

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,613
	:
	:
vs.	: CRIMINAL DIVISION
	: Motion for Reconsideration of Sentence
ALBERT SANCHEZ,	:
Defendant	:

OPINION AND ORDER

On October 7, 2002, Defendant pled guilty to one count of Driving Under the Influence and by Order dated December 12, 2002, was sentenced on that conviction. In the instant Motion for Reconsideration of Sentence, filed July 8, 2003, Defendant seeks to vacate that portion of the sentence which required him to comply with the mandates of 42 Pa. C.S. Section 7002, commonly known as the Ignition Interlock Device Act.

Initially, the Court notes the Commonwealth's objection to the timeliness of Defendant's motion. Specifically, the Commonwealth contends the motion may not be considered by the Court as it was filed more than 30 days following entry of the Order on December 12, 2002. The Court notes, however, that in the Order of December 12, 2002, the Court reserved jurisdiction over the Ignition Interlock Device Act issue by indicating that Defendant "may challenge the applicability of this matter without prejudice, and that challenge is preserved for future disposition." As a final determination of the issue was reserved, the 30-day time limit does not apply in the instant matter. See Cappelli and Sons, Inc. v Keystone Custom Homes, Inc., 815 A.2d 643 (Pa. Super. 2003). The Court will therefore consider Defendant's motion on its merits.

Defendant contends that application of the Ignition Interlock Device Act in this matter is against the holding of Alexander v Commonwealth, DOT, 2003 Pa. Commw. LEXIS 158. In Alexander, the Commonwealth Court held that consideration of any DUI convictions which

occurred prior to the effective date of the Act was an unlawful retroactive application of the Statute. The Court agrees with Defendant that under Alexander, his conviction in 1998 cannot be considered as a first offense, thus rendering his current conviction a second offense, subjecting him to the mandatory provisions of Section 7002(b). Therefore, that portion of his sentence which subjected him to the “mandates” of the Ignition Interlock Device Act will be vacated.¹

ORDER

AND NOW, this day of September 2003, for the foregoing reasons, Defendant’s Motion for Reconsideration of Sentence is hereby granted and the Order of December 12, 2002 is hereby modified to vacate that portion of the Order, which referred to the Ignition Interlock Device Act.

As modified herein, the Order of December 12, 2002 shall continue in full force and effect.

By the Court,

Dudley N. Anderson, Judge

cc: DA
 PD
 Adult Probation Office
 Gary Weber, Esq.
 Hon. Dudley N. Anderson

¹ The Court does note that Defendant’s instant conviction, which occurred after the effective date of Section 7002(a) is properly considered a first offense under that subsection, which, while not mandatory, allows the Court to require the installation of an ignition interlock device, in the Court’s discretion. The Court chooses, however, not to exercise its discretion in such a manner in the instant matter.