

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

MARK PETER MEDERNACH

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 717 MDA 2012

Appeal from the Judgment of Sentence March 12, 2012
In the Court of Common Pleas of Berks County
Criminal Division at No(s): CP-06-CR-0004872-2011

BEFORE: PANELLA, J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY OTT, J.:

Filed: February 22, 2013

The Commonwealth appeals from the judgment of sentence imposed on Appellee, Mark Peter Medernach, on March 12, 2012 by the Berks County Court of Common Pleas. On February 13, 2012, Medernach entered an open plea of guilty to one count of accidents involving death or personal injury and one count of driving under the influence of alcohol.¹ On appeal, the Commonwealth argues the trial court entered an illegal sentence by failing to impose the mandatory sentence of 90 days pursuant to 75 Pa.C.S. §

* Retired Senior Judge assigned to the Superior Court.

¹ 75 Pa.C.S. § 3742(a) and 3802(b), respectively.

3742(b)(2). Based on the following, we vacate in part and affirm in part the judgment of sentence.

The trial court set forth the facts and procedural history as follows:

On December 21, 2011, a seven count Criminal Information was filed against the Defendant, Mark P. Medernach . . . for an incident that occurred on August 26, 2011 near Kutztown Road in Maxatawny Township, Berks County, Pennsylvania. On February 13, 2012, [Medernach] entered an open plea of guilty before this Court as to Count 2, Accidents Involving Death or Personal Injury, and Count 4, Driving Under the Influence of Alcohol. [Medernach] admitted that on August 26, 2011, he operated a motor vehicle in the Commonwealth of Pennsylvania while his blood alcohol content ("BAC") was .117%, and that while doing so he was involved in an accident which resulted in injury to Howard Burkholder, and that he did not immediately stop at the scene of the accident to give information and render assistance. At the conclusion of said guilty plea hearing, this Court deferred sentencing until March 12, 2012.

On March 12, 2012, this Court sentenced [Medernach] on Count 4 as follows: [Medernach] is ordered to be committed for a period of forty-eight (48) consecutive hours to six (6) months to the Berks County Jail System effective Friday, March 16, 2012. In addition, [Medernach] was ordered to pay the costs of prosecution, a fine of \$500 as provide in the Vehicle Code, and as a special condition, [Medernach] was ordered to make restitution in Count 2. In Count 2, [Medernach] was ordered to be placed on intermediate punishment ("IP") for a period of five (5) years under local supervision effective March 12, 2012 and concurrent with Count 4. [Medernach] was also ordered to be committed to the Berks County Jail System for a period of two (2) days, to run concurrent with Count 4. In addition, at the expiration of said period of incarceration, [Medernach] was ordered to be placed on electronic monitoring ("EM") for a period of one-hundred and fifty (150) days, paying \$11 per day for use of the EM equipment and \$660 prior to the installation of EM. On Count 2, [Medernach] was also ordered to pay a fine of \$1,000 as provided by the Vehicle Code, the costs of prosecution, restitution in the amount of \$6,385 to be paid in monthly installments of \$500 until the total amount has been

satisfied. Lastly, [Medernach] was ordered to pay restitution before fines and costs.

Trial Court Opinion, 6/15/2012, at 1-2 (unnumbered) (record citations and footnotes omitted). The Commonwealth filed this appeal.²

In its sole argument, the Commonwealth contends the trial court erred in permitting Medernach to serve the majority of his mandatory minimum incarceration in a county intermediate punishment program (“IPP”), specifically, on electronic monitoring. The Commonwealth states that 75 Pa.C.S. § 3742 “dictates that where the victim suffers serious bodily injury as a result of an accident where the defendant fails to stop or return to the scene, the trial court has no discretion to impose a sentence less than the mandatory 90 days of incarceration dictated by statute.” Commonwealth’s Brief at 7. The Commonwealth notes that there are various provisions of the Sentencing Code that make certain offenses eligible for county intermediate punishment. **See** 42 Pa.C.S. §§ 9802 (relating to the definition of “eligible offenders”) and 9804 (relating to county IPP). Nevertheless, the Commonwealth argues that in accordance with 42 Pa.C.S. §§ 9721(a.1) (relating to sentencing generally) and 9763 (relating to sentence of county intermediate punishment), county IPP is not an alternative for sentencing

² On April 13, 2012, the trial court ordered the Commonwealth to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). The Commonwealth filed a concise statement on April 30, 2012. The trial court issued an opinion pursuant to Pa.R.A.P. 1925(a) on June 15, 2012.

purposes when a mandatory minimum applies, unless Section 9763 “specifically authorizes” such an alternative. *Id.* at 9. The Commonwealth concludes the judgment of sentence should be vacated and the matter should be remanded for resentencing.

