NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellant v. PATRICK MICHAEL GRINNAN Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2126 EDA 2013

Appeal from the Order of July 11, 2013
In the Court of Common Pleas of Montgomery County
Criminal Division at No. CP-46-CR-0004801-2012

BEFORE: BOWES, J., OTT, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.: **FILED MAY 08, 2014**

The Commonwealth appeals from the July 11, 2013 Order of the court dismissing all counts of driving under the influence of alcohol or controlled substances ("DUI") against Appellee, Patrick Michael Grinnan. After careful review, we reverse.

On May 4, 2012, Appellant was involved in a two-vehicle accident in Horsham, Montgomery County, Pennsylvania. Responding police smelled alcohol on Appellant and, after observing his difficulty concentrating and following instructions, administered field sobriety tests, which Appellant failed. The police arrested Appellant and charged him with general impairment DUI[1] and combination drug/alcohol DUI.[2] Appellant failed to

---

[1] 75 Pa.C.S. § 3802(a)(1).
[2] 75 Pa.C.S. § 3802(d)(3).

appear at his pre-trial conference, and a bench warrant issued. Appellant was subsequently arrested in Tioga County.

Ten days after his arrest, Appellant appeared in the Montgomery County Court of Common Pleas,[3] via video from Tioga County Prison, for a bench warrant revocation hearing.[4] ***See*** N.T. 7/11/2013. The trial court initially explained to Appellant that he would be required to return to Montgomery County to face the DUI charges. ***Id.*** at 5. Defense counsel sought to resolve the matter, and informed Appellant that the Commonwealth had extended an offer whereby Appellant could plead guilty in exchange for a 72-hour jail sentence. ***Id.*** at 5-6. When Appellant explained to the court that he had spent the last 10 days in jail on the bench warrant, the trial court suggested that the Commonwealth and the court "just let him walk on this one. He's given us 72 hours." ***Id.*** at 6. Ultimately, citing Appellant's ten days in prison, the cost and logistical difficulties of continued prosecution, and the fact that Appellant was a first-time DUI offender, the trial court informed Appellant that he was receiving a "gift" and dismissed the underlying DUI charges. ***Id.*** at 7-11. The

---

[3] The Honorable John J. Braxton presided over the bench warrant revocation hearing as a visiting judge.

[4] Courts of Common Pleas conduct bench warrant hearings pursuant to Pa.R.Crim.P. 150. Rule 150 hearings are non-adjudicatory proceedings, although the presiding court may accept defendants' negotiated guilty pleas.

Commonwealth objected and later argued an oral motion for reconsideration,[5] which the trial court denied.[6]

The Commonwealth timely appealed. Both the Commonwealth and the trial court complied with Pa.R.A.P. 1925. The trial court's 1925(a) opinion indicates it dismissed Appellant's charges as *de minimis* infractions pursuant to 18 Pa.C.S. § 312. ***See*** Trial Court 1925(a) Opinion, September 12, 2013 ("1925(a) Opinion"), pp. 1-2.

The Commonwealth raises the following issue for our review:

> Whether the trial court abused its discretion and committed an error of law when it ruled *sua sponte* at a bench warrant revocation hearing to dismiss driving under the influence charges based upon the belief that, because [Appellant] had spent ten days in jail on the bench warrant and had moved out of Montgomery County, the cost of further prosecution outweighed the Commonwealth's interest in deterring future violations through the full range of sanctions authorized by law, including license suspension and increased penalties for repeat offenders?

Appellant's Brief, p. 4. The proper standard for reviewing a trial court's dismissal of appellant's DUI charges as *de minimis* infractions is whether the court abused its discretion. ***Commonwealth v. Przybyla***, 722 A.2d 183, 184 (Pa.Super.1998). "An abuse of discretion is more than just an error in

---

[5] A certified legal intern represented the Commonwealth at the bench warrant revocation hearing. A Deputy District Attorney, and the Chief of Montgomery County District Attorney's Office's Pre-Trial Unit, represented the Commonwealth during the oral motion for reconsideration.

[6] The trial court memorialized the dismissal of the charges in a written order filed July 11, 2013.

judgment and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will." ***Commonwealth v. Lutes***, 793 A.2d 949, 959 (Pa.Super.2002).

