

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1427 – 2006
:
vs. : CRIMINAL DIVISION
:
NAVARRO BANKS, :
Defendant : On Remand for Resentencing

OPINION AND ORDER

On July 16, 2007, Defendant was sentenced to two concurrent terms of two to five years incarceration on two counts of delivery of a controlled substance, the Court having applied the school zone mandatory minimum. On appeal, the Superior Court upheld Defendant’s conviction but remanded for resentencing, finding that due to a miscommunication between the Court and counsel, no proof that the sales were conducted within a school zone had been offered by the Commonwealth. At the hearing held September 23, 2008, the Commonwealth presented evidence that the sales took place 977.8 feet or less¹ from the property of Pennsylvania College of Technology (“Penn College”). Defendant does not dispute the measurement itself, but argues that such should have been made from the academic center, the closest building in which classes are held, and which is admittedly farther than 1000 feet from the closest sale, rather than from the edge of the Penn College property.

The section of the Crimes Code providing for the mandatory minimum sentence at issue is § 6317, “Drug-free school zones”, which provides, in pertinent part, as follows:

(a) GENERAL RULE.-- A person 18 years of age or older who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance occurred *within 1,000 feet of the real property* on which is located a public, private or parochial school or a

¹ The distance from the edge of the school property to the furthest sale was given. The other sale took place about 300 to 450 feet closer.

college or university or within 250 feet of the real property on which is located a recreation center or playground or on a school bus, be sentenced to a minimum sentence of at least two years of total confinement, notwithstanding any other provision of this title, The Controlled Substance, Drug, Device and Cosmetic Act or other statute to the contrary.

18 Pa.C.S. Section 6317(a) (emphasis added). The Superior Court has held this statute unambiguous, “as it applies to anyone ‘within 1000 feet of the real property[.]’” Commonwealth v. Williams, 2008 Pa. Super. LEXIS 2042 (August 5, 2008). Thus, to read into the statute the requirement that the place of measurement be a location where classes are held would be to create a limitation not provided for by the General Assembly. See Williams, *supra*, where the Superior Court refused to limit application of the statute to transactions occurring during the school year, noting that “[n]othing in the statutory language evinces legislative intent to limit its application to the school year. The General Assembly included no such express limitation and it is not the province of the judiciary to create one.”

The Court also takes instruction from the Superior Court’s discussion of the issue of whether the measurement should take place from the school building or from the school property under the previous Sentence Enhancement provision of the Sentencing Guidelines, 204 Pa.Code Section 303.10(b).² The Court stated:

We do not find the absence of the term "school property" in the enhancement provisions to require the measurement to take place from a school building rather than from school property. "The purpose of this type of school enhancement should be to create a drug-free zone around schools to signal to drug traffickers that their presence in this zone would subject them to longer sentences upon conviction." See *Commonwealth v. Murphy*, 405 Pa. Super. 452,

² At the time of the Court’s decision, that section provided as follows:

(b) Youth/School Enhancement

When the court determines that the offender either distributed a controlled substance to a person or persons under the age of 18 in violation of 35 P.S. § 780-114, or manufactured, delivered or possessed with intent to deliver a controlled substance *within 1000 feet of a public or private elementary or secondary school*, the court shall consider the range of sentences described in § 303.9(c).

204 Pa.Code Section 303.10(b) (emphasis added). The emphasized language was modified to “within 1000 feet of the real property on which is located a public or private elementary or secondary school” by the section’s subsequent amendment.

592 A.2d 750, 755 (Pa. Super. 1997) (holding Commonwealth not required to prove for application of school enhancement that defendant intended to be within one thousand feet of a school). We find a school encompasses not only the school building itself, but includes all of the school property located in a zone where children have access such as a school playground. Therefore, measurement from the playground corner was proper, and the trial court did not err in applying the school enhancement.

We strongly disagree with the dissent that the measurement must occur from the school building rather than from the school property. Such an interpretation runs contrary to the purpose of the school enhancement in creating a drug-free school zone. Today many schools of this Commonwealth have campus like settings, which consist of multiple school buildings, athletic fields, stadiums and playgrounds. The school enhancement should be equally applied to a person who sells drugs to a student on the front steps of the school building to the outermost point of school property. Otherwise, the school enhancement would have no effect in deterring drug traffickers from distributing illegal drugs near our schools. If we followed the dissent's position, it would lead to the illogical result that our students could be approached during school hours on the track field located more than 1,000 feet from the main school building, and the drug dealer would escape this sentencing provision. Such a limited application of the school enhancement would not protect our children or make our schools safe from crime.

Commonwealth v. Davis, 734 A.2d 879,883 (Pa. Super. 1999)(footnote omitted). Even though the amendments to the Crimes Code and Sentencing Guidelines have rendered moot the particular holding of Davis, its reasoning supports this Court's conclusions that the edge of the school property is the proper place of measurement, and that the distance to a building wherein classes are held is irrelevant.

Accordingly, as the transactions at issue took place within 1000 feet of the real property on which is located a college, the Court's application of the mandatory minimum in its sentence of July 16, 2007, was proper, and that sentence will therefore be reinstated.

ORDER

AND NOW, this 22nd day of September 2008, for the foregoing reasons, this Court's sentence of July 16, 2007 is hereby REINSTATED. The Sheriff is directed to return Defendant to the appropriate state institution at his earliest convenience.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Sheriff
DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson