

COMMONWEALTH OF PENNSYLVANIA
v. NELSON EUGENE RYDER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 580-2002

Motion in Limine; Ex Post Facto Change to Sentence; DNA Analysis

1. Final judgments of the judiciary are inviolable and a sentence may not be disturbed by a subsequent legislative change; however, this does not preclude legislative enactments that change the manner of executing a sentence.
2. In order to be *ex post facto*, a law must be retrospective, must alter the definition of criminal conduct or increase the penalty, and must be penal in nature.
3. Reasonable prison regulations, administrative requirements, and subsequent punishment for infraction are considered to be part of every sentence for every prisoner and do not constitute additional punishment.
4. The denial of parole for refusal to comply with a regulation or requirement is not *ex post facto* unless it is prohibiting the release of non-compliant inmates who have reached their mandatory release dates.
5. Withdrawing blood for DNA analysis is a non-penal, administrative requirement because there is no evidence of any intent to punish or requirements so harsh as to constitute punishment.
6. The requirement that a prisoner submit to a pre-release withdrawal of blood does not alter the maximum sentence or change the parole eligibility date because actual release on parole is dependent on full compliance with all prison rules and administrative requirements.
7. Because the defendant had not yet reached his mandatory parole date, requiring him to supply blood for DNA analysis prior to release was not an *ex post facto* change to his sentence.

Appearances:

John F. Nelson, Esq., *District Attorney*

Allen C. Welch, Esq., *Attorney for Defendant*

OPINION

Walker, P.J., August 26, 2005

Procedural History and Factual Summary

The defendant, Nelson Ryder, was incarcerated in the Commonwealth of Virginia when the Virginia Legislature enacted Virginia Code 1950, Section 19.2-310-2, which provides that: "Notwithstanding the provisions of 53.1-159 any person convicted of a felony who is in custody after July 1, 1990, shall provide a blood sample prior to the individual's parole eligibility date."^[1] In accordance with this statute, Ryder provided blood to the Commonwealth of Virginia for the purposes of deoxyribonucleic acid (DNA) analysis and profiling for inclusion in the National DNA Databank.

During a rape investigation in 2002, the Pennsylvania State Police found a match in the National DNA Index System (NDIS) to semen that was found on the victim. The match was the blood drawn from the defendant, Nelson Ryder. Subsequently, Ryder was charged with rape, aggravated indecent assault, and terroristic threats in the Commonwealth of Pennsylvania.

The defendant has filed two pre-trial motions. The defendant alleges that the search warrant was insufficient on its face and that the taking of blood for DNA analysis by the Commonwealth of Virginia violated his rights under the United States Constitution. This Court held by order of Court on July 28, 2005, that the search warrant was properly issued because the Court did not find any evidence of fraud or recklessness. Furthermore, this Court held that hearsay evidence is sufficient basis for the issuance of the warrant. Therefore, only the motion regarding the taking of the blood for DNA analysis is before this Court today.

Discussion

Final judgments of the judiciary are inviolable and a sentence may not be disturbed by a subsequent legislative change; however, this does not preclude legislative enactments that change the manner of executing a sentence. Commonwealth v. Sutley, 474 Pa. 256, 263, 378 A.2d 780, 784-5 (1977). The court in Sutley explained:

[T]he legal sentence is the maximum sentence. The reason being that while the minimum sentence determines parole eligibility, the maximum sets forth the period of time that the state intends to exercise its control over the offender for his errant behavior. The judicial discretion is the determination of the period of control over the person of the offender in view of the nature of the crime, the background of the defendant and the other pertinent considerations for such a decision. It is this exercise of discretion that the rule of the "inviolability of final judgment" seeks to protect. The institution in which the sentence is to be served, the objects sought to be accomplished during this period of control and all of the other penological considerations are not primarily judicial functions. Id. at 268, 378 A.2d at 786. (Citations omitted.)

The defendant alleges that the enforcement of Virginia Code 1950, Section 19.2-310-2, was unconstitutional as applied to him because the requirement that he provide blood for DNA analysis before he could be paroled was an *ex post facto* change to his sentence. The defendant also alleges that the use of the DNA profile by the Commonwealth of Pennsylvania violates the Fourth Amendment of the United States Constitution and Article 1, Section 8, of the Pennsylvania Constitution under the fruit of the poisonous tree doctrine. The Commonwealth cites to Dial v. Vaughn, 733 A.2d 1 (Pa.Cmwlt. 1999), in support of its argument that the DNA analysis requirement was not an *ex post facto* change to Mr. Ryder's sentence and is constitutionally available to the Commonwealth in its criminal case against him.

In order to be *ex post facto*, a law must be retrospective, must alter the definition of criminal conduct or increase the penalty, and must be penal in nature. California Dep't of Corrections v. Morales, 514 U.S. 499 (1995); Van Doren v. Mazurkiewicz, 695 A.2d 967 (Pa.Cmwlt. 1997). Withdrawing blood for DNA analysis is a non-penal, administrative requirement because there is no evidence of any intent to punish or requirements so harsh as to constitute punishment. Dial v. Vaughn, 733 A.2d 1, 5 (Pa.Cmwlt. 1999). Reasonable prison regulations, administrative requirements, and subsequent punishment for infraction are considered to be part of every sentence for every prisoner and do not constitute additional punishment. Id. at 6. The requirement that a prisoner submit to a pre-release withdrawal of blood does not alter the maximum sentence or change the parole eligibility date because actual release on parole is dependent on full compliance with all prison rules and administrative requirements. Id. at 4. The blood analysis requirement is not substantially different from the requirement to maintain other convict identification records such as fingerprints. Id.

The denial of parole for refusal to comply is not *ex post facto* unless it is prohibiting the release of non-compliant inmates who have reached their mandatory release dates. Jones v. Murray, 506 U.S. 977 (1992). The court in that case went on to hold that where the mandatory parole date has not yet been reached, it is not *ex post facto* to retain non-compliant inmates because it is not exceeding the terms of the original sentence. Id.

The defendant in this case was serving a twenty-five-year sentence in a Virginia prison when the blood was taken. Under Virginia law, he was eligible for parole after serving one-third, or approximately eight years, of his sentence. Parole was mandatory after serving two-thirds, or approximately sixteen years, of his sentence. At the time the blood was drawn, Mr. Ryder had served approximately six years of his sentence, so he was not yet eligible for parole. Therefore, this Court holds that the withdrawal of blood from Mr. Ryder was not an *ex post facto* change to his sentence. The withdrawal of Mr. Ryder's blood for

DNA analysis and inclusion in the National DNA Databank was not obtained in violation of his rights under the United States Constitution or the Pennsylvania Constitution and can be used by the Commonwealth of Pennsylvania in their case against Mr. Ryder.

ORDER OF COURT

August 26, 2005, after a review of the record, the letter briefs submitted by counsel and the relevant law, the Court holds that the withdrawal of blood from Mr. Ryder was not an *ex post facto* change to his sentence. The withdrawal of Mr. Ryder's blood for DNA analysis and inclusion in the National DNA Databank was not obtained in violation of his rights under the United States Constitution or the Pennsylvania Constitution and can be used by the Commonwealth of Pennsylvania in their case against Mr. Ryder.

Defendant's Motion in Limine to Exclude Results of DNA Testing is hereby denied.

[1] Section 53.1-159 provides that a defendant is eligible for parole within the discretion of the state authorities at the completion of one-third of his sentence. At the completion of two thirds of the sentence, parole becomes mandatory.