

COMMONWEALTH OF PENNSYLVANIA
v. CAROLYN MARIE SPOONIRE, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, Nos. 196-2009, 197-2009 and 198-2009

Controlled Substances, Prosecutions, Sentence and Punishment, Extent of Punishment; Statutes, Construction and Operation, General Rules of Construction, Intention of Legislature, Plain Meaning; Statutes, Construction and Operation, Particular Classes of Statues, Penal Statutes

1. A sentencing judge has great discretion in the determination of a sentence to choose the range of confinement which best suits a particular defendant and the circumstances surrounding his crime. However, such discretion is not unfettered, and must account for general principles in the sentencing guidelines.
2. Factors in crafting an individualized and particularized sentence include the protection of the public, the gravity of the offense as related to the impact on the life of the victim and the community, and the rehabilitative needs of the Defendant.
3. It has long been held that imposition of sentences to be served consecutively or concurrently is a determination solely within the discretion of the trial court.
4. The drug-free school zones statute mandates an enhancement of sentence where a drug-related crime occurs within one thousand (1,000) feet of a school or playground, the Pennsylvania Code providing for the addition of time to the maximum and minimum sentence otherwise imposed.
5. In interpreting a statute, the Court must attempt to ascertain and effectuate the intent of the General Assembly.
6. The courts of this Commonwealth presume that when a statute is adopted by the Legislature, the Congress acts with full knowledge of existing statutes relating to the same subject.
7. When determining the meaning of a statute, the Court must begin with the plain meaning of the language utilized therein, and cannot disregard such plain meaning under the pretext of pursuing the spirit of the statute. In reading plain language, words and phrases shall be construed according to rules of grammar and according to their common and approved usage. The Court must presume that each word, sentence, or provision is intended to serve a purpose, and should be given effect.
8. Penal statutes, which impose some sanction as part of a criminal sentence, are to be strictly construed in favor of the accused.
9. The language of the school zone enhancement does not address whether the enhanced sentences imposed must be served consecutively or concurrently, or the historical discretion of the trial court in determining the question.
10. The goal and purpose of the statute has been described as the protection of children from the ravages and evils of the illegal drug trade, attempting to fortify the barrier segregating places frequented by children from the illegal drug scene.
11. As to the scope and zone of application, no express limitation was included in the language by the Legislature, so that none should be judicially imposed. Prior decisions reject attempts to read limits into the statute that do not appear from the text itself, or enlarge the statute past those offenses to which it explicitly applied.
12. Given the statute's silence as to its impact on the discretion of the Court to impose a concurrent rather than consecutive sentence, it is reasonable to construe the provisions as leaving such discretion intact. Further, it is this

construction which operates in favor of life and liberty. This Court has no reason to believe that if the General Assembly had intended to remove such discretion where the school zone enhancement is implicated, it would not have so provided in the statute.

Appearances:

Travis L. Kendall, Esquire, *Fulton County District Attorney*

Dwight C. Harvey, Esquire, *Attorney for Defendant*

OPINION

Van Horn, J., September 3, 2010

Statement of the Case

The Defendant, Carolyn Marie Spoonire, was charged in three separately docketed cases of crimes related to the trafficking and sale of crack cocaine. In case numbers 196 and 197 of 2009, the Defendant was charged with Criminal Conspiracy in the delivery of cocaine, Possession with Intent to Deliver, and Possession of a Controlled Substance^[1]. These offenses were alleged to have occurred on July 1 of 2009, whereby the Defendant sold crack cocaine to a confidential informant. In case number 198 of 2009, the Defendant was charged with Possession of Cocaine with Intent to Deliver, and Possession of a Controlled Substance, for incidents occurring on June 29, 2009 ^[2].

After a confidential informant revealed to Fulton County Police that crack cocaine could be obtained from the Defendant, two controlled purchases occurred on June 29 and July 1 of 2009 at Spoonire's home. The officer in charge of the investigation applied for and obtained a search warrant for the residence after the second purchase on July 1. Upon executing the warrant, officers found U.S. currency, owe sheets, and buy money used in a previous controlled buy. The search also revealed approximately eight (8) grams of crack cocaine in a fire safe.

