[J-59-2012]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 39 EAP 2011
	:	
Appellee	:	Appeal from the Judgment of Superior Court entered on 12/15/2010 at No. 2724 EDA 2008 affirming the Judgment of
v.	:	Sentence entered on 8/18/2008 in the Court of Common Pleas, Philadelphia County, Criminal Trial Division at No. CP-
DAVID A. WILSON,	:	51-CR-0010866-2007.
	:	
Appellant	:	ARGUED: May 8, 2012

OPINION

MR. CHIEF JUSTICE CASTILLE **DECIDED: May 28, 2013**

This Court granted allocatur to consider whether a probation condition authorizing warrantless, suspicionless searches of a probationer's home violates statutory and constitutional precepts. For the reasons that follow, we vacate the order of the Superior Court on statutory grounds and remand for resentencing.

This matter emanates from the Philadelphia Gun Court, a specialized court within the Court of Common Pleas. That body was instituted by the First Judicial District on January 10, 2005 as a response to the marked increase in gun violence in Philadelphia, and was established to provide prompt adjudication of gun-related offenses. All Philadelphia gun cases where the most serious charge was a violation of the Pennsylvania Uniform Firearms Act of 1995 ("VUFA"), 18 Pa.C.S. § 6101 *et seq.*, were to be handled by the Philadelphia Gun Court.

Testimony at appellant's trial established that in the early morning hours of September 1, 2007, a Philadelphia police officer observed appellant standing next to a parked automobile on the 3900 block of Mellon Street in Philadelphia. Appellant was pointing a handgun through the passenger window at the driver. The police officer ordered appellant to drop his weapon. Appellant did not comply, but instead, gun in hand, retreated to a nearby residence. The police officer repeated his demand that appellant drop his weapon. Appellant finally complied, and placed himself on the ground in compliance with the officer's direction. The police officer, and a second officer who arrived on the scene in response to a call for back up, retrieved a loaded .38 caliber revolver. Police also recovered seven packets of marijuana and five packets of cocaine from appellant.

Appellant was tried non-jury. He was represented at trial by the Defender Association of Philadelphia ("Defender Association"). At trial, in addition to evidence relative to appellant's conduct on September 1, 2007, the Commonwealth presented the Quarter Sessions file from a previous prosecution in which appellant was convicted of another VUFA offense; this information was relevant to prove that appellant was a convicted felon prohibited from possessing a firearm.

Following the bench trial, appellant was convicted of three counts of VUFA: 18 Pa.C.S. § 6105 (persons not to possess or own firearms), § 6108 (unlicensed carrying of firearm in public in Philadelphia), and § 6110.2 (possessing firearm with altered serial number). He was also convicted of one count of possession of a controlled substance, 35 P.S. § 780-113(a)(16).

On August 18, 2008, appellant was sentenced by the Honorable Susan I. Schulman. The trial court noted that it was sentencing appellant only on the charge of violating Section 6105; no sentence was imposed on the remaining charges. N.T.,

8/18/2008, at 62-63. The Commonwealth requested a sentence of 3 to 6 years, a term falling in the standard range of the sentencing guidelines. Id. at 58. The trial court instead sentenced appellant to a mitigated-range sentence of 2½ to 5 years' incarceration, to be followed by three years' probation. Id. at 62-63.

The trial court emphasized that there was no stricter probation than Gun Court probation. As a condition of probation and of parole, the trial court authorized warrantless, suspicionless searches of appellant's residence for weapons, and prohibited him from residing in a household where anyone had a firearm. The court also explained that Gun Court probation officers had smaller caseloads and reported directly to the judge; and that any violation of the probation would result in appellant serving the balance of his sentence in jail. Id. at 63-64. Appellant did not object to the probationary condition at sentencing, nor did he file a post-sentencing motion.

Appellant filed a *pro se* notice of appeal; it is not clear why his court-appointed counsel did not file the notice. Appellant failed to comply with the trial court's directive that he file a Pa.R.A.P. 1925(b) Statement of Matters Complained of on Appeal. On February 10, 2009, the trial court filed an opinion stating that all claims were waived.

On February 12, 2009, an attorney from the Defender Association entered an appearance in the Superior Court.[1] Counsel petitioned the Superior Court for a remand to file a Rule 1925 statement. Remand was granted, and counsel filed a Rule 1925(b) Statement which challenged, for the first time, the propriety and "legality" of the condition allowing for random searches during the term of parole and probation.

