSON

FILED: June 27, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S09022-22o%20-%20105188521189692929.pdf?cb=1>

“Here, however, trial counsel denied that he raised a misidentification defense at trial—an assertion that the record contradicts. As such, he did not provide any strategic reason for failing to provide expert testimony to help the jury consistent with his chosen defense in light of Walker. Nor does the Commonwealth provide any reasons that could support such a choice. Furthermore, there is scant support to find that trial counsel had even read Walker in the five months leading up to trial. As such, the Commonwealth has not demonstrated how the PCRA court erred in finding that Robinson met his burden to prove that his trial counsel was ineffective.”

Dissenting Opinion by Stevens: <https://www.pacourts.us/assets/opinions/Superior/out/J-S09022-22do%20-%20105188521189693384.pdf?cb=1>

COMMONWEALTH OF PENNSYLVANIA v. DANIEL D. CHISEBWE

FILED: June 28, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A14042-22o%20-%20105190817189884435.pdf?cb=1>

“We hold the language in Sections 1511(b)(1) and 1311(c) that grants drivers additional time periods to present proof of the required documents, does not extend to belligerent and combative behavior of the licensee to provide the required documents “upon the demand” of a police officer.”

COMMONWEALTH OF PENNSYLVANIA v. GREGORY LOWMAN

FILED: June 28, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A13015-22o%20-%20105190862189886709.pdf?cb=1>

“Since the parties did not agree upon any particular sentence, the PCRA court’s vacation – on merger principles – of Appellant’s judgment of sentence did not alter the terms of the plea agreement between Appellant and the Commonwealth. Appellant’s plea of nolo contendere to three counts of aggravated assault remains intact. As such, the PCRA court erred when it vacated the plea and returned the parties to their pre-plea agreement status. The appropriate remedy was simply to correct Appellant’s sentence and leave Appellant’s guilty plea undisturbed.”

COMMONWEALTH OF PENNSYLVANIA v. JEFFREY DEAN MCFARLAND

FILED: June 29, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S20020-22o%20-%20105192254190029982.pdf?cb=1>

“Upon review, we discern no abuse of the trial court’s discretion in rejecting Appellant’s weight claim. The jury was “free to believe all, none or some of the evidence and to determine the credibility of the witnesses.” Appellant essentially asks us to make findings of fact and reweigh the evidence in his favor, which is not our role as an appellate court. See appellant’s weight claim where he asked this Court to reweigh the evidence that we re-weigh the evidence and assess the credibility of a witness presented at trial, a task that is beyond our scope of review.”). Finally, and contrary to Appellant’s claim, there is no constitutional requirement for the police to conduct a forensic analysis of evidence.”

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