The criminal informations were filed October 12, 2009, with the Defendant appearing and waiving arraignment on October 13, 2009. After several continuances, trial by jury was held May 13, 2010. The jury returned a verdict of guilty on all charges. The Court, after requesting a Pre-Sentence Investigation Report, by Order dated May 13, 2010, set sentencing for June 22, 2010. On June 22, the Court sentenced the Defendant.

In Count one (1) of case number 196 of 2009, the Defendant was sentenced to a period of confinement not less than six (6) months nor more than twenty four (24) months. In Count two (2), the Court imposed sentence of not less than twenty four (24) months, nor more than sixty (60) months, to run concurrent with the period of confinement imposed under count one (1). In case number 197 of 2009, the Court imposed sentence of six (6) to twenty four (24) months of confinement for Count one (1), to run concurrent with a period of twenty four (24) to sixty (60) months imposed for Count two (2). The sentences in case number 197 of 2009 were imposed consecutive to those under case number 196 of 2009.

Under the final docket number, in case number 198 of 2009, the Court imposed a period of confinement of not less than twenty four (24) months, and not more than sixty (60) months. Rather than impose such period consecutively, the Court in its discretion ordered the sentence in case 198 of 2009 to run concurrently with that imposed in case number 197 of 2009. Thus, in aggregate, the Defendant was sentenced to a minimum period of confinement of forty eight (48) months with credit given for time served. The maximum period of confinement imposed was one hundred and twenty (120) months.

On June 30, 2010, the Defendant filed Post-Sentence Motions. Thereafter, on July 1, 2010, the Commonwealth similarly took exception with the Court's sentence, filing a Motion for Modification. By Order dated July 2, 2010, the Court directed the Defendant to Answer the Commonwealth's motion, and further directed that written argument be submitted by the parties. By Order dated July 9, 2010, the Court similarly directed a response to the defense motion from the Commonwealth, and requested written argument to the Court. Argument was set upon both motions for August 31, 2010.

On July 13, 2010, the Defendant Answered the Commonwealth's Motion for Modification, providing written argument in support of the same on July 23, 2010. The Commonwealth's written argument in support of its motion was timely received by the Court on the same date. Briefs in support of, and in opposition to, the Defendant's Post-Sentence Motions were

also timely received by the Court. Argument was held as scheduled on August 31, 2010. Though disposition of the Defendant's Post-Sentence Motions will require evidentiary hearing, the Post-Sentence Motion filed by the Commonwealth is now ripe for disposition. The Court having heard argument, reviewed the motion and the response thereto, and considered the written arguments of counsel, now issues this Opinion and Order affirming its power to impose concurrent sentences in case numbers 198 and 197 of 2009.

Issue Presented

After trial, by Notice dated March 14, 2010, the Commonwealth made clear its intent to proceed at sentencing under 18 Pa. C.S.A. §6371(a). This section requires a mandatory minimum sentence of two (2) years total confinement for commission of enumerated offenses within one thousand (1,000) feet of a public school. See 18 Pa. C.S.A. §6371(a) (2010). According to the Commonwealth, by sentencing the Defendant to concurrent sentences in case numbers 197 and 198 of 2009, the Court thwarted the legislative intent behind the statute and misapplied the guidelines. The Commonwealth argues that the statute requires the Court sentence the Defendant to consecutive terms of confinement for each enumerated offense occurring within the school zone.

The Defendant argues the Court was within its discretion in imposing concurrent sentences in cases 197 and 198 of 2009, as the statute does not explicitly prohibit concurrent sentences. Further, the Defendant asserts that the action by the Court was in accord with the intent of the legislature to treat drug offenses occurring within school zones more harshly than others. The Defendant points out that absent the enhancement mandated by statute, she could have faced a minimum period of confinement of as little as six (6) months. As such, the Defendant maintains the intent of the legislature to more harshly punish crimes within school zones was achieved despite the decision of the Court to impose concurrent sentences.

