

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :
 :
 vs. : NO. 1432-CR-2019
 :
 BRITTANY HOPE ACKLEY, :
 Defendant :

Criminal Law - Driving Under Suspension/DUI Related – 75 Pa.C.S.A. §1543(b)(1)(i) – Flat Sentence – Summary Offense – Legality of Sentence – Applicability of Min/Max Sentencing Rule – Challenge to Constitutionality of Statute – Void for Vagueness – Due Process

1. Section 1543(b)(1)(i) of the Vehicle Code for a first-time offense of driving under suspension/DUI related, a summary offense, calls for a prison sentence of no less than 60 days nor more than 90 days, and a \$500.00 fine.
2. Unlike a first-time summary offense for driving under suspension/DUI related, defined by Section 1543(b)(1.1)(i) of the Vehicle Code, which was held by the Pennsylvania Supreme Court in Eid to be void for vagueness in violation of the requirements of due process because the statute called for a mandatory minimum sentence of 90 days' imprisonment with no clear definite statutory maximum period, Section 1543(b)(1)(i) provides for a mandatory minimum sentence of 60 days' imprisonment and a maximum period of imprisonment not to exceed 90 days. Accordingly, Section 1543(b)(1)(i) is not void for vagueness.
3. For criminal offenses defined by the Vehicle Code for which no maximum period of imprisonment is provided, other than summary offenses, the Crimes Code acts to supply a maximum term of imprisonment.
4. Similar to the mandatory sentencing provisions contained in former Section 1543(b) of the Vehicle Code, the penalties imposed pursuant to Section 1543(b)(1)(i) do not constitute cruel and unusual punishment, do not violate due process for being either overbroad or not bearing a reasonable relation to a legitimate legislative purpose, and do not violate equal protection as applied to persons similarly situated.
5. Section 9756(b)(1) of the Sentencing Code provides that "[t]he court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed." 42 Pa.C.S.A. §9756(b)(1).
6. As a matter of statutory construction, the minimum-maximum sentencing rule prescribed by Section 9756(b)(1) of the Sentencing Code as a general sentencing provision yields to a more specific statutory provision inconsistent therewith, such as Section 1543(b)(1)(i). The language of Section 1543(b)(1)(i) prohibits imposition of a minimum sentence which is one-half or less of the maximum sentence

allowable. Section 1543(b)(1)(i) of the Vehicle Code mandates a sentence that cannot be in compliance with Section 9756(b)(1) of the Sentencing Code, is specific to license suspension cases, applies to an offense graded as a summary offense, compels imposition of a flat sentence, and controls over the more general Section 9756(b)(1).

7. Additionally, Section 9756(c)(1) of the Sentencing Code permits the imposition of a sentence of imprisonment without the right to parole (*i.e.*, a flat sentence) when a summary offense is charged. Section 9756(c)(1), which is permissive and not mandatory, is therefore not inconsistent with Section 1543(b)(1)(i) of the Vehicle Code.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION



COMMONWEALTH OF PENNSYLVANIA

NO. 1432-CR-2019

vs.

BRITTANY HOPE ACKLEY,
Defendant

Seth E. Miller, Esquire
Assistant District Attorney
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Counsel for Commonwealth

Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – May 25, 2023

Defendant, Brittany Hope Ackley, challenges the legality and constitutionality of a sixty-day flat sentence she received for driving under suspension, DUI related, a summary offense calling for a sentence of not less than sixty days nor more than ninety days pursuant to Section 1543(b)(1)(i) of the Vehicle Code. The issues forming the basis of Defendant's challenge are discussed below.

PROCEDURAL AND FACTUAL BACKGROUND

On October 24, 2019, David M. Roberts, the Chief Ranger at Beltzville State Park, stopped a vehicle driven by Defendant was driving because of a non-functioning rear brake light. During the stop, Ranger Roberts learned the vehicle was reported stolen and that Defendant's driving privileges were suspended, DUI related. Defendant was arrested

[FN-12-23]

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and charged that same date with receiving stolen property,¹ a felony of the third degree (Count 1); driving while under suspension, DUI related,² a summary offense (Count 2); and general lighting requirements, rear lighting,³ a summary offense (Count 3). Subsequently, by stipulation, a charge of unauthorized use of a motor vehicle,⁴ a misdemeanor of the second degree (Count 4), was added to the criminal information.