[1] A subsequent trial court opinion states that the Defender Association was first appointed to represent appellant on February 11, 2009. Tr. ct. slip op., dated 5/04/2008, at 1. This is not in accord with the trial court docket entries. The trial court docket reveals that the Defender Association was appointed as appellant's counsel on June 13, 2008, prior to trial. Additionally, there is no entry on or around February 11, 2009 indicating that counsel was appointed.

Subsequently, the trial court issued an opinion explaining the reasons for the condition. The trial court emphasized that appellant, who was only 20 years old at the time of sentencing, already had an extensive criminal history. Also, the crimes for which appellant was convicted were serious. The trial court also observed that "[h]is conduct in this case - pointing a loaded gun at a passenger in a car - showed his propensity for violent, and possibly deadly, behavior." Tr. ct. slip op., dated 5/04/2008, at 4.

The trial court explained that the probation condition permitting warrantless, suspicionless searches of appellant's residence for weapons comported with the statutory authorization that a sentencing court may "impose 'reasonable conditions' that it deems necessary to 'insure or assist the defendant in leading a law-abiding life.'" Id. (quoting 42 Pa.C.S. § 9754). The trial court opined that this condition complies with Section 9754. The trial court stated that "[i]t has been the considered judgment of not only this [c]ourt, but also its predecessors sitting in Gun Court, that random searches of the residence of a probationer convicted of violating the most serious VUFA offense, that of possessing a firearm as a prior convicted felon . . . , [are] both reasonable and necessary." Id. at 4-5.

Finally, the trial court recognized that there are statutory limits on a probation officer's authority to search a probationer or his property. Id. at 5 (citing, *inter alia*, 61 P.S. § 331.27b, *recodified at* 42 Pa.C.S. § 9912, *effective* October 13, 2009).[2] The trial court recognized that Section 9912 provides that a probation officer may conduct warrantless searches of the property of an offender only if the officer has reasonable

[2] Section 9912 is substantially a reenactment of Section 331.27b. While the trial court referenced § 331.27b as appellant's sentence was imposed prior to the recodification, for the sake of clarity, we shall refer not to the former designation of Section 331.27b, but rather to the present designation of Section 9912.

suspicion to believe that the property contains contraband or other evidence of violations of the offender's conditions of probation. The trial court, however, did not find that this statutory framework confined its authority to fashion a sentence. Instead, the trial court reasoned that "there is no violation of Appellant's constitutional protections where the specific condition or probation prevents Appellant from residing where anyone has a firearm, and where Appellant is advised that there could be random searches to determine whether he is compliant." Tr. ct. slip op., dated 5/04/2008, at 5.

On appeal to the Superior Court, appellant argued that the warrantless, suspicionless searches condition was invalid. Appellant argued, *inter alia*, that the condition violated the Fourth Amendment of the United States Constitution and Article 1, § 8 of the Pennsylvania Constitution. He also claimed that the condition was in tension with Section 9912's provision that a probation officer may conduct a warrantless search of a probationer's property only if the officer has reasonable suspicion that contraband or other evidence of a violation of probation will be found.

On October 14, 2009, a panel of the Superior Court affirmed in part and vacated in part the judgment of sentence in a brief memorandum opinion. The panel vacated that portion of the sentence which authorized warrantless, suspicionless searches as a condition of probation or parole on a state sentence.[3] The panel also rejected the

[3] In rendering its decision, the Superior Court relied on its September 16, 2009 decision in Commonwealth v. Galendez, 2798 EDA 2007. The Galendez panel decision stated that a sentencing court was not allowed to impose as a condition of parole or probation that the defendant would be subjected to warrantless, suspicionless searches for weapons. At the time the Superior Court issued its panel decision in the matter *sub judice*, the Galendez panel opinion was published.

After the Superior Court panel issued its October 14, 2009 decision in the matter *sub judice*, the Superior Court granted reargument in Galendez. See 2798 EDA 2007 (order dated 11/25/2009). That order also directed that the September 16, 2009 decision was withdrawn.

Commonwealth's argument that appellant had waived the claim by failing to raise it before the trial court, characterizing the claim as one sounding in sentencing legality.

