

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH	:	CRIMINAL COURT
	:	
	:	
vs.	:	NO. CR 1704-2006
	:	
MICHAEL M. WELTON, JR.,	:	
DEFENDANT	:	

OPINION AND ORDER

This matter is before the Court on defendant’s motion for reconsideration of sentence. Defendant argues that the crime of carrying a firearm without a license should have been treated as a misdemeanor of the first degree, under 18 Pa. C.S. 6106(a)(2), rather than a felony of the third degree, under §6106(a)(1).

The statute clearly states the offense is a third degree felony except when the defendant is otherwise eligible to possess a valid license, and “has not committed any other criminal violation.” §6106(a)(1) and (2). The defendant argues that “any other criminal violation” means only violations involving the unlicensed firearm, or at least that the defendant was carrying the firearm when the other crime was committed.¹

The Pennsylvania Supreme Court rejected a reverse argument, namely that “any other criminal violation” means only violations *not* involving the illegally carried firearm. Commonwealth v. Bavusa, 832 A.2d 1042 (Pa. 2003). The court stated that “no such limitation is included within or suggested by the statute.” *Id.* at 1055.

The Pennsylvania Superior Court also rejected the argument that “any other

¹ Defendant’s unlicensed weapon was in the vehicle, and not with the defendant at the time the other offenses were committed.

criminal violation” does not include driving under the influence of alcohol, because that crime is not contained within Title 18. Commonwealth v. Derr, 841 A.2d 558 (Pa. Super 2004). The Superior Court stated, “The legislature did not limit the term ‘any other criminal violation’ to criminal violations contained within a specific title, and we decline Appellant’s invitation to circumscribe the Legislature’s intent.” *Id.* at 561.

Thus the appellate courts have made it clear the judiciary may not place limitations upon the term “any other criminal violation” which do not appear in the statute. In interpreting statutes, the court is obligated to construe the words and phrases of the statute according to their common and approved usage. 1 Pa. C.S. 1903(a).

The defendant committed numerous criminal violations contemporaneously with his §6106 offense of carrying a firearm without a license.² It is irrelevant that the defendant did not use the firearm to commit these violations, and that the defendant did not carry the firearm when committing the violations. The commission of the contemporaneous offenses clearly disqualify him from receiving the more lenient treatment under 18 Pa. C.S. 6106 (a)(2).

² The defendant pled guilty to a total of nineteen counts, including the offenses of burglary, criminal trespass, and a number of related theft offenses.

ORDER

AND NOW, this 26th day of July, 2007, the request for reconsideration of sentence is **DENIED**. The Court's sentencing order of June 29, 2007 is reaffirmed.

BY THE COURT,

Richard A. Gray, Judge

cc: District Attorney
George Lepley, Esq.
Gary Weber, Esq.