

**Pennsylvania Commission on Sentencing  
Caselaw Highlights (PA Reporter through May 23, 2008)**

	Gordon	942 A.2d 174	12/28/2007	PA	Sentence	Mandatory	<b>Three Strikes.</b> Determination of whether predicate crimes arose from separate criminal transactions, for purposes of sentencing under the three-strikes statute, is a legal question related to a sentencing factor, and thus imposition of a three-strikes sentence based on such a determination by a trial court, as opposed to a jury, does not implicate a defendant's constitutional right to trial by jury; such a determination is not a factual finding that results in a sentence that exceeds the otherwise applicable statutory maximum. U.S.C.A. Const.Amend. 6; 42 Pa.C.S.A. § 9714(a)(2), (d).
	Dickson	918 A.2d 95	3/29/2007	PA	Sentence	Mandatory	Statute imposing mandatory sentence enhancement on person who visibly possessed a firearm or firearm replica during commission of crime of violence applies only to those parties culpable for a "crime of violence" who visibly possess a firearm or firearm replica during the commission of the crime; thus, unarmed co-conspirators do not fall within the ambit of the statute. (Per Baer, J., with one justice joining and one justice concurring separately.) 42 Pa.C.S.A. §§ 9712(a), 9714(g).
	McClintic	909 A.2d 1241	11/22/2006	PA	Sentence	Mandatory	<b>Two/Three Strikes:</b> "Current offense," within meaning of the multiple-offender sentencing statute's three-strike provision, which provides for a minimum sentence of at least 25 years of total confinement when "the person had at the time of the commission of the current offense previously been convicted of two or more such crimes of violence arising from separate criminal transactions," means the crime of violence for which the defendant is currently being sentenced. 42 Pa.C.S.A. § 9714(a)(2), (g).
	McClintic	909 A.2d 1241	11/22/2006	PA	Sentence	Mandatory	<b>Two/Three Strikes:</b> Defendant could not receive enhanced sentences under multiple-offender sentencing statute's three-strike provision for second of two crimes of violence, robbery and burglary, that were committed during single criminal episode; burglary, which was purported fourth strike for which second sentence enhancement was imposed, occurred prior to conviction, sentence, and opportunity to reform incident to third-strike offense of robbery. 42 Pa.C.S.A. § 9714(a)(2), (g).
	McClintic	909 A.2d 1241	11/22/2006	PA	Sentence	Mandatory	<b>Two/Three Strikes:</b> Under the multiple-offender sentencing statute's two-strike and three-strike provisions, each strike that serves as a predicate offense must be followed by sentencing and, by necessary implication, an opportunity for reform, before the offender commits the next strike. 42 Pa.C.S.A. § 9714(a)(1, 2), (g).

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	Shiffler	879 A.2d 185	7/22/2005	PA	Sentence	Mandatory	<b>Two/Three Strikes:</b> Burglary defendant's prior plea of guilty to three counts of burglary at a single plea hearing counted as one prior offense for purposes of the multiple offender statute, where defendant committed all of the prior burglaries before he was convicted or sentenced for any of them, and "recidivist philosophy" of sentencing statute required that heightened punishment for repeat offenders was proper only where convictions and corresponding terms of incarceration were sequential and each was separated by an intervening opportunity to reform. 42 Pa.C.S.A. § 9714.
	Bradley	834 A.2d 1127	10/28/2003	PA	Sentence	Mandatory	<b>Two/Three Strikes:</b> Defendant's prior robbery convictions constituted separate criminal transactions for purposes of sentencing defendant as a three strikes offender, even though the robberies occurred on the same day, where the robberies were discrete criminal incidents that occurred at different times, occurred in different locations over three miles apart, involved two victims with no connection to one another, and neither robbery was essential to the successful commission of the other. 42/9714.
	Belak	825 A.2d 1252	6/17/2003	PA	Sentence	Mandatory	<b>Two/Three Strikes:</b> Defendant's sentence of mandatory minimum of 25 years' imprisonment did not violate his right to due process; record showed that defendant was sentenced under section of statute providing for maximum sentence of life imprisonment without parole upon conviction of third or subsequent crime of violence if court determines that lesser sentence is insufficient to protect public safety, rather than section of 'strike two' sentencing statute, which imposed mandatory minimum sentence on high risk dangerous offender, that was found to be unconstitutional. 42/9714.
	Belak	825 A.2d 1252	6/17/2003	PA	Sentence	Mandatory	<b>Two/Three Strikes:</b> Section of statute, providing for maximum sentence of life imprisonment without parole upon conviction of third or subsequent crime of violence if court determines that lesser sentence is insufficient to protect public safety, was severable from provision found to be unconstitutional. 42/9714.
	Butler	760 A.2d 384	10/27/2000	PA	Sentence	Mandatory	<b>Two/Three Strikes:</b> The 'strike two' sentencing statute which imposes a mandatory minimum sentence on a high risk dangerous offender violates due process by placing the burden on the defendant to rebut the presumption that he is a high risk dangerous offender. 42/9714.
	Vasquez	744 A.2d 1280	1/28/2000	PA	Sentence	Mandatory	Once trial court determines that Commonwealth has established requirements of a legislatively mandated sentence, trial court has no discretion to deviate its sentence from that which is defined by statute. When the court imposes a sentence outside the legal parameters prescribed by applicable statute, sentence is illegal and should be remanded for correction.

