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# Supreme Court's Mandatory Minimum Ruling Viewed as 'Game-Changer'

Max Mitchell, *The Legal Intelligencer*

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The state Supreme Court's decision tossing the mandatory minimum sentencing scheme for drug-free school zones effectively strikes down numerous mandatory minimum sentencing laws in the state, and leaves the question of whether these schemes will return in the hands of the General Assembly, according to court watchers.

"It's a total game-changer," said David Zellis, a defense attorney and former Bucks County first assistant district attorney. Mandatory minimums are "almost a bedrock of the criminal justice system in Pennsylvania."

The high court on Monday determined that portions of the drug-free school zone mandatory-minimum sentencing law could not be severed from sentencing provisions that had been invalidated by the U.S. Supreme Court in 2013. Because those infirm portions of the law could not be severed, the court in *Commonwealth v. Hopkins* struck down the drug-free school zone mandatory-minimum sentencing scheme in its

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entirety as unconstitutional.

According to attorneys, the decision's holdings regarding the severability issue validated the reasoning behind several state Superior Court decisions to strike down numerous other mandatory minimum sentencing schemes, including those for defendants convicted of robberies involving a firearm and crimes against victims younger than 16 years old.

"It's going to strike them all down," said Philadelphia prosecutor Hugh J. Burns Jr., who filed an amicus brief for the Pennsylvania District Attorneys Association. "Going forward, as far as applying the existing mandatory statutes, that's not going to be possible."

The 2013 U.S. Supreme Court case *Alleyne v. United States* invalidated portions of mandatory sentencing laws by holding that facts that increase a mandatory minimum sentence are an element of the offense. Those factual issues, the decision held, must be submitted to a jury, as opposed to a judge, and must be found beyond a reasonable doubt, instead of by a preponderance of the evidence. The *Alleyne* decision dealt with mandatory minimum schemes based on prior offenses.

Prosecutors in *Hopkins* argued these invalidated portions of the drug-free school zone sentencing mandatory-minimum law could be severed. However, Justice Debra Todd, in the majority opinion, said that allowing the portions of the law to stand on their own would require the sentencing scheme to be rewritten.

"It is beyond our province to, in essence, rewrite Section 6317 to transform its sentencing commands, whether by utilizing special verdicts or otherwise, into a new substantive offense, contrary to the express legislative intent to the contrary," Todd said.

According to Todd, defendant Kyle Hopkins sold heroin to a confidential informant on three occasions—one of which was near a school. Anticipating that the state would seek the mandatory minimum sentence, Hopkins filed a motion for extraordinary relief contending that the sentencing provision was unconstitutional.

The court of common pleas granted the motion, and said Section 6317 put facts determining the applicability of the mandatory minimum sentence in the hands of the judge based on a preponderance-of-the-evidence standard, which violated *Alleyne*.

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Todd nodded to the General Assembly's intent, but agreed with the trial court that the sentencing scheme is now impermissible.

"While we do not question the legislature's wisdom or the necessity of severe penalties for those dealing in illegal drugs near our commonwealth's schools, for the reasons that follow, we are constrained to conclude that the United States Supreme Court's decision in *Alleyne* renders Section 6317 unconstitutional and, further, that in light of clear legislative intent, severance of the violative provisions from the statute is not permissible," Todd said.

## RESENTENCING NEEDED?

Attorneys agreed the decision will mean that many cases pending on appeal will now need to go through resentencing proceedings.

But according to Burns, the main issue is that the decision takes away a major bargaining chip for prosecutors across the state when it comes to hammering out plea deals.

"The real problem is going forward," Burns said. "Now the commonwealth doesn't have the leverage they used to have."

When asked how prosecutors might react to counterbalance the loss of this tool, Burns asked, "What are we going to do? Glower at them?"

However, Matthew T. Mangino, a former district attorney of Lawrence County, said that, even without mandatory minimums during plea deal negotiations, prosecutors will still be able to seek the upper ends of sentencing guidelines, push for adding aggravated elements to a defendant's charges, and also request consecutive as opposed to concurrent sentences.

"By and large, prosecutors can look at cases on an individual

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basis and make appropriate plea offers based on facts and circumstances," Mangino said.

According to Zellis, these sentencing schemes were "a hammer" that prosecutors used in a wide variety of cases. He said that, while the scheme led to a lot of guilty pleas, the mandatory sentences also led some defendants to try their luck at trial.

"To a large extent we may end up seeing less trials," Zellis said.

## Up To The Lawmakers

Mangino said several years ago a decision like this would have been a "no-brainer" for legislators to reinstate these tough-on-crime sentencing measures. But that may no longer be the case.

"It's an interesting time in the criminal justice system right now," Mangino said. "Typically, at any other time, I would say there's no way the legislature would not go back and try to rewrite the law so mandatory minimums would pass constitutional muster. But there are also growing issues with regard to mass incarceration and the cost of that, and legislators and policymakers are looking into that."

Burns said these sentencing schemes had been an important factor in lowering crime rates, and doing away with them could have a direct impact on the crime rate.

"These mandatory sentencing statutes were instrumental in suppressing the enormous crime wave in the 80s and 90s," he said. "Now people think, 'We'll just throw away the thing that got it under control.'"

Zellis predicted that legislators might wait and see what the crime rate does in the absence of mandatory sentencing schemes before deciding whether to reinstate them.

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