The Commonwealth sought, and was granted, reargument. The Superior Court *en banc* issued a split decision which affirmed the search condition as it applied to the probationary sentence, but vacated the condition as it applied to "the state parole aspect of the sentence." Commonwealth v. Wilson, 11 A.3d 519 (Pa. Super. 2010). Judge Panella, joined by Judges Stevens, Shogan, and Allen, authored the lead opinion which was denoted as an Opinion in Support of Affirmance ("OISA"), notwithstanding the mandate of partial vacatur The OISA first considered the Commonwealth's argument that appellant's challenge went to the discretionary aspects of his sentence and was waived as appellant failed to raise it before the trial court. Citing Superior Court authority, the OISA rejected this argument and found that "whether the trial court possessed the authority to impose a particular sentence implicates the legality of the sentence[.]" Id. at 525 (citing Commonwealth v. Mears, 972 A.2d 1210, 1211 (Pa. Super. 2009) (internal quotation marks omitted)). Thus, the claim was deemed nonwaivable.

Turning to the merits, the OISA first considered whether the warrantless, suspicionless search condition was valid as it related to probation. The OISA noted that in fashioning a probationary sentence, the trial court's primary concern is to promote the probationer's rehabilitation and restoration to a useful life. The OISA observed that the purpose of conditions placed on probation orders is to assist a probationer in leading a law-abiding life; the Sentencing Code authorizes a trial court, *inter alia*, to impose reasonable conditions that are reasonably related to the probationer's rehabilitation. Id. (citing 42 Pa.C.S. § 9754(c)(13)).

The OISA found that permitting warrantless, suspicionless searches was an appropriate condition that was reasonably related to appellant's rehabilitation. It observed that the trial court was aware that probationers have great incentive to conceal any criminal activities and quickly dispose of incriminating evidence; they are also more likely than the average citizen to violate the law. The OISA found that the condition was particularly appropriate with respect to appellant, considering the nature of his crime and the fact that he had a history of firearms offenses. Id. at 526.

The OISA also found the condition appropriate for reasons extending beyond appellant's particular case. Id. (noting that condition was "eminently reasonable" because it was "clearly tied to [appellant's] rehabilitation and protection of the public[;]" further noting that condition was "especially reasonable in light of the epidemic of gun violence in Philadelphia.") Given that trial courts are confronted with the task of deterring violent crimes and ensuring the public's protection, the OISA concluded that trial courts "must be afforded every available and lawful tool in their arsenal to effectively stem this deadly tide of violence plaguing too many of our cities." Id.

The OISA next addressed appellant's argument that Section 9912 curtails the trial court's authority to impose such a condition on probation, since a probation officer cannot conduct such a search without reasonable suspicion. The OISA rejected this argument. It adopted a limited reading of Section 9912(d)(2), finding that it applied only to searches by probation officers acting on their own authority without any judicial sanction. The OISA determined that Section 9912(d)(2) does not limit the authority of the trial court to impose a condition of probation that the probationer be subject to warrantless, suspicionless searches.

The OISA then proceeded to consider, and reject, appellant's constitutional claims. However, given our disposition on statutory grounds, we need not discuss this aspect of the opinion.

Finally, the OISA turned to appellant's argument that the search condition was unlawful insofar as it applied to parole. The OISA noted that the Pennsylvania Board of Probation and Parole ("Board") is responsible for setting the terms of parole; a trial court is without authority to set parole terms. The OISA therefore vacated the parole search condition.

Then-President Judge Ford Elliott authored a concurring statement, noting that she concurred in the result reached by the lead opinion. On the probation condition issue, President Judge Ford Elliott would have denied relief solely on waiver grounds because she believed that the challenge implicates the discretionary aspects of appellant's sentence, and not its legality. As appellant did not raise the issue before the trial court, President Judge Ford Elliott would have found that the probation search issue was waived. In a footnote, however, President Judge Ford Elliott noted that she was in agreement with both "the rationale and result" of the OISA holding that the condition respecting parole was an illegal sentence. Wilson, 11 A.3d at 531-33 (Ford Elliott, P.J., concurring).[4]

Judge Lazarus, joined by Judges Gantman, Donohue, and Mundy, authored an opinion in support of reversal ("OISR").[5] The OISR joined the OISA in finding that the

[4] The Commonwealth did not cross-appeal from the holding respecting parole; thus, the question of the propriety of the search condition as a parole matter is not before this Court.