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	Myers	722 A.2d 649	12/23/1998	PA	Sentence	Mandatory	In finding that sentencing judge incorrectly redetermined marijuana's weight, for purposes of sentencing for drug trafficking conviction, Superior Court misinterpreted plain language of drug trafficking sentencing statute that "the applicability of this section shall be determined at sentencing." 18 Pa.C.S.A. § 7508(b).
	Burnsworth	669 A.2d 883	12/27/1995	PA	Sentence	Mandatory	Mandatory sentencing provisions of 18 PaCS7508(a)(1)(i)(ii)(iii) are not constitutionally vague or overbroad as related to penalties based on the number of plants, notwithstanding differences in plant size, maturity and intoxicating productivity.
	Vasquez	753 A.2d 807 726 A.2d 396	6/20/2000	PA PA Super	Sentence	Mandatory	Supreme Court reversed the decision of the Superior Court (and affirmed the trial court) relating to the issue of statutory construction, finding that on a second count of a two-count indictment, defendant was subject to enhanced sentence based on his conviction of another drug trafficking offense, even though the other offense was the first county contained in the indictment.
	Diamond	945 A.2d 252	3/20/2008	PA Super	Sentence	Mandatory	Defendant received reasonable notice of Commonwealth's intent to seek mandatory minimum sentence of five years for aggravated assault after conviction and before sentencing, where, at initial hearing before sentencing court, Commonwealth stated that it intended to seek mandatory sentence, defendant's sentencing hearing was continued, and defendant was sentenced almost 30 days after initial hearing. 42 Pa.C.S.A. § 9712.
	Watson	945 A.2d 174	2/7/2008	PA Super	Sentence	Mandatory	Recidivist enhancement provision of Drug Act did not apply to inchoate crime of criminal conspiracy to sell drugs for which defendant was convicted, even if enhancement provision did not specifically exclude inchoate crimes. 18 Pa.C.S.A. §§ 903, 7508.  If no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction; an illegal sentence must be vacated.
	Lane	941 A.2d 34	1/4/2008	PA Super	Sentence	Mandatory	That trial court, rather than jury, made findings necessary to impose life sentence without possibility of parole, for robbery, aggravated assault, and possession of instrument of crime, did not violate defendant's jury trial or due process rights, as such constitutional protections did not extend to the fact of prior convictions, and the existence of two prior convictions alone caused defendant to be eligible to possibly be sentenced within a range of increased penalties. U.S.C.A. Const.Amend. 6, 14; 42 Pa.C.S.A. § 9714(a)(2).

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	Lane	941 A.2d 34	1/4/2008	PA Super	Sentence	Mandatory	Although the constitutional requirement of a jury trial and proof beyond a reasonable doubt applies to any fact other than a prior conviction that is legally essential to the punishment, it is permissible for judges to exercise discretion in imposing a sentence within the range allowed by statute. U.S.C.A. Const.Amend. 6, 14.
	Boyd	941 A.2d 1	12/14/2007	PA Super	Sentence	Mandatory	That defendant had neither been convicted nor sentenced for predicate drug offense at time he committed instant offense did not render him ineligible for five-year mandatory minimum sentencing; statute governing drug trafficking sentences provided for a mandatory minimum sentence of five years "if at the time of sentencing" on subsequent offense, not at the time of the offense or conviction, the defendant had been convicted of another drug trafficking offense. 18 Pa.C.S.A. § 7508(a)(3)(ii).
	Slotcavage	939 A.2d 901	12/13/2007	PA Super	Sentence	Mandatory	For purposes of the "legality" of a imposition of a mandatory minimum sentence, a minimum sentence merely sets the date prior to which a prisoner may not be paroled; it is the maximum sentence that delineates the punishment imposed for the criminal offense.
	Slotcavage	939 A.2d 901	12/13/2007	PA Super	Sentence	Mandatory	Mandatory minimum sentence of one year in prison for conviction of delivery of a controlled substance was not a violation of defendant's Sixth Amendment rights; mandatory minimum sentence did not exceed the punishment authorized by the jury's verdict. U.S.C.A. Const.Amend. 6; 18 Pa.C.S.A. § 7508.
	Nieves	935 A.2d 887	10/5/2007	PA Super	Sentence	Mandatory	<b>DUI.</b> Second driving under influence (DUI) offense committed within ten-year look-back period was "prior offense," for purposes of imposing mandatory minimum for third offense, regardless that defendant pled guilty to second and third offenses simultaneously . 75 Pa.C.S.A. § 3806(a, b).
	Perez	931 A.2d 703	8/8/2007	PA Super	Sentence	Mandatory	The initial determination of whether the Commonwealth proves that the mandatory minimum applies under drug trafficking sentencing statute is reserved by statute for the sentencing court, and thus, resolving whether the weight of the drug triggers application of the mandatory minimum requires the judge to sit as a fact-finder, necessitating credibility determinations, and if the court finds the requirements of drug trafficking sentencing statute are established, it does not have the discretion to impose a sentence less severe than that mandated by the legislature. 18 Pa.C.S.A. § 7508.