We begin with the relevant standard of review. “The determination as to whether the trial court imposed an illegal sentence is a question of law; our standard of review in cases dealing with questions of law is plenary.” *Commonwealth v. Love*, 957 A.2d 765, 767 (Pa. Super. 2008) (citation and quotation marks omitted). Moreover, “[w]hen minimum sentences are mandated by statute, the [trial] court’s discretion is restricted to compliance.” *Commonwealth v. Sanchez-Rodriguez*, 814 A.2d 1234, 1237 (Pa. Super. 2003).

Moreover, because this appeal concerns statutory construction, we note:

“[W]hen the legislature adopts a statute it does so with full knowledge of existing statutes relating to the same subject.” *Hutskow v. Washowich*, 156 Pa. Commw. 655, 628 A.2d 1202, 1207 (Pa. Cmwlt. 1993) (citing *Commonwealth v. Milano*, 300 Pa. Super. 251, 446 A.2d 325 (Pa. Super. 1982)). Accordingly, “statutes or parts of statutes that relate to the same persons or things or to the same class of persons or things are to be construed together, if possible.” *Casiano v. Casiano*, 2002 PA Super 384, 815 A.2d 638, 642 (Pa. Super. 2002). In construing such kindred statutes, our objective is, first and foremost, to ascertain and effectuate the intent of the General Assembly as reflected in the statutory language. *See Commonwealth v. Ostrosky*, 2005 PA Super 5, 866 A.2d 423, 427 (Pa. Super. 2005). “[W]hen the language of a statute is clear and unambiguous, it must be given effect in accordance with its plain and common meaning.” *Commonwealth v.*

Kelley, 569 Pa. 179, 801 A.2d 551, 554 (Pa. 2002) (citing 1 Pa.C.S. § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”); 18 Pa.C.S. § 105 (requiring that “[t]he provisions of [the Crimes Code] shall be construed according to the fair import of their terms”)).

Commonwealth v. Hansley, 994 A.2d 1150, 1152-1153 (Pa. Super. 2010).

The underlying charge for the conviction and sentence at issue is accidents involving death or personal injury, a third-degree felony. Section 3742 of the Motor Vehicle Code provides, in pertinent part:

(a) General rule. --The driver of any vehicle involved in an accident resulting in injury or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 3744 (relating to duty to give information and render aid). Every stop shall be made without obstructing traffic more than is necessary.

(b) *Penalties.*

. . .

(2) If the victim suffers serious bodily injury, any person violating subsection (a) commits a felony of the third degree, and the **sentencing court shall order the person to serve a minimum term of imprisonment of not less than 90 days** and a mandatory minimum fine of \$ 1,000, notwithstanding any other provision of law.

. . .

(c) *Authority of sentencing court.* --**There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (b)(2)** . . . or to place such offender on probation or to suspend sentence. Sentencing

guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

75 Pa.C.S. § 3742 (emphasis added).

A trial court may impose county intermediate punishment as a sentencing alternative. **See** 42 Pa.C.S. § 9721(a)(6). However, Section 9721 sets forth the following exception to the general sentencing rule:

"Unless specifically authorized under section 9763 (relating to a sentence of county intermediate punishment) . . . , subsection (a) **shall not apply** where a **mandatory minimum sentence is otherwise provided by law.**"

42 Pa.C.S. § 9721(a.1)(1) (emphasis added). "Thus, where a mandatory minimum sentence applies, the court is deprived of the discretion to impose any of the specified alternatives." *Commonwealth v. Mazzetti*, 44 A.3d 58, 64 (Pa. 2012).

Section 9763 sets forth the following:

Any person receiving a penalty imposed pursuant to **75 Pa.C.S. § 1543(b)** (relating to driving while operating privilege is suspended or revoked), former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) or **75 Pa.C.S. § 3804** (relating to penalties) for a first, second or third offense under 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs) may only be sentenced to county intermediate punishment after undergoing an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments).