On August 30, 2022, Defendant pled guilty to Counts 2 and 4 of the information, driving under suspension and unauthorized use of a motor vehicle, respectively. On March 3, 2023, and having the benefit of a pre-sentence investigation report, Defendant was sentenced to a period of imprisonment in the Carbon County Correctional Facility for not less than sixty days nor more than sixty days on the driving under suspension charge, to be served on consecutive weekends starting March 17, 2023, together with a fine of \$500.00. On the charge of unauthorized use of a motor vehicle, Defendant was sentenced to probation for a period of two years to run concurrent with her sentence for driving under suspension.

On March 13, 2023, Defendant filed a Petition for Reconsideration of the sentence imposed for driving under suspension challenging the sentencing statute at 75 Pa.C.S.A. §1543(b)(1)(i) as being "unconstitutionally vague in that it does not provide for a minimum and maximum sentence," that the sentencing scheme set forth in the statute violates state

¹ 18 Pa.C.S.A. §3925 (a) .

² 75 Pa.C.S.A. §1543 (b) (1) (i) .

³ 75 Pa.C.S.A. §4303 (b) .

⁴ 18 Pa.C.S.A. §3928 (a) .

and federal due process rights, and that the sentence imposed violates Pennsylvania's "min-max" rule. At the court's request, the issues raised in Defendant's Petition for Reconsideration have been briefed by counsel and argument held on May 25, 2023. For the reasons discussed below, we deny Defendant's Petition for Reconsideration.

DISCUSSION

Defendant's Challenge: Statute Void for Vagueness

The statute at issue, Section 1543(b)(1)(i) of the Vehicle Code, reads as follows:

(i) A person who drives a motor vehicle on a highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended or revoked as a condition of acceptance of Accelerated Rehabilitative Disposition for a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) or the former section 3731, because of a violation of section 1547(b)(1) (relating to suspension for refusal) or 3802 or former section 3731 or is suspended under section 1581 (relating to Driver's License Compact) for an offense substantially similar to a violation of section 3802 or former section 3731 shall, upon a first conviction, be guilty of a summary offense and shall be sentenced to pay a fine of \$500 and to undergo imprisonment for a period of not less than 60 days nor more than 90 days.

75 Pa.C.S.A. §1535(b)(1)(i).

In challenging the constitutionality of Section 1543(b)(1)(i), Defendant relies primarily on the Pennsylvania Supreme Court's decision in Commonwealth v. Eid, 249 A.3d 1030 (Pa. 2021). At issue in Eid was the constitutionality of Section 1543(b)(1.1)(i) which provided as follows:

(1.1) (i) A person who has an amount of alcohol by weight in his blood that is equal to or greater than .02% at the time of testing or who at the time of testing has in his blood any amount of a Schedule I or nonprescribed Schedule II or III controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or its metabolite or who refuses testing of blood or breath and

who drives a motor vehicle on any highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended or revoked as a condition of acceptance of Accelerated Rehabilitative Disposition for a violation of section 3802 or former section 3731 or because of a violation of section 1547(b)(1) or 3802 or former section 3731 or is suspended under section 1581 for an offense substantially similar to a violation of section 3802 or former section 3731 shall, upon a first conviction, be guilty of a summary offense and shall be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of not less than 90 days.

75 Pa.C.S.A. §1543(b)(1.1)(i). The Supreme Court held the incarceration provision of this statute invalid and unenforceable concluding that while providing for a minimum term of ninety days' imprisonment, because no clear definite statutory maximum period of incarceration is given, the permissible range of sentence was unconstitutionally vague and violated principles of due process under both the Pennsylvania and Federal Constitutions. Id. at 1033, 1044. As stated by the Court, "In order to afford sufficient notice for due process purposes, a sentencing statute must specify the range of available sentences with 'sufficient clarity.'" Id. at 1044 (quoting Beckles v. United States, - U.S. -, 137 S.Ct. 886, 892, 197 L.Ed.2d 145 (2017)). Otherwise, a person would be deprived of liberty without fair notice of the consequences of his actions. Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983); Commonwealth v. Bell, 645 A.2d 211, 215 n.9 (Pa. 1994) ("We believe that fairness [under the independent tenets of the Commonwealth's due process principles] requires that a defendant be notified of the maximum sentence he could face for committing a particular offense.").⁵

⁵ *Cf.* Commonwealth v. Rollins, 2023 WL 2994038 (Pa. 2023) (holding Section 1543(b)(1)(iii) of the Vehicle Code, which grades a third or subsequent offense of driving with a DUI-related suspended license as a misdemeanor of the third