Discussion

A. General Principles of Sentencing and Statutory Interpretation

A sentencing judge has "a great deal of discretion in the determination of a sentence" to choose the range of confinement "which best suits a particular defendant and the circumstances surrounding his crime." *Commonwealth v. Boyer*, 856 A.2d 149 (Pa. Super. Ct. 2004). Yet this discretion is not unfettered, and must account for general principles set forth in the advisory sentencing guidelines. Considering factors including the protection of the public, the gravity of the offense as related to the impact on the life of the victim and the community, and the rehabilitative needs of the Defendant, the Court must create an individualized sentence crafted to the particular case. See *id.* at 153 (citing 42 Pa. C.S.A. §9721(b)). The trial court has broad discretion to fashion a particularized and just sentence, as it views firsthand the character of the defendant, displays of remorse, defiance or indifference, and the overall effect and nature of the crime. *Commonwealth v. Begley*, 780 A.2d 605, 643 (Pa. 2001). Further, it has long been held that imposition of sentences to be served consecutively or concurrently is a determination "solely within the discretion of the trial court." *Boyer*, 856 A.2d at 153-54.

In Pennsylvania, the indeterminate sentencing scheme prevents an exact determination of the length of sentence which will actually be served. See *Commonwealth v. Kleinicke*, 895 A.2d 562, 572 (Pa. Super. Ct. 2006). The trial court imposes sentence by electing a maximum and minimum period of confinement guided by the terms set forth in the Sentencing Code. See *id.* While a criminal defendant will serve the minimum sentence imposed, whether she will serve up to the maximum is determined by the discretion of the parole board in granting or denying parole after the expiration of the minimum time period. See *id.* The minimum sentence is therefore the "guide to the earliest potential release date," a baseline for possible early release. *Id.* Thus, sentencing enhancements like the one at issue increase the minimum release date, thereby prolonging the term of incarceration for crimes the legislature has determined are sufficiently heinous to merit increased punishment. Pennsylvania's sentencing guidelines constitute a middle ground between guidelines that are mandatory or presumptive and those which are advisory or voluntary. See *id.* The guidelines must be considered by the Court, but have been repeatedly called advisory by our Supreme Court. See *Commonwealth v. Sessoms*, 532 A.2d 775 (Pa. 1987).

The statute at issue mandates an enhancement of sentence where a drug related crime occurs within one thousand (1,000) feet of a school or playground. See 18 Pa. C.S.A. §6317^[3]. The statutory section establishes a mandatory minimum sentence, while the regulations under the Pennsylvania Code authorize the enhancement under the Sentencing Guidelines. See 204 Pa. Code §303.9(c)^[4], 303.10(b)^[5]. The statute is silent on the question of whether such enhanced sentences are required to be served consecutively, or whether the discretion of the trial court to impose sentence concurrently is preserved. As such, the Court must interpret the statute using the guidelines set forth in the Statutory Construction Act and decisional law. See 1 Pa. C.S.A. §1921; *Commonwealth v. Drummond*, 775 A.2d 849, 855-56 (Pa.

Super Ct. 2001).

In interpreting a statute, the Court must attempt to ascertain and effectuate the intent of the General Assembly. See 1 Pa. C.S. §1921(a); *Commonwealth v. Hoke*, 962 A.2d 664, 667 (Pa. 2009). The courts of this Commonwealth presume that when a statute is adopted by the legislature, the Congress acts "with full knowledge of existing statutes relating to the same subject." See *Commonwealth v. Hansley*, 994 A.2d 1150, 1152 (Pa. Super. Ct. 2010). When determining the meaning of a statute, the Court must begin with the plain meaning of the language utilized therein, and cannot disregard such plain meaning "under the pretext of pursuing the spirit of the statute." *Commonwealth v. Sanchez-Rodriguez*, 814 A.2d 1234, 1237 (Pa. Super. Ct. 2003). In reading plain language, "words and phrases shall be construed according to rules of grammar and according to their common and approved usage." See 1 Pa. C.S. §1903(a). The Court must presume that each word, sentence, or provision is intended to serve a purpose, and should be given effect. See *Commonwealth v. Williams*, 955 A.2d 386, 389 (Pa. Super. Ct. 2008). Penal statutes, which impose some sanction as part of a criminal sentence, are to be strictly construed in favor of the accused. See *Commonwealth v. Kelley*, 801 A.2d 551, 554 (Pa. 2002).

