[J-98-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 7 EAP 2005
	:	
Appellee	:	Appeal from the order of the Superior Court entered September 1, 2004, at No. 1221 EDA 2002 affirming the judgment of
v.	:	sentence entered on March 25, 2002, in the Court of Common Pleas of Philadelphia County, Criminal Division, at
RAVAH DICKSON,	:	0201-0022.
	:	
Appellant	:	
	:	
	:	ARGUED: September 14, 2005

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY **DECIDED: March 29, 2007**

I join the majority opinion, save for its analysis of Section 1922(4) of the Statutory Construction Act and its treatment of our decision in Estate of Lock, 244 A.2d 677 (Pa. 1968). I agree with the Majority's strong suggestion that Estate of Lock is at odds with the plain language of the Statutory Construction Act and a modern understanding of the import of our denial of allocatur; moreover, I also find that it is contrary to our established standard of review regarding matters of statutory interpretation. Indeed, the continued viability of our nearly-half-century-old decision in Estate of Lock has been questioned by our Court before. See Pelton v. Commonwealth, Department of Public Welfare, 523 A.2d 1104, 1109 n.4 (Pa. 1987). Therefore, rather than continue to equivocate, for the reasons stated below, I believe that it is time to prune this unfortunate offshoot from our statutory construction jurisprudence and overrule our prior decision in Estate of Lock.

The rule of statutory construction found at 1 Pa.C.S. §1922(4) instructs "That when a court of last resort has construed the language used in a statute, the General Assembly in

subsequent statutes on the same subject matter intends the same construction to be placed upon such language." Breaking with prior case law,[1] our Court in its 1968 decision in Estate of Lock expressly extended this rule and opined that where a decision of the *Superior Court* construing a statute has not been modified by the Pennsylvania Supreme Court, there is a presumption that the subsequent enactment of a similar statute dealing with the same subject matter is intended to carry the same construction as that given by the Superior Court. Estate of Lock, 244 A.2d at 682-83.

In its discussion of whether the sentencing enhancement found at 42 Pa.C.S. §9712 applies to an unarmed co-conspirator to the underlying crime, the Majority necessarily considers this presumption. The Majority notes that because the Superior Court has interpreted Section 9712 and we have thereafter denied allocatur on this issue, coupled with the fact that the Legislature has since revisited this statute and failed to amend Section 9712, that pursuant to Estate of Lock, the presumption arises. Majority Opinion at 19.

The Majority attempts to surmount the presumption by suggesting that the Court's "mandate to find legislative intent" must not yield to the Estate of Lock presumption. Majority Opinion at 19. The Majority continues upon a plain language approach to statutory interpretation and concludes that the Superior Court's prior decisions "cannot be used as a brickbat to prevent us from bringing the decisional law of this Commonwealth into line with the plain language of §9712(a)." Majority Opinion at 20. Yet, if a simple re-interpretation of the statute by our Court overcomes the presumptive power of the intermediate appellate court's interpretation, it can hardly be considered a presumption at all.

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[1] See, e.g., Parisi v. Philadelphia Zoning Board of Adjustment, 143 A.2d 360, 363 (Pa. 1958); Salvation Army Case, 36 A.2d 479, 481 (Pa. 1944); Buhl's Estate, 150 A. 86, 87 (Pa. 1930); Bell v. Bell, 135 A. 219, 220 (Pa. 1926). Although DuPuy Estate, 96 A.2d 318, 320 (Pa. 1953), implicitly suggests a presumption based upon Superior Court precedent, it was not until our decision in Estate of Lock that a presumption based upon intermediate appellate court case law was made clear.

Instead of engaging in the exercise of what our Court would require of itself by way of a burden to rebut the presumption created by the Superior Court's interpretation of a statute, I believe that the presumption based upon *Superior Court* case law as articulated in Estate of Lock is itself what is faulty and should be repudiated.

First, Estate of Lock is in direct contravention of the plain language of the Statutory Construction Act. Section 1922(4) of the Act focuses on an interpretation of a statute by the "court of last resort." There is no question that the Superior Court is not the "court of last resort" in Pennsylvania - it is the Supreme Court of Pennsylvania. See, e.g., Commonwealth v. Wallace, 870 A.2d 838, 842 (Pa. 2005) (differentiating between an intermediate appellate court and a court of last resort); Warehime v. Warehime, 860 A.2d 41, 48 (Pa. 2004) (noting as no federal issues involved in the appeal, the Pennsylvania Supreme Court was the court of last resort). Thus, the standard articulated in Estate of Lock cannot withstand even cursory scrutiny with respect to the language employed by the Legislature itself.

Second, Estate of Lock's presumption regarding legislative intent hinges on the existence of an intermediate court decision which has not been modified by our Court. As noted by the Majority, this approach fails to appreciate that our denial of allocatur of an intermediate court decision is not an endorsement of or rejection of the intermediate appellate court's decision. Majority Opinion at 19 fn.14; see also Commonwealth v. Tarver, 426 A.2d 569, 574 (Pa. 1981) (opining that the denial of allocatur is not a ruling on the merits). Yet, under Estate of Lock, our denial of allocatur gives birth to the presumption, thereby giving our denial of allocatur unintended significance.

Finally, and perhaps most importantly, the continued use of Estate of Lock as a guide to statutory interpretation would diminish, at least to some extent, this Court's power to interpret a legislative enactment and to freely reject an intermediate appellate court's interpretation of a statute. This limitation on review is inconsistent not only with the

structure of our Unitary Judicial System, which places the Supreme Court at its head, but also with our long-established standard of review concerning matters of statutory interpretation - de novo review. To give the intermediate appellate court's prior interpretation presumptive value, would be to give greater deference to that lower intermediate appellate court's prior decision than it is entitled to under de novo review.

For the reasons stated above, I would overrule Estate of Lock, and conform again our statutory construction jurisprudence to the clear terms of Section 1922(4) from which it deviated, and thus, confine the presumptive intent of the Legislature to statutory interpretations by the "court of last resort" which is, the Pennsylvania Supreme Court.[2] [3]

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[2] While I do not lightly condone the overruling of our prior precedent, see, e.g., Grimaud v. Commonwealth, 865 A.2d 835, 849 n.2 (Pa. 2005) (Cappy, J. dissenting), when a decision of considerable vintage is shown through the consequences of application to be wrongly decided, such that the reason for the rule no longer exists, I see no basis on which to perpetuate such decisional law.

[3] The Majority offers that while it is deciding this appeal "solely on the plain language" of the relevant statutes, it nevertheless believes itself compelled to address other arguments regarding the intent of the Legislature and in doing so, speaks to import of Estate of Lock. In seemingly contradictory fashion, the Majority characterizes its discussion regarding Estate of Lock as *obiter dicta*, "we need not reach questions concerning … the meaning and validity of our decision in Lock …," Majority Opinion at 20 fn. 15, yet on the other hand, continues to believe it to be necessary to the resolution of the appeal - "[t]he question thus becomes whether our mandate to find legislative intent in the language of the statute must yield to the Lock presumption …." Majority Opinion at 19. Yet, if the presumption of Section 1922(4), as interpreted by Estate of Lock exists, then it is a necessary component of the statutory construction analysis in this appeal. Simply stated, Estate of Lock is "in play" in this appeal whether a plain language construction is utilized by the Majority or not. Finally, and perhaps most importantly, regardless of the reason articulated by the Majority for raising and addressing Estate of Lock, by applying that decision and the dubious presumption contained therein, the Majority has expressly given Estate of Lock continued viability and validity. With this I cannot agree.