[5] Since President Judge Ford Elliott's concurrence provided a fifth vote for the OISA's mandate as to both the probation search issue and the parole search issues, the OISR is more accurately styled as a Concurring and Dissenting Opinion. Nevertheless, we will employ the nomenclature employed below.
(continued…)

issues involved (respecting both probation and parole) implicated the legality of the sentence. The OISR also concurred in the OISA's finding that the trial court's imposition of a search condition on parole was unenforceable because parole is under the exclusive supervision of the Board, and not the courts of common pleas.[6]

The OISR, however, would have found that the warrantless, suspicionless search condition imposed on appellant's probationary sentence was invalid. The OISR concluded that such a condition violated the plain language of Section 9912(d)(2). The OISR reasoned that the General Assembly had promulgated Section 9912 to regulate the manner in which probation officers may function, and that a trial court is not free to authorize those officers to violate the boundaries imposed by the General Assembly. Therefore, the OISR would have held that the trial court lacked authority to direct probation officers to perform warrantless, suspicionless searches of appellant's property, in contravention of Section 9912(d)(2).

Appellant filed a Petition for Allowance of Appeal, which this Court granted; appellant stated the issue on appeal as:

> Is not the probation condition authorizing random, suspicionless searches of [appellant's] home illegal, as a violation of 42 Pa.C.S. § 9912(d)(2), as well as the Fourth Amendment of the U.S. Constitution and Article 1, Section 8 of the Pennsylvania Constitution?

Commonwealth v. Wilson, 26 EAL 2011 (order dated 6/07/2011). The appeal poses questions of law; thus, our scope of review is plenary and our standard of review is *de novo*. Commonwealth v. Weigle, 997 A.2d 306 (Pa. 2010).

(…continued)

[6] Thus, on the parole search issue, the court was unanimous as to both reviewability and the merits.

Preliminarily, we note that, when considering matters which raise both constitutional and non-constitutional bases for relief, we attempt to resolve the matter on non-constitutional grounds whenever practicable. See In re Farnese, 17 A.3d 357, 373 (Pa. 2011); In re Fiori, 673 A.2d 905, 909 (Pa. 1996). Thus, we will commence our analysis by looking first at appellant's statutory argument.

Appellant asserts that the warrantless, suspicionless probation search condition runs afoul of Section 9912(d) entitled "grounds for personal search." Subsection (d)(2) provides that a probation officer may conduct a property search of an offender under his supervision "if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision." 42 Pa.C.S. § 9912(d)(2). A property search is defined as "[a] warrantless search of real property, vehicle or personal property which is in the possession or under the control of an offender." 42 Pa.C.S. § 9911. The statute further restricts the behavior of probation officers by requiring that "[p]rior approval of a supervisor shall be obtained for a property search absent exigent circumstances." 42 Pa.C.S. § 9912(d)(3). The terminology employed in these provisions – search, reasonable suspicion, exigent circumstances – are immediately recognizable to lawyers and judges as terms of art employed in search and seizure jurisprudence.

Appellant argues that the Superior Court OISA erred when it concluded that Section 9912(d)(2)'s reasonable suspicion standard applies only when probation officers conduct property searches based on their own authority, and has no applicability to a trial court pre-authorizing searches when fashioning a probationary sentence. Appellant maintains that the Superior Court's interpretation effectively inserts a non-textual exception into Section 9912, permitting warrantless, suspicionless

property searches by probation officers when such permission is granted in a sentencing order. In appellant's view, such a construction of the statute is contrary to the plain meaning of Section 9912. The statute, appellant stresses, contains no exceptions or restrictions on its scope: it simply is not written so that it applies only to those searches which are initiated by a probation officer without court authorization.

Additionally, appellant argues that such a broad reading runs counter to the General Assembly's intent in adopting Section 9912. Appellant notes that the progenitor of Section 9912 was adopted after the Court's decision in Commonwealth v. Pickron, 634 A.2d 1093 (Pa. 1993). In Pickron, parole officers arrived at the parolee's apartment with an arrest warrant and were admitted by the parolee's mother for the limited purpose of searching for the parolee. Upon entering the residence, the officers observed evidence indicating the presence of narcotics. The officers immediately expanded their search to areas that were too small to contain the parolee, but could contain evidence of narcotics. The officers then seized a package of white powder and other evidence indicating the presence of illegal narcotics, arrested the parolee and new charges were filed. Prior to trial, the parolee filed a suppression motion, which the trial court granted. Upon the Commonwealth's pre-trial appeal, the Superior Court reversed, but upon further discretionary review, this Court reversed and reinstated the suppression ruling.