B. The Concurrent Sentences in Cases 198 and 197 of 2009 Were Properly Imposed

The language of the school zone enhancement does not address whether the enhanced sentences imposed must be served consecutively or concurrently. Indeed, the terms of the statute do not address at all the historical discretion of a trial court to elect whether sentences must be served one following another or simultaneously. The Superior Court in *Hinds* discussed the proper approach to utilize in construing the directives of the statute. See *Commonwealth v. Hinds*, 775 A.2d 859 (Pa. Super. Ct. 2001) (en banc). The goal and purpose of the statute was stated as the protection of children "from the ravages and evils of the illegal drug trade," attempting to "fortify the barrier" segregating places frequented by children from the "illegal drug scene." *Id.* at 862. As to the scope and zone of application, no express limitation was included in the language by the legislature, so that none should be judicially imposed. As the Court in *Williams* pointed out, the prior decisions interpreting the drug free school zones law have "rejected attempts to read limits" into the statute that do not appear from the text itself. *Williams*, 955 A.2d at 389. For instance, in *Campbell*, the Superior Court rejected a trial court determination that the term "playgrounds" applied only to areas near schools, as the language did not contain any such qualification. See *Commonwealth v. Campbell*, 758 A.2d 1231, 1233 (Pa. Super. Ct. 2000).

Yet, so too has the Superior Court rejected attempts to broaden application of the statute where such application was not explicitly authorized by its terms. In *Hoke*, the Supreme Court held that a statute requiring a mandatory minimum be imposed for the crime of manufacturing methamphetamine did not extend to require such mandatory minimum be imposed for the crime of conspiracy to manufacture amphetamines. See *Commonwealth v. Hoke*, 962 A.2d at 669. The statute was not to be enlarged past those enumerated offenses to which it explicitly applied, nor restricted to a narrower application where the terms did not call for such limitation. In *Wilson*, the Superior Court reiterated the distinction between mandatory sentencing provisions and enhanced sentencing guidelines, the latter preserving the discretion of the trial court in determining penalties. See *Commonwealth v. Wilson*, 829 A.2d 1194, 1999 (Pa. Super. Ct. 2003). The regulations require the Court "consider" the "range of sentences" they describe, stating the enhancement should be applied to each violation. 204 Pa. Code 303.10. However, the text leaves the Court to determine the ultimate range of sentence to be imposed by setting forth maximum and minimum periods of confinement. See 204 Pa. Code 303.9(c).

As the statute does not address whether enhanced sentences should be imposed consecutively or concurrently, the Court therefore construes the provision as leaving intact our discretion to decide the question. As a penal statute, the school zone enhancement must be construed in favor of the Defendant. See *Kelley*, 801 A.2d at 554. As our Supreme Court has stated, "when a criminal statute calls for construction, it is not the construction that is supported by the greater reason that is to prevail, but that one which, if reasonable, operates in favor of life and liberty." See *Commonwealth v. Glover*, 156 A.2d 114, 116 (Pa. 1959). Given the statute's silence as to its impact on the discretion of the Court to impose a concurrent rather than consecutive sentence, it is reasonable to construe the provision as leaving such discretion intact. Further, it is this construction which operates in favor of life and liberty.

The Commonwealth cites 42 Pa. C.S.A. §9716 in arguing the enhancements in each case must be imposed consecutively. Yet this statute does not address the imposition of consecutive or concurrent enhanced sentences, but instead addresses the situation where "two or more sections requiring mandatory minimum sentences" apply. 42 Pa. C.S.A. §9716 (2010). The statute provides the Court in such situation is bound by the section requiring greater penalty, a provision the Commonwealth seeks to enlarge in support of the argument each enhancement must be served consecutively. See *id.* Yet the statute does not address concurrently imposed mandatory minimums, but rather provides that where two such enhancements apply, the Court should impose the period of time which is greater. Instantly, the Court did apply the

school zone enhancement to each violation, and no other sentencing enhancement was argued to apply to the Defendant's crimes. The cited section is therefore inapplicable to decide the issue in dispute.

