



After the stipulated trial, the parties immediately proceeded to sentencing. At sentencing, the parties stipulated that Appellant had a prior DUI offense. Moreover, the parties stipulated that Appellant's prior DUI occurred on May 21, 2006 and that Appellant was convicted of the DUI on May 23, 2007. **See** Appellant's Sentencing Brief, 4/16/18, at 2; Commonwealth's Sentencing Brief, 5/18/18, at 1-2.

Notwithstanding this prior DUI conviction, Appellant claimed that he should not be subject to the more severe grading and sentencing provisions levied upon second-time DUI offenders, as his prior offense did not occur "within 10 years prior to the date of the offense for which [Appellant was] being sentenced." **See** 75 Pa.C.S.A. § 3806(b)(1)(i) ("[f]or purposes of sections . . . 3803 (relating to grading) [and] 3804 (relating to penalties) . . . the prior offense must have occurred . . . within 10 years prior to the date of the offense for which the defendant is being sentenced"); **see also** 75 Pa.C.S.A. § 3803(b)(4) (mandates a higher grading for individuals who violate Section 3802(d), where the individual "has more than one prior offense"); 75 Pa.C.S.A. § 3804(b) (mandates increased penalties for individuals who violate Section 3802(d) when it is "a second offense").

Appellant argued that, to interpret Section 3806(b)(1)(i) properly and determine whether he has a "prior offense" for purposes of that section, the trial court must look to the dates that he actually committed his DUIs – which were May 21, 2006 and May 6, 2017. Appellant claimed that, since more than 10 years elapsed between these dates, he was not subject to Section

3806(b)(1)(i)'s ten-year look-back provision and, thus, he did not have a "prior offense" for purposes of Section 3806(b)(1)(i). Appellant's Sentencing Brief, 4/16/18, at 2.

Nevertheless, during sentencing, Appellant acknowledged this Court's recent opinion in **Commonwealth v. Mock**, 186 A.3d 434 (Pa. Super. 2018), *appeal granted*, \_\_\_ A.3d \_\_\_, 2018 WL 6420180 (Pa. 2018). **See** N.T. Sentencing, 5/24/18, at 3-4. In **Mock**, this Court held that "the phrase 'prior offense,' as used in [75 Pa.C.S.A. § 3806(b)(1)(i)], refers to . . . the date of conviction or other disposition" – not the date the individual actually committed the prior DUI. **Mock**, 186 A.3d at 437-438. Therefore, Appellant acknowledged that, under **Mock**, his "prior offense" occurred on the date he was sentenced for his first DUI – which was May 23, 2007. **See** N.T. Sentencing, 5/24/18, at 3-4. Appellant thus acknowledged that, since May 23, 2007 was "within 10 years prior to the date of the offense for which [Appellant was] being sentenced" – which was May 6, 2017 – **Mock** required the trial court to sentence him as a second-time DUI offender. **Id.** However, during sentencing, Appellant informed the trial court that, even though the trial court was bound by **Mock**, he was raising the claim for issue-preservation purposes and so that a higher court could overrule **Mock** and grant him relief. **See id.**

The trial court sentenced Appellant to serve a term of 90 days to five years in jail, with a concurrent term of one year of probation, for his

convictions. **Id.** at 8-9. Appellant filed a timely notice of appeal and now raises one claim to this Court:

Whether the trial court committed reversible error when it held that [Appellant's] DUI conviction was a second offense based on the provisions of 75 Pa.C.S. § 3806?

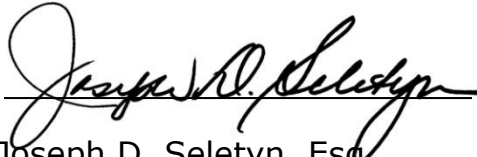
Appellant's Brief at 5.

We need not engage in an extended discussion of Appellant's claim on appeal as Appellant acknowledges that **Mock** was binding on the trial court and that **Mock** compelled the trial court's sentencing decision. **See** Appellant's Brief at 19. While we understand that Appellant seeks to have **Mock** overruled, we cannot do so. We, like the trial court, are bound by **Mock**. **See, e.g., Commonwealth v. Karash**, 175 A.3d 306, (Pa. Super. 2017) ("a panel of this Court cannot overrule the decision by another panel"); **Commonwealth v. Taggart**, 997 A.2d 1189, 1201 n.16 (Pa. Super. 2010) (recognizing that "one three-judge panel of [the Superior] Court cannot overrule another" three-judge panel). This is true even though the Pennsylvania Supreme Court recently granted allowance of appeal in **Mock**. **See Marks v. Nationwide Ins. Co.**, 762 A.2d 1098, 1101 (Pa. Super. 2000) (explaining that the Superior Court has "long held that as long as the [precedential] decision has not been overturned by the Supreme Court, a decision by our Court remains binding precedent"). Therefore, we must conclude that Appellant's claim fails as a matter of law.

Judgment of sentence affirmed. Jurisdiction relinquished.

J-S79030-18

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 02/15/2019