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Perez	931 A.2d 703	8/8/2007	PA Super	Sentence	Mandatory	Given the aggregate weight of heroin found on defendant and his co-conspirator, imposition of the minimum sentence of two years' imprisonment under drug trafficking sentencing statute was warranted; defendant was liable for the 0.3 grams of heroin he sold on the street in front of co-conspirator's house and the 0.863 grams of heroin recovered from inside co-conspirator's house. 18 Pa.C.S.A. § 7508(a)(7)(i).
Hoke	928 A.2d 300	6/26/2007	PA Super	Sentence	Mandatory	Conspiracy charge on which defendant, also convicted of the manufacture of a controlled substance, was sentenced was subject to the same mandatory sentencing provision as offense of manufacturing a controlled substance. 18 Pa.C.S.A. § 905; 35 P.S. § 780-113(k).
Wisor	928 A.2d 270	6/11/2007	PA Super	Sentence	Mandatory	Sentencing court lacked discretion to impose lesser sentence than that mandated by legislature for each of three separate violations of state Sewage Facilities Act, irrespective of defendant's mitigation of such violations. 35 P.S. §§ 750.7, 750.13.
Harley	924 A.2d 1273	5/25/2007	PA Super	Sentence	Mandatory	Statute setting forth sentences for drug trafficking was rationally related to the legislature's goal in fighting the spread of drugs in communities regardless of the amount of drugs possessed in the first offense, and thus, the statute did not violate equal protection; defendant did not demonstrate that dealing a small amount of drugs was not considered by the legislature in deciding to punish recidivist dealers, and defendant failed to demonstrate that persons who were convicted of selling small amounts of controlled substance in their first delivery should be subjected to higher level of scrutiny than persons who sold large amounts of a controlled substance. U.S.C.A. Const.Amend. 14; 18 Pa.C.S.A. § 7508.
Ramos	920 A.2d 1253	3/20/2007	PA Super	Sentence	Mandatory	Trial court properly imposed mandatory minimum sentence of five years of incarceration on defendant convicted of robbery and conspiracy to commit robbery; court found that defendant possessed a real gun, despite his claim to the contrary, which was finding was based on credibility determinations made by fact finder, and even if court incorrectly concluded that weapon was not a real firearm, victims' testimony revealed that it was certainly a replica of one. 42 Pa.C.S.A. § 9712(a, e).
Johnson	920 A.2d 873	3/12/2007	PA Super	Sentence	Mandatory	Testing representative samples and extrapolating a total narcotic content is an accepted way of measuring drug quantities. The identity of illegal narcotic substances may be established by circumstantial evidence alone, without any chemical analysis of the seized contraband. Heroin defendant sold on each of three days could not be aggregated for purposes of application of mandatory sentencing. 18 Pa.C.S.A. § 7508(a)(7)(i).

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	Littlehales	915 A.2d 662	1/5/2007	PA Super	Sentence	Mandatory	Statute governing sentences for offenses against elderly persons did not violate Apprendi, even though statute imposed a mandatory minimum sentences of one year and the statutory maximum for theft by deception graded as a second-degree misdemeanor was two years; the court's finding of "justifiable cause," which would allow the court to impose more than the minimum sentence for theft by deception, did not increase the sentence beyond what would otherwise be the statutory maximum. 18 Pa.C.S.A. § 3922, 42 Pa.C.S.A. § 9717(a).
	Poncala	915 A.2d 97	12/8/2006	PA Super	Sentence	Mandatory	<b>DUI:</b> Defendant's offense of driving under influence of alcohol (DUI) subjected him to mandatory prison sentence of not less than one year, regardless of whether defendant would qualify for county intermediate punishment program (IPP); defendant's blood alcohol concentration (BAC) was 0.16% or higher and his current DUI was at least his third DUI in ten years, and a mandatory sentence for such circumstances was specifically established by a provision of the statute governing DUI penalties, which thus trumped general and discretionary IPP sentencing statute. 1 Pa.C.S.A. § 1933; 42 Pa.C.S.A. § 9804(b)(5); 75 Pa.C.S.A. §§ 3802(c), 3804(c)(3).
	Poncala	915 A.2d 97	12/8/2006	PA Super	Sentence	Mandatory	<b>PCS STAFF NOTE (1/4):</b> DUI mandatories were specifically targeted by the legislature when county IP was enacted in the early 1990's, and is currently the most common conviction for which county IP is imposed as a sentence. The 2003 amendments to both Title 75 and Title 42 were intended to continue this option as an alternative to the mandatories, but limited use to a first, second or third offense in ten years. The 2004 amendment to Title 75 was intended to correct problems that occurred when different look-back periods were used to determine grading vs. mandatory provisions.