The determination to impose such enhanced sentences concurrently in two cases was based on examination of the character of the Defendant and the crime, as well as the impact on the public and the community. The Court did indeed wish to protect the public, and the children who are the object of the school zone enhancement, and continues to believe the sentence imposed serves such purpose. In aggregate, the Defendant shall serve at least forty-eight (48) months, or four (4) years, and will likely serve closer to the maximum of one hundred and twenty (120) months, or ten (10) years. As we are required to do, the Court considered the character of the Defendant, a fifty-three (53) year old grandmother without a prior criminal record. The crimes were committed within the Defendant's home, the drugs sold to adults rather than children on a playground. While these factors do not lessen the crimes committed, nor merit disregard of the school zone enhancement, they are considerations as to the nature of the crime and the need for protection of the public. Weighing such considerations, the Court properly exercised its discretion in imposing sentence.

In cases where the character of the defendant, the nature of the crime and its impact on the victims and the community so merit, we construe the Youth/School Zone Enhancement as preserving the Court's discretion to impose enhanced sentences concurrently. We further presume our legislature was aware, when drafting the statute, of the historical discretion placed in the sentencing court to impose periods of confinement concurrently or consecutively based on our evaluation of the pertinent considerations. See *Hansley*, 994 A.2d at 1152. This Court has no reason to believe that if the General Assembly had intended to remove such discretion where the school zone enhancement is implicated, it would not have so provided in the statute. Given the reluctance expressed by our appellate courts to enlarge or to restrict the scope of the drug free school zones statute, the Court will not construe this legislative omission as altering the established discretion of a sentencing court.

ORDER OF COURT

September 3, 2010, upon review of the Commonwealth's Post-Sentence Motion, the Defendant's Answer, legal memoranda submitted by the parties, and following hearing and a review of the applicable law, it is hereby ordered that the Commonwealth's Motion is denied and the imposition of concurrent sentences in case numbers 197 and 198 of 2009 is hereby affirmed.

[¹] See 18 Pa. C.S.A. §903(a)(1) (2010); 35 P.S. §780-113(a)(30); 35 P.S. §780-113(a)(16).

[²] See 35 P.S. §780-113(a)(30); 35 P.S. §780-113(a)(16).

[³] The Statute Provides: "A person 18 years of age or older who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of the . . . Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance occurred within 1,000 feet of the real property on which is located a public, private or parochial school or a college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus, be sentenced to a minimum sentence of at least two years of total confinement . . . The maximum term of imprisonment shall be four years for any offense (1) subject to this section; and (2) for which The Controlled Substance, Drug, Device and Cosmetic Act provides for a maximum term of imprisonment of less than four years." 18 Pa. C.S.A. §6317.

[⁴] The Code provides: "Youth/School Enhancement sentence recommendations. If the court determines that an offender violated the drug act pursuant to §303.10(b), 12 months shall be added to the lower limit of the standard range of the applicable sentencing matrix and 36 months shall be added to the upper limit of the standard range of the applicable sentencing matrix. The range of sentences (i.e.- standard range) shall be considered by the court for each combination of Offense Gravity Score [OGS] and Prior Record Score [PRS]." 204 Pa. Code 303.9(c).

[⁵] (b) Youth/School Enhancement. (1) When the court determines that the offender either distributed a controlled substance to a person or persons under the age of 18 in violation of 35 P.S. §780-114, or manufactured, delivered or possessed with intent to deliver a controlled substance within 1000 feet of the real property on which is located a public or private elementary or secondary school, the court shall consider the range of sentences described in §303.9(c). (2) The Youth/School Enhancement only applies to violations of 35 P.S. §780-113(a)(14) and (a)(30). (3) The Youth/School

Enhancement shall apply to each violation which meets the criteria above." 204 Pa. Code 303.10(b).