The Court observed that there was no statute or regulation providing guidance by which a probation or parole officer could conduct a warrantless search. The Court reasoned that absent this statutory or regulatory guidance, or an agreement by the parolee consenting to the search, the Fourth Amendment prohibited the warrantless search of the parolee's residence. The Court held that the Fourth Amendment does not permit the determination to conduct a search of a probationer or parolee to be left to the

unfettered discretion of the individual officer. Rather, "some systemic procedural safeguards must be in place to guarantee those limited [F]ourth [A]mendment rights." Id. at 1098.

Appellant claims that in response to Pickron, the General Assembly enacted the search provision that is now found in Section 9912.[7] Appellant maintains that the provision provides the framework Pickron demanded for guiding a probation officer's decision to conduct a warrantless search, and a critical component of that guidance is that warrantless searches are permitted only when the probation officer has reasonable suspicion to believe that contraband or other evidence of a violation of the terms of probation will be found.

Appellant acknowledges that the general language of Section 9754(c), which is part of the Sentencing Code and addresses the specific conditions of probation that the court may impose, authorizes a trial court to require a probationer "[t]o satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience." See 42 Pa.C.S. § 9754(c)(13). Appellant reasons, however, that "[w]hile this section does allow for a broad range of possible conditions, nothing in it can be read to authorize trial courts to violate other statutory provisions." Appellant's Brief at 10.

The Commonwealth counters by echoing the reasoning in the OISA. It maintains that Section 9912 is directed only to the conduct of county probation officers who are

[7] Appellant provides no support for his claim that the General Assembly adopted the progenitor of Section 9912 in response to Pickron. Yet, both the timing of the adoption of the statute and the legislative history afford support for this undeveloped assertion. The General Assembly considered this provision in 1995, soon after Pickron was handed down. Additionally, comments on the floor of the House of Representatives indicated that the provision was adopted to provide the "statutory framework" mentioned in Pickron. See House of Representatives Journal, June 19, 1995, at 336 (comments of Rep. Wogan).

acting independently, and has no bearing on the authority of sentencing judges. The Commonwealth asserts that Section 9912 simply provides a standard for agents in the field who are acting "independent[ly] of judicial guidance." Commonwealth's Brief at 20. The provision, the Commonwealth asserts, has no application to a trial court fashioning a probationary sentence. The Commonwealth contends that if the General Assembly had intended Section 9912 to circumscribe the trial court's authority to fashion probation search conditions, then it could have amended Section 9754, which was in existence when Section 9912's predecessor was promulgated, to make it clear that a sentencing court may not permit warrantless, suspicionless searches as a condition of probation.[8]

The matter has been ably briefed, but we believe appellant clearly has the better of the arguments. The overarching principle of statutory construction is that the "intent of the Legislature is always our polestar when considering the interpretation and construction of statutes." In re Paulmier, 937 A.2d 364, 372 (Pa. 2007), citing 1 Pa.C.S. § 1921(a). "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." See 1 Pa.C.S. § 1921(b). In this case, two provisions of Title 42 are at issue: Section 9912(d)(2) and Section 9754(c)(13). When a dispute implicates a general statutory provision and special one, we note that the Statutory Construction Act directs that

> the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and

[8] We note that the Commonwealth does not renew its argument – which was rejected by all judges on the *en banc* Superior Court panel - that this sentencing claim implicates the discretionary aspects of sentencing only, and is waived because appellant did not preserve it in the trial court. We offer no view on that issue.

> it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa.C.S. § 1933.

Section 9912(d)(2) is a specific provision addressing a narrow circumstance: the conditions under which a county probation officer may conduct a warrantless search, including a requirement that the probation officer must possess reasonable suspicion that the property contains contraband or other evidence of violations of the probationer's terms of probation. The provision is clear and unambiguous, and lists no exception, much less one tied to a trial court's probation order. The reasons for the restrictions, which were adopted in response to Pickron, are obvious: searches implicate constitutional rights (even though the Fourth Amendment rights of probationers are diminished), whether the search is specifically authorized by the judiciary or not.

The Commonwealth would have us read Section 9912 so that it has no application to orders of a sentencing court. The Commonwealth's position is that while a probation officer's unilateral decision to conduct a warrantless, suspicionless search would violate Section 9912, a court may authorize a probation officer to conduct those self-same prohibited searches. Essentially, the Commonwealth believes that the trial court has the authority to suspend Section 9912's application when the court sees fit. By this reasoning, only Section 9754 would have any application, and it could not be said that that section was in conflict with Section 9912.