Section 1543(b)(1)(i) is clearly distinguishable from the sentencing statute in Eid and, on its face, mandates not only a minimum period of imprisonment of not less than sixty days, but also a maximum term not to exceed ninety days. See Penna. Fin. Responsibility Assigned Claims Plan v. English, 664 A.2d 84, 87 (Pa. 1995) ("Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words."); see also Commonwealth v. O'Brien, 514 A.2d 618, 620 (Pa.Super. 1986) ("The words 'not less than' used in the statute unambiguously connote a minimum term of imprisonment. It strains all notions of common sense to suggest that 'not less than' can reasonably be interpreted as meaning 'maximum.'"), appeal denied, 527 A.2d 537 (Pa. 1987), cited with approval in Eid, 249 A.3d at 1042. *But cf.* Commonwealth v. White, 268 A.3d 499, 501 (Pa.Super. 2022) (holding that Section 1543(b)(1)(i) of the Vehicle Code sets the range of a defendant's potential maximum sentence such that the sentence defendant received, thirty to sixty days' imprisonment, was legally enforceable).

degree and calls for a minimum period of imprisonment of not less than six months, but fails to expressly specify a maximum term of imprisonment, constitutional; explaining the importance of distinguishing between summary and misdemeanor convictions under the Vehicle Code and the applicability of maximum terms of imprisonment set in the Crimes Code: noting that pursuant to Section 6502(c) of the Vehicle Code the Crimes Code does not apply to fines and convictions for offenses classified as summary offenses under the Vehicle Code, but that because Section 6502(c) is limited to summary offenses, the general language in Section 106(e) of the Crimes Code classifying offenses defined by any other statute - inclusive of the Vehicle Code - acts to supply a maximum term of imprisonment of one year for a violation of Section 1532(b)(1)(iii) graded as a misdemeanor of the third degree); Commonwealth v. Lawrence, 291 A.3d 912, 915 (Pa.Super. 2023) (same). Both Eid and the instant case involve violations graded as summary offenses.

Defendant's Challenge: Statute Violates Due Process

As regards the general constitutionality of Section 1543(b)(1)(i), legislative enactments are presumed to be constitutional. Commonwealth v. Herman, 161 A.3d 194, 205 (Pa. 2017). "One who challenges the constitutionality of a statute bears a heavy burden of persuasion. Accordingly, legislation will not be declared unconstitutional unless it 'clearly, palpably and plainly' violates the constitution." Eid, 249 A.3d at 1041 (citation and quotation marks omitted). All doubts are to be resolved in favor of a finding of constitutionality. Interest of J.J.M., 265 A.3d 246, 263 (Pa. 2021). Here, Defendant points to no specific provisions of Section 1543(b)(1)(i) alleged to violate state and federal due process rights and cites no legal authority to support such a position. *Cf.* Commonwealth v. Hoover, 494 A.2d 1131 (Pa.Super. 1985) (holding former Section 1543(b) did not violate the constitutional prohibition against cruel and unusual punishment, the right to due process, or equal protection); Commonwealth v. Hill, 549 A.2d 583 (Pa.Super. 1988) (holding that the mandatory penalties imposed under former Section 1543(b) did not constitute cruel and unusual punishment, did not violate due process for being either overbroad or not bearing a reasonable relation to a legitimate legislative purpose, and did not violate equal protection as applied to persons similarly situated), appeal denied, 557 A.2d 721 (Pa. 1989).

Defendant's Challenge: Statute Violates "Min-Max" Rule

Defendant's contention that Section 1543(b)(1)(i) violates Pennsylvania's "min-max" rule is a statutory and not a constitutional argument. Bell, 645 A.2d at 217. Section 9756(b)(1) of the Sentencing Code provides that "[t]he court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed." 42 Pa.C.S.A. §9756(b)(1). Because Section 9756(b)(1) is a general sentencing provision, it yields to a more specific statutory provision inconsistent therewith: Commonwealth v. Klingensmith, 650 A.2d 444, 447-48 (Pa.Super. 1994) (citing 1 Pa.C.S.A. §1933 (Particular controls general) of the Statutory Construction Act of 1972), appeal denied, 659 A.2d 986 (Pa. 1995). In Klingensmith the Superior Court held that a prior version of Section 1543(b) of the Vehicle Code, which graded a violation as a summary offense and required a sentence of not less than ninety days imprisonment upon conviction, not only implicitly created an exception to the minimum-maximum sentencing rule, but "specifically authoriz[ed] a trial court to impose a flat minimum mandatory sentence of ninety days for driving with a suspended license when the license was suspended as a result of a prior DUI conviction"). Cf. Commonwealth v. Postie, 110 A.3d 1034, 1044-45 (Pa.Super. 2015) (holding that a flat sentence of four months' imprisonment for a conviction under Section 1543(a) of the Vehicle Code violated the minimum-maximum sentencing rule; because the violation was defendant's twentieth conviction for driving under suspension, Section 6503(a.1) of the Vehicle Code, applicable to sixth or subsequent violations, required a sentence of not less than thirty days nor more than six months, which range allowed for the imposition of a sentence

conforming to the minimum-maximum standard set in Section 9756(b)(1) of the Sentencing Code).