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	Poncala	915 A.2d 97	12/8/2006	PA Super	Sentence	Mandatory	PCS STAFF NOTE (2/4): In both the DUI and county IP statutes, the legislature used the phrase 'may only be sentenced to county intermediate punishment' to limit the use of IP to certain circumstances, not to mandate the use of county IP. Under Title 75, the phrase is used to limit sentences of county IP in lieu of the mandatory (if the court chooses to) to first, second and third convictions within ten years. Under Title 42, the phrase is used to limit the types of programs that may be considered when county IP is imposed in lieu of the mandatory. This may be obvious, but it is possible to read these sections and this phrase as requiring the use of county IP (which I suspect is how the def. wished it to be read!).
	Poncala	915 A.2d 97	12/8/2006	PA Super	Sentence	Mandatory	PCS STAFF NOTE (3/4): At least as expressed in the opinion, if the Commonwealth was trying to argue that a mandatory minimum of one year would make the person ineligible, I think this is questionable. Since the length of the revised mandatory minimum sentences vary depending on the elements of the current conviction (BAC, controlled substance, minors, etc.), and the maximum sentence must be imposed if the offender is drug dependent, and the court may order the offender to serve any DUI sentence in the county and retain parole authority, there is no link between the nature of the sentence (state vs. county) and the eligibility for county IP... just that a fourth or subsequent DUI in ten years is not eligible.
	Poncala	915 A.2d 97	12/8/2006	PA Super	Sentence	Mandatory	PCS STAFF NOTE (4/4): If you read the majority opinion literally, one could never use county IP to satisfy a DUI mandatory. And unfortunately, due to the more recent amendment to Title 75 to correct an error, statutory construction is used by the Superior Court to read this as an undoing of the IP option. However, the Superior Court opinion fails to consider or cite 42 PaCS 9721(a.1)(1) which specifically provides for the use of county IP for DUI mandatories.
	Leverette	911 A.2d 998	11/17/2006	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Legislative purpose of Pennsylvania's three-strikes law is to punish multiple offenders consistently with the recidivist philosophy, i.e., that the most culpable defendant is one who reoffends after being reproved. Defendant could not be sentenced as a third-time offender under mandatory sentencing provisions of three strikes statute based on his multiple convictions arising out of similar incidents on sequential days, and for which sentencing occurred on the same day under the same docket number, where defendant was never sentenced as a second-time offender, and was not given an opportunity to reform between convictions. 42 Pa.C.S.A. § 9714.

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	Bongiorno	905 A.2d 998	8/8/2006	PA Super	Sentence	Mandatory	Grassy area set off from apartment buildings by a fence, containing a merry-go-round-type ride, with "safety chips," i.e., wood chips, spread on the ground near the merry-go-round, was a "playground," for purposes of mandatory sentencing provision imposing a two-year minimum sentence for drug offenses committed within 250 feet of property on which a playground was located. 18 Pa.C.S.A. § 6317(a, b).
	Lane	withdrawn	7/12/2006	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Trial court's imposition of life imprisonment without possibility of parole pursuant to three strikes enhancement, based on finding that 25 years of total confinement was insufficient to protect the public safety, did not violate defendant's right to jury trial; given defendant's criminal history, life imprisonment was within the range of punishment authorized by statute and was within the discretion of the court. 42 Pa.C.S.A. § 9714(a)(2).
	Lane	withdrawn	7/12/2006	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Sentence of life imprisonment without possibility of parole under three strikes enhancement was warranted for defendant convicted of robbery, aggravated assault, and possessing an instrument of crime; Commonwealth properly provided records and proof of defendant's two prior murder convictions, as well as a complete sentencing record of defendant's adjustment in and out of prison, and a victim's impact statement as to his most recent conviction, and trial court found that defendant had committed other acts of violence, that defendant had committed the most recent offense only 18 months after being paroled from a 25- year sentence, and that 25 years of incarceration was insufficient to protect the public. 42 Pa.C.S.A. § 9714(a)(2).