42 Pa.C.S. § 9763(c)(1) (emphasis added).

Here, the trial court found the following:

[I]n certain cases, in lieu of a mandatory 90 day sentence, a defendant may be sentenced to a county IP. In fact, the

legislature has carved out an array of convictions which make a defendant ineligible for intermediate punishment, none of which are 75 Pa.C.S.A. § 3742(a). See 42 Pa.C.S.A. § 9802.

Trial Court Opinion, *supra*, at 5 (unnumbered). The court then applied Section 9802, which defines those individuals who may be eligible for county intermediate punishment. It provides, in pertinent part:

“Eligible offender.” -- **Subject to section 9721(a.1)** (relating to sentencing generally), a person convicted of an offense who would otherwise be sentenced to a county correctional facility, who does not demonstrate a present or past pattern of violent behavior and who would otherwise be sentenced to partial confinement pursuant to section 9724 (relating to partial confinement) or total confinement pursuant to section 9725 (relating to total confinement).

42 Pa.C.S. § 9802 (emphasis added). The court determined Medernach qualified as an eligible offender for the county IPP of electronic monitoring. **See** 42 Pa.C.S. 9804.

We are constrained to disagree with the trial court’s findings. Because the charge of accidents involving death or personal injury is not “specifically authorized” under Section 9763, Medernach’s sentence is governed by Section 9721(a.1)(1). Moreover, as stated in Section 9802, *supra*, eligibility for county intermediate punishment is subject to Section 9721(a.1). Therefore, pursuant to Section 9721(a.1), this case requires the application of a mandatory minimum sentence of 90 days’ imprisonment as specified in Section 3742(b)(2). Therefore, we conclude the trial court erred in failing to impose the mandatory minimum of 90 days’ imprisonment to

Medernach's sentence regarding the offense of accident involving death or personal injury.³

Furthermore, to the extent the trial court opines that Medernach's sentence should be upheld on equitable grounds,⁴ we decline to do so.

The court relies on *Jacobs v. Robinson*, 410 A.2d 959 (Pa. Cmwlth. 1980) and *Commonwealth v. Kriston*, 588 A.2d 898 (Pa. 1991) to support the use of equity in this case. Both of those cases are distinguishable from the present matter. In *Jacobs*, the defendant was inadvertently released from prison based on a clerical error in recording his sentence. The Commonwealth Court held that credit towards his sentence must be allowed for the time he was away from the prison because "a prisoner cannot be compelled to serve a sentence in installments and has a right to serve his sentence continuously." *Jacobs*, 410 A.2d at 960. In *Kriston*, the defendant was released by the prison warden after serving ten days of a mandatory minimum 30-day sentence because the prison authorities misunderstood the manner in which the mandatory sentence should be served. Moreover, "[b]efore entering the electronic home monitoring program, [the defendant] was assured by prison authorities that time spent

³ We note that Medernach could have been sentenced to IPP for the DUI offense because he was a first-time offender and had undergone an assessment for the electronic monitoring. N.T., 3/12/2012, at 6.

⁴ *See* Trial Court Opinion, *supra*, at 6-7 (unnumbered).

in the monitoring program would count towards his minimum sentence.” ***Kriston***, 588 A.2d at 901 (emphasis in original). The Pennsylvania Supreme Court held: “Under these circumstances, denying appellant credit for time served in home monitoring would constitute a manifest injustice.” ***Id.***

Here, however, Medernach’s sentence was not the result of clerical or prison authority error; rather, the trial court imposed an improper sentence that did not reflect the mandatory minimum requirement. We are compelled to conclude that equitable considerations are not present in this case. Therefore, by imposing a sentence of 48 hours of county incarceration and 150 days of electronic monitoring, the trial court improperly reduced the period of imprisonment to less than the mandatory minimum of 90 days. Accordingly, we vacate this portion of Medernach’s sentence regarding the Section 3742(a) conviction, affirm the sentence as to the Section 3802(b) conviction, and remand for resentencing.

Judgment of sentence vacated in part and affirmed in part. Case remanded for proceedings consistent with this memorandum. Jurisdiction relinquished.