Section 1543(b)(1)(i) at a minimum, creates an exception to 42 Pa.C.S.A. §9756(b)(1). As stated by Judge Bowes in Commonwealth v. Meredith (Non-Precedential Decision):

Section 1543(b)(1) now states that the sentence must be at least sixty days but cannot exceed ninety days imprisonment. Its language prohibits imposition of a minimum sentence that could be one-half or less of the maximum sentence, unlike the sentencing provision examined in *Postie*. Section 1543(b)(1) mandates a sentence that cannot be in compliance with §9756(b)(1), remains specific to license suspension cases, compels imposition of a flat sentence, and controls over the more general §9756(b)(1).

2016 WL 616983 *2 (Pa.Super. 2016). See also 42 Pa.C.S.A. §9756(c)(1) (permitting the imposition of a sentence of imprisonment without the right to parole (i.e., a flat sentence) when a summary offense is charged).⁶ Section 9756(c)(1) is permissive and, therefore, not inconsistent with Section 1543(b)(1)(i) of the Vehicle Code.

CONCLUSION

The words and meaning of Section 1543(b)(1)(i) are clear and unmistakable: a first-time violation of this statute subjects the defendant to a period of imprisonment of not less than sixty days nor more than ninety days. See Commonwealth v. Harner, 617 A.2d

⁶ Section 9756(c)(1) reads in relevant part as follows:

(c) Prohibition of parole for summary offenses. - The court may impose a sentence to imprisonment without the right to parole under this subsection only when:

(1) a summary offense is charged;

42 Pa.C.S.A. 9756(c)(1).

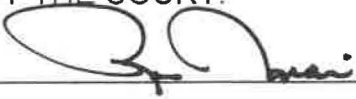
702, 705 (Pa. 1992) ("When language of a statute is clear and unambiguous, it must be given effect in accordance with its plain and common meaning."). This language begs of no exception and, on its face, is inconsistent and incompatible with the Sentencing Code's general scheme of indeterminate sentencing, that a sentence specify a minimum and maximum term, with the minimum term no greater than half the maximum term. See 42 Pa.C.S.A. §9756(b)(1). It is impossible to comply with the dictates of both Section 1543(b)(1)(i) and Section 9756(b)(1). Simply stated, a statutory mandatory minimum sentence under Section 1543(b)(1)(i) of not less than sixty days would require a maximum sentence of at least 120 days to be in compliance with Section 9756(b)(1)'s minimum-maximum rule, a maximum in excess of the ninety-day statutory maximum allowable under Section 1543(b)(1)(i). Cf. Bell, 645 A.2d at 217 (reasoning that a flat five-year sentence for possession with intent to deliver at least 50 pounds of marijuana, 35 P.S. §780-113(a)(30), was valid notwithstanding 42 Pa.C.S.A. §9756(b)(1), where 18 Pa.C.S.A. §7508(a)(1)(iii) required a mandatory minimum sentence of five years' imprisonment but 35 P.S. §780-113(f)(2) prohibited a maximum sentence in excess of five years), cited with approval in Commonwealth v. Ramos, 83 A.3d, 86, 91 (Pa. 2013).

As a matter of statutory construction, a later enacted specific statutory provision (i.e., 75 Pa.C.S.A. §1543(b)(1)(i)) controls over an earlier enacted more general provision (i.e., 42 Pa.C.S.A. §9756(b)(1)). See Statutory Construction Act of 1972, 1 Pa.C.S.A. §§1933 and 1936 (Irreconcilable statutes passed by different General Assemblies) (providing that statute latest in date of final enactment shall prevail). That Section

1543(b)(1)(i) implicitly repeals Section 9756(b)(1) to the extent the two are inconsistent, is reinforced not only by its grading as a summary offense under the Vehicle Code, but also due to its limited application to license suspension cases of a specific type.

Section 1543(b)(1)(i) stands on its own and is not subject to the Sentencing Code's minimum-maximum sentencing. It violates no statutory provision and no constitutional right of which Defendant has made us aware. It is enforceable on its own terms, as is the sixty-day flat sentence Defendant received.

BY THE COURT:


_____ P.J.