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	Free	902 A.2d 565	6/23/2006	PA Super	Sentence	Mandatory	Commonwealth's failure to preserve marijuana plants that were seized and used to support charged offense of possession of controlled substance with intent to deliver (PWID) did not violate defendant's due process rights; while Commonwealth was required to prove that defendant possessed a minimum of 51 live marijuana plants or over 50 pounds of marijuana in order to render defendant subject to a five-year mandatory sentence for conviction on charged offense, destruction did not prevent defendant from challenging imposition of such sentence, as defendant only offered speculation that the plants had exculpatory value that was apparent prior to their destruction, defendant had access to comparable evidence, in that he had report of chemist who inspected the plants and photographs of the plants that were extensive and detailed, and police did not act in bad faith in destroying the evidence. U.S.C.A. Const.Amend. 14; 18 Pa.C.S.A. § 7508(a)(1)(iii).
	Bell	901 A.2d 1033	6/5/2006	PA Super	Sentence	Mandatory	On second and third counts of information charging three counts of delivery of cocaine, defendant was subject to enhanced sentences based on his conviction for "another drug trafficking offense," as used in statute governing sentencing for drug trafficking, even though that other offense was first count contained in information. 18 Pa.C.S.A. § 7508(a)(3)(ii).
	Kleinicke	895 A.2d 562	3/8/2006	PA Super	Sentence	Mandatory	Imposition of mandatory minimum sentence of five years' imprisonment for possession of 51 or more live marijuana plants, without unanimity of jurors as to number of plants, did not violate Sixth Amendment right to jury trial of defendant who was convicted of possession with intent to manufacture marijuana, even though minimum sentence was increased to be coextensive with five-year maximum sentence; statute setting forth minimum penalties applicable to possession of various amounts of marijuana merely increased the minimum sentence and not the maximum term of imprisonment beyond the statutory maximum authorized by jury's verdict. U.S.C.A. Const.Amend. 6; 18 Pa.C.S.A. § 7508(a)(1)(iii); 35 P.S. § 780-113(a)(30), (f)(2).

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	Kleinicke	895 A.2d 562	3/8/2006	PA Super	Sentence	Mandatory	Statute increasing mandatory minimum sentence for possession with intent to distribute marijuana, but not extending sentence beyond the five-year statutory maximum, on basis of judge's finding that defendant possessed 51 or more live marijuana plants, did not violate defendant's Sixth Amendment right to jury trial or due process; statute did not discard presumption of innocence, did not create a presumption of existence of any fact, did not place any burden of proof of existence of any fact on defendant, did not relieve prosecution of its burden of proving guilt, did not alter maximum penalty, and did not create a separate offense allowing for a separate penalty. U.S.C.A. Const.Amend. 6, 14; 18 Pa.C.S.A. § 7508(a)(1)(iii); 35 P.S. § 780- 113(a)(30), (f)(2).
	Ausberry	891 A.2d 752	1/20/2006	PA Super	Sentence	Mandatory	First degree burglary included the situation in which the structure was adapted for overnight accommodation and an individual was present, and thus defendant's prior burglary conviction could be considered a crime of violence when imposing a second strike sentence for his current convictions for aggravated assault and other offenses; felony one burglary was defined in a negative manner to be as "except as provided" in the definition of second degree burglary, which was defined as a burglary of a structure that was not adapted for overnight accommodation and in which no individual was present. 42 Pa.C.S.A. § 9714(g); 18 Pa.C.S.A. § 3502.
	Knowles	891 A.2d 745	1/12/2006	PA Super	Sentence	Mandatory	Burglary of home during which time homeowner was absent but later returned to encounter defendant and co-defendant was "crime of violence," within meaning of statute requiring imposition of mandatory minimum sentence of ten years for any person who is convicted of a crime of violence and has previously been convicted of a crime of violence. 42 Pa.C.S.A. § 9714(g).
	Mitchell	883 A.2d 1096	9/12/2005	PA Super	Sentence	Mandatory	<b>Blakely v. Washington</b> : Imposition of mandatory minimum five-year sentence for visible possession of a firearm while committing kidnapping did not violate Blakely v. Washington, which requires that a jury decide certain factual issues related to sentencing, even though the jury had not found that defendant had committed the crime with a firearm, as jury's verdict vested the trial court with the authority to impose a five-year sentence; Pennsylvania guidelines were not mandatory, and thus did not prohibit any particular sentence within the statutory maximum, and mandatory minimum merely divested court of the discretion to impose a lower sentence. U.S.C.A. Const.Amend. 6; 42 Pa.C.S.A. § 9712.

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	Lewis	885 A.2d 51	9/7/2005	PA Super	Sentence	Mandatory	<b>Drug mandatory.</b> Mandatory sentencing statute which was applicable to drug convictions in which the transactions occurred within school zone applied to pre-school. Term "school" includes pre-schools as that term is used in mandatory sentencing statute which is applicable to drug convictions in which the transactions occur within school zone. 18 Pa.C.S.A. § 6317.
	Crist	880 A.2d 696	7/29/2005	PA Super	Sentence	Mandatory	Defendant had knowledge that his codefendant visibly possessed a firearm that placed robbery victim in reasonable fear of death or serious bodily injury, for which defendant should have been sentenced to applicable minimum mandatory sentence of five years' imprisonment; defendant saw codefendant holding a gun and pointing it at the restaurant manager, after defendant became aware of codefendant's use of the gun during the commission of the robbery, defendant continued to act as an accomplice to the crime and waited for codefendant to exit the store, and then drove codefendant from the scene and later divided the stolen money. 42 Pa.C.S.A. § 9712.
	Crist	880 A.2d 696	7/29/2005	PA Super	Sentence	Mandatory	An accomplice is subject to mandatory minimum sentencing under statute governing crimes committed by persons visibly in possession of firearms if he has knowledge at any point during the commission of the crime that his co-felon visibly possessed a firearm. 42 Pa.C.S.A. § 9712.
	Alford	880 A.2d 666	7/26/2005	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Evidence supported finding that defendant used a firearm during course of committing a theft to facilitate his escape and complete the crime, and thus, sentencing statute governing violent offenses committed with firearms was applicable to robbery conviction; evidence indicated that after pulling constable's firearm from its holster, defendant pistol-whipped constable and twice pulled the trigger with the muzzle of the firearm pressed against constable's side, and that after exiting the vehicle that he had and constable had been riding in, defendant pointed firearm in the direction of a passing truck driver who had stopped at the scene. 18 Pa.C.S.A. § 3701(a)(2); 42 Pa.C.S.A. § 9712(a).
	Alford	880 A.2d 666	7/26/2005	PA Super	Sentence	Mandatory	Sentencing statute governing violent offenses committed with firearms applies when possession manifests itself in the process of the crime. Under sentencing statute governing violent offenses committed with firearms, "visible possession" means the gun was seen by or had a visible effect on the victim. 42 Pa.C.S.A. § 9712.