A trial court may dismiss charges if it finds the conduct constituting the offense to be *de minimis* in nature. The Crimes Code provides:

> **§ 312. De minimis infractions**
>
> **(a) General rule.—**The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the conduct of the defendant:
>
> (1) was within a customary license or tolerance, neither expressly negative by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
>
> (2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
>
> (3) presents such other extenuations that it cannot reasonably be regarded as envisaged by the General Assembly or other authority in forbidding the offense.

18 Pa.C.S. § 312. "An offense alleged to be *de minimis* in nature should not be dismissed where either harm to the victim or society in fact occurs." ***Lutes***, 793 A.2d at 963.

The trial court explained the dismissal of the charges as follows:

> The [c]ourt decided to dismiss the case because (1) [Appellant] had already served five times the time he would be incarcerated had he been convicted, and (2) it would be a waste of resources to incur the expense of bringing [Appellant] back from Tioga

> County, when the likely result would be a two day jail term, already more than served.

1925(a) Opinion, p. 1. The court recognized the Commonwealth's desire to prosecute to preserve Appellant's criminal record and for potential license suspension consequences, but determined "these considerations [were] outweighed by the others." ***Id.*** Finally, the trial court quoted Section 312 and briefly discussed one distinguishable *de minimis* case[7] before again concluding "that the transportation costs would be substantial and [Appellant] had already served 10 days for an offense that would normally result in a 48 hour sentence." ***Id.*** at 2.

Initially, the trial court incorrectly based its dismissal of the charges on the *de minimis* infractions statute. The instant underlying charges involved an alleged DUI involving both drugs and alcohol that resulted in a two-vehicle accident. This is precisely the harm from which the DUI statute seeks to protect society. ***See Commonwealth v. McCoy***, 895 A.2d 18, 36 (Pa.Super.2006), *aff'd*, 601 Pa. 540, 975 A.2d 586 (2009) ("Surely the essential purpose of the DUI legislation is to prevent bodily injury and property damage caused by drivers under the influence of drugs and

---

[7] ***Commonwealth v. Jackson***, 510 A.2d 1389 (Pa.Super.1986). Unlike the instant case, ***Jackson*** involved defendants who were already serving prison terms, who received administrative discipline for new crimes, and whose charges were dismissed following a motion, not *sua sponte* by the court, prior to any discipline for the crimes in question. 510 A.2d at 1391.

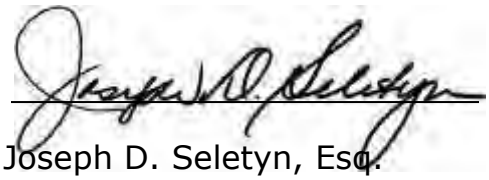
alcohol."). Accordingly, the trial court erred by dismissing Appellant's DUI charges as *de minimis* infractions. ***See Lutes***, ***supra***.

Additionally, to the extent the trial court based its dismissal on an anticipated "waste of resources" to conduct a trial, the court also erred. The Commonwealth retains discretion regarding the prosecution of criminal matters. ***See Commonwealth v. Brown***, 708 A.2d 81, 84 (Pa.1998) ("[a] District Attorney has a general and widely recognized power to conduct criminal litigation and prosecutions on behalf of the Commonwealth, and to decide whether and when to prosecute, and whether and when to continue or discontinue a case."). The Commonwealth may have legitimate considerations and interests in prosecuting cases that extend beyond an analysis of the bottom-line expenses incurred in the course of a prosecution. In DUI cases, such considerations include, but are not limited to, maintaining records for the purpose of future DUI prosecutions and restitution to victims where accidents occur, as in the instant case. Unless a defendant's conduct is truly *de minimis*, it is not for the trial court to, *sua sponte*, make its own determinations about these legitimate considerations. ***See Commonwealth v. Pachipko***, 677 A.2d 1247, 1249 (Pa.Super.1996) ("It is clearly inappropriate for a trial court to raise an issue on behalf of a party, thereby acting as an advocate."); ***see also Commonwealth v. Baumhammers***, 960 A.2d 59, 75 (Pa.2008). As described ***supra***, this is not a *de minimis* infraction case.

Order reversed. Case remanded for further proceedings. Jurisdiction relinquished.

Judge Ott concurs in result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/8/2014