We are not persuaded by this reasoning. We think it obvious that Section 9912's progenitor was adopted by the General Assembly with an eye to addressing the constitutional concerns identified in Pickron, and the policymaking branch responded by requiring a degree of suspicion before a warrantless probation search could be conducted -- employing a term of art of specific meaning in search and seizure jurisprudence -- and by requiring supervisory approval when a property search is at

issue. It is true that Pickron's constitutional concerns were expressed by focusing on the otherwise unfettered discretion of probation officers, and did not speak of the judiciary's role. Still, the General Assembly's response specifically focused on searches by probation officers, adopted a reasonable suspicion requirement, and did not suggest an exception whereby a judicial officer could authorize a no-suspicion search by a probation officer. The General Assembly could well have been concerned that any suspicionless search conducted without the probationer's prior consent could pose a constitutional issue since an argument could be made (as one is by appellant here, in the alternative) that what is constitutionally impermissible for a governmental actor may not be rendered permissible simply by having the trial court authorize the suspect conduct.[9]

Additionally, we do not read the Sentencing Code's catchall and generalized authorization of sentencing courts to impose probation conditions "reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty" as establishing an exception to the later-adopted, explicit statutory restriction upon warrantless searches by probation officers. This provision does not specifically speak to issues of search and seizure – except insofar as it recognizes that the probationer maintains some measure of a liberty interest. If anything, the qualification of the Section 9754(c)(13) power – *i.e.*, that the reasonable conditions cannot be "unduly restrictive of liberty" -- suggests the General Assembly's awareness that even probationers may

[9] As we are deciding this appeal matter on the statutory claim, we will not reach the constitutional issue of whether a court may authorize random, suspicionless searches as a condition of probation. See Fiori, 673 A.2d at 909. Our discussion in text is not intended as an expression of view on the constitutional question; rather, we simply believe that the constitutional overlay (however the question may have been answered when the provision was adopted, or today) is probative of the plain meaning, intention, and reach of this statute.

retain a measure of privacy. And, that measure of privacy is explicitly addressed by the search restrictions in Section 9912(d)(2).

In short, both provisions guide and constrain a trial court in fashioning a sentencing order, and they easily coexist. It is untenable to read the provisions in a disharmonious fashion. We do not doubt that the fear of warrantless, suspicionless searches is an effective way of helping a probationer toe the line and rehabilitate himself. But, the statutory scheme, in both of the relevant iterations here, makes clear that there are other factors to consider as well.

Accordingly, we hold that, under this statutory construct, sentencing courts are not empowered to direct that a probation officer may conduct warrantless, suspicionless searches of a probationer as a condition of probation.[10] Accordingly, as we find that the warrantless, suspicionless search probation condition violated Section 9912(d)(2), we vacate the order of the Superior Court to the extent that it found that this probation condition was permissible, and we remand to the trial court for resentencing in accordance with this decision.[11]

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[10] The Pickron Court also adverted to circumstances where the probationer agrees to the search condition, or where a statute authorizes the condition, but made clear that it was not saying that those circumstances, which were not before the Court, would survive constitutional scrutiny. We likewise offer no view on such circumstances, which are not before us.

[11] In his request for relief, appellant asks that if this Court were to find the probation condition invalid, we simply strike that condition from the sentence; he does not ask for a remand for resentencing. Merely striking the condition, without remanding for resentencing, would be improper. The trial court sentenced appellant on only one of the three charges of which he was convicted, and it made clear that it viewed the warrantless, suspicionless search condition of probation to be an integral part of its sentencing scheme. Our finding that this condition is invalid affects the landscape of options available to the court, and may affect the court's sentencing scheme; accordingly, the case must be remanded to the trial court. See Commonwealth v. (continued…)

Jurisdiction relinquished.

Former Justice Orie Melvin did not participate in the decision of this case.

Messrs. Justice Saylor, Eakin and Baer and Madame Justice Todd join the opinion.

Mr. Justice McCaffery files a dissenting opinion.

(…continued)
Goldhammer, 517 A.2d 1280, 1283 (Pa. 1986); Scarpone v. Commonwealth, 596 A.2d 892, 896-97 (Pa.Cmwlth. 1991).