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	Williams	871 A.2d 254	3/18/2005	PA Super	Sentence	Mandatory	<b>DUI:</b> Defendant should not have received separate sentences for two driving under the influence of alcohol (DUI) convictions, since the two subsections of driving under influence that defendant violated constituted a single injury to Commonwealth. 75 Pa.C.S.A. § 3731(a) (Repealed).
	Menezes	871 A.2d 204	3/8/2005	PA Super	Sentence	Mandatory	<b>DUI:</b> Statute requiring trial court to impose mandatory sentence of 48 consecutive hours in jail on conviction for driving under the influence (DUI) controlled over statute requiring court to give credit for all time spent in custody, and thus defendant was not entitled to credit for 18 hours of pre-arraignment custody for purposes of serving mandatory 48 consecutive hours; statute imposing mandatory sentence was the more recently enacted statute and more specifically addressed issue. 1 Pa.C.S.A. § 1933; 42 Pa.C.S.A. § 9760(1), 75 Pa.C.S.A. § 3731(e)(1)(i) (Repealed).
	Forbes	867 A.2d 1268	1/28/2005	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> State's "two-strikes" sentencing statute did not violate defendant's federal due process rights, in prosecution for assault and burglary; statute did not alter maximum penalty for crime committed nor create separate offense calling for separate penalty, and statute operated solely to limit sentencing court's discretion in selecting penalty within range already available to it. U.S.C.A. Const.Amend. 14; 18 Pa.C.S.A. §§ 2701, 2702, 3502; 42 Pa.C.S.A. § 9714(a)(1).
	Smith	866 A.2d 1138	1/11/2005	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Evidence supported finding that defendant had convictions for prior violent crimes within meaning of "three strikes" law; criminal extracts detailing convictions described a man with defendant's same name, birth date and physical characteristics, FBI fingerprint classification number assigned to defendant was the same for all offenses, and facts attributed to the person who committed the prior convictions were confirmed through defendant's interaction with police, court staff and probation department personnel in connection with the instant case. 42 Pa.C.S.A. § 9714.
	Smith	866 A.2d 1138	1/11/2005	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> "Three strikes" sentencing law, which takes into account prior convictions that occurred before enactment of the statute, was not improperly applied retroactively; statute did not impose new legal burdens on past transactions or occurrences, statute did not increase the sentences defendant received for his prior convictions, and any retroactive effect of statute was intended by legislature. 1 Pa.C.S.A. § 1926; 42 Pa.C.S.A. § 9714.

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	Guilford	861 A.2d 365	11/1/2004	PA Super	Sentence	Mandatory	Robbery defendant's prior guilty plea to attempted burglary did not constitute a prior conviction for a "crime of violence" for purposes of second and subsequent offense sentencing statute, even though underlying facts of prior offense would have supported conviction for first degree felony burglary, a crime of violence. 18 Pa.C.S.A. § 3502(c)(1, 2). Defendant's prior guilty plea to first degree robbery for threatening another with or intentionally putting him in fear of immediate serious bodily injury constituted a prior conviction of a "crime of violence" for purposes of second and subsequent offense sentencing statute. 18 Pa.C.S.A. § 3701; 42 Pa.C.S.A. § 9714.
	Ward	856 A.2d 1273	8/24/2004	PA Super	Sentence	Mandatory	Offense underlying defendant's New York robbery conviction was substantially equivalent to Pennsylvania's robbery offense, and thus robbery conviction was tantamount to a "first strike" for the purposes of Pennsylvania's "three strikes law," although New York offense did not explicitly require threat of bodily injury; New York offense required an assailant to use or threaten to use a dangerous instrument while forcibly stealing property, which implied a threat of bodily injury, and both offenses prohibited an assailant from intimidating through threat of bodily harm to facilitate a theft. 18 Pa.C.S.A. § 3701(a)(1)(ii); 42 Pa.C.S.A. § 9714; NY McKinney's Penal Law § 160.15(3).
	McClintic	851 A.2d 214	5/27/2004	PA Super	Sentence	Mandatory	Trial court was not limited to imposing only single enhanced sentence for each criminal episode, i.e., each date, rather than enhanced sentence for each offense committed, when it sentenced defendant convicted of two counts each of robbery and burglary under "Three Strikes" law. 42 Pa.C.S.A. § 9714(a)(2). Recidivist statute allowing for enhancement of sentence upon sentencing judge's finding of prior conviction for violent crime did not violate Apprendi requirement that any fact used to enhance sentence had to be submitted to jury for determination beyond reasonable doubt. 42 Pa.C.S.A. § 9714.
	Stevenson	850 A.2d 1268	5/26/2004	PA Super	Sentence	Mandatory	Defendant sentenced to five-year mandatory minimum sentence of "total confinement" for offenses committed with a firearm was not entitled to credit for time served on house arrest in a home electronic monitoring program. 42 Pa.C.S.A. § 9712. "Total confinement," for purposes of statute governing mandatory minimum sentence for offenses committed with firearms, means imprisonment, and does not include intermediate punishments, such as house arrest. 42 Pa.C.S.A. § 9712.

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	Green	849 A.2d 1247	4/30/2004	PA Super	Sentence	Mandatory	Defendant did not have constitutional right to have jury find facts necessary to bring him within scope of mandatory minimum sentencing for drug offenses. Const. Art. 1, §§ 6, 9; 18 Pa.C.S.A. § 7508. Mandatory minimum sentencing scheme which allowed trial court to find triggering facts by preponderance of evidence did not violate state constitution's due process clause. Const. Art. 1, § 6; 18 Pa.C.S.A. § 7508.
	Manuel	844 A.2d 1	1/27/2004	PA Super	Sentence	Mandatory	<b>Drug Trafficking mandatory.</b> Mandatory sentencing provision was triggered, for purposes of sentence of defendant physician following his conviction for prescription of a controlled substance not in accordance with treatment principles, where aggregate weight of methadone prescribed to patient by defendant was in excess of ten-gram threshold triggering the mandatory sentence; statute establishing mandatory sentence scheme utilizing aggregate weight contemplated that it would be applied to pharmaceutical pills, and the language chosen by the legislature was controlling. 35 P.S. § 780-113(a)(14); 18 Pa.C.S.A. § 7508(a)(2)(ii).
	Sheppard	837 A.2d 555	11/25/2003	PA Super	Sentence	Mandatory	Victim's testimony that he saw defendant turn and point gun in his direction when confronted by victim in victim's home, and that victim's reaction demonstrated reasonable fear of death or serious bodily injury, was sufficient to support imposition of mandatory minimum five-year sentence for possession of firearm during commission of burglary.
	Nguyen	834 A.2d 1205	10/21/2003	PA Super	Sentence	Mandatory	Mandatory Minimum Sentence Act, requiring mandatory minimum sentence for crimes committed with firearm, did not violate defendant's state constitutional right to trial by jury; defendant waived his right to jury trial and proceeded before judge who was also sentencing judge, such that judge heard all evidence in this case, just as jury would have, including evidence that defendant used firearm to commit crimes, and sentencing trigger was not element of offense, but rather was sentencing factor that court was required to apply. Const. Art. 1, § 6; 42 Pa.C.S.A. § 9712.
	Nguyen	834 A.2d 1205	10/21/2003	PA Super	Sentence	Mandatory	Preponderance of evidence standard for judicial determination of use of firearm under Mandatory Minimum Sentence Act did not violate state constitution's due process clause; state's constitution as it related to due process guarantees afforded no greater protection than federal constitution, and preponderance of evidence standard of Act did not violate due process clause of federal constitution. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 9; 42 Pa.C.S.A. § 9712.

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	Shiffler	833 A.2d 1128	10/3/2003	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Consolidation of three separate burglary offenses at plea hearing did not transform those convictions into one prior conviction, within meaning of three strikes law, thus requiring remand for trial court to impose mandatory minimum 25-year sentence for subsequent burglary conviction. Three strikes law does not require that a defendant's prior convictions must result in separate sentences during separate judicial proceedings.
	Taylor	831 A.2d 661	8/21/2003	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Defendant's prior federal conviction for armed robbery constituted an "equivalent crime" under the statute requiring mandatory minimum sentences for second and subsequent sentences; the elements of both offenses included defendant's resort to force or intimidation in the presence of another to take that which did not belong to defendant, and the conduct prohibited by both statutes was the same.
	Norris	819 A.2d 568	3/10/2003	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Statute required that court have before it defendant's record of prior convictions, that defendant be provided with same, and that court make a determination of defendant's previous convictions based on a preponderance of the evidence prior to determining applicability of provisions in statute; verbal recitation by the Commonwealth of what it considered to be defendant's prior qualifying convictions, without the court having benefit of defendant's written record, was insufficient. 42/9714.
	Norris	819 A.2d 568	3/10/2003	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Commonwealth's notice to defendant facing aggravated assault charge, which invoked statutory section concerning mandatory sentences for second and subsequent offenses generally, and without specifying whether it sought imposition of the two strikes provision or the three strikes provision, constituted reasonable notice that the Commonwealth was to seek three strikes sentence and was not misleading; notice encapsulated all relevant provisions of section, and section indicated that its applicability was to be determined at time of sentencing. 42/9714.
	Norris	819 A.2d 568	3/10/2003	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Defendant convicted of aggravated assault had notice after conviction and before sentencing, as mandated by statute, of Commonwealth's intent to proceed under statute concerning mandatory sentences for third strike violent offenders, even though Commonwealth provided written notice in bill of information prior to conviction, where Commonwealth verbally indicated on record at sentencing hearing its intent and described two prior convictions which qualified aggravated assault in case as a third strike, and informed defense counsel on day prior to hearing. 42/9714.

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	Kunkle	817 A.2d 498	1/14/2003	PA Super	Sentence	Mandatory	Commonwealth could not use sentence modification hearing to present evidence to support application of sentence enhancement statute for drug offense committed within 250 feet of recreation center or playground, where Commonwealth had failed to present sufficient evidence for application of sentence enhancement at original sentencing hearing. 18/6317(b).
	Sanchez-Rodriguez	814 A.2d 1234	1/3/2003	PA Super	Sentence	Mandatory	Drug-free School Zone: Provision of drug-free school zone requiring that offenders 'be sentenced to a minimum sentence of at least two years of total confinement, notwithstanding any other provision' of controlled substance statute did not require sentencing court to impose such two-year minimum in addition to the sentences which it imposed upon defendants pursuant to applicable mandatory sentencing provisions under controlled substance statute, which sentences were already greater than two years; provision in drug-free school zone statute merely required court to impose on a defendant to which such statute was applicable a sentence of not less than two years. 18/6317(a), 7508.
	Gunn	803 A.2d 751	7/8/2002	PA Super	Sentence	Mandatory	Two/Three Strikes: Defendant could not be sentenced under 'three strikes' statute where the Commonwealth failed to prove, by a preponderance of the evidence, that the defendant's previous conviction for conspiracy to commit aggravated assault qualified as a crime of violence. 18/2702, 42/9714.
	Graham	799 A.2d 831	5/17/2002	PA Super	Sentence	Mandatory	United States Supreme Court's holding in <i>Apprendi v. New Jersey</i> that any fact that increases penalty for crime beyond prescribed statutory maximum must be submitted to jury and decided beyond a reasonable doubt did not apply to case that involved application of statute that established minimum sentence for conviction of controlled substance offense if delivery of controlled substance, or possession with intent to deliver, occurred within 1000 feet of school; minimum sentence required by statute was well within maximum possible sentence for underlying offense.
	Bess	789 A.2d 757	1/2/2002	PA Super	Sentence	Mandatory	Whether a mandatory minimum sentence applies is the sole province of the judge at the sentencing hearing. Request to find that defendant had less than statutorily required amount required for minimum sentence had to be made to court, not jury. 18/7508.
	Williams	787 A.2d 1085	12/14/2001	PA Super	Sentence	Mandatory	Statute imposing mandatory minimum sentence for offenses committed with a firearm was valid as against claim that it applied in the absence of proof beyond a reasonable doubt that a defendant possessed a firearm, as firearm possession was merely a sentencing factor that was not subject to beyond a reasonable doubt standard of proof.

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	Edrington	780 A.2d 721	7/20/2001	PA Super	Sentence	Mandatory	<b>Two/Three Strikes:</b> Defendant's guilty plea to aggravated assault represented his third conviction for a crime of violence, and thus defendant was a third-time violent offender subject to mandatory term of no less than 25 years, where defendant was previously convicted of aggravated assault and burglary, both of which were defined as 'crimes of violence' under statute. 42/9714.
	Benn	779 A.2d 574	6/25/2001	PA Super	Sentence	Mandatory	Trial court could not impose a lesser sentence than that required by state law for conviction for accidents involving personal injury or death in effort to keep defendant in county prison system; court did not have discretion to impose sentence one day shorter than that required by state law, although defendant had waived four days credit for time served.
	Hinds	775 A.2d 859	4/25/2001	PA Super	Sentence	Mandatory	En banc. Statute governing sentencing for delivery or possession of drugs within a school "zone" requires nothing more than the actor deliver or possess drugs within the requisite distance from school and, thus, does not exclude drug activity within a residence located within the zone, even if it is not readily accessible by, nor involves, school age children.
	Drummond	775 A.2d 849	4/25/2001	PA Super	Sentence	Mandatory	En banc. Term "zone" does not exclude a residence which is clearly within a school zone, but not readily accessible by school age children, as that term is used in mandatory sentencing statute applicable to drug convictions in which the transactions occurred within school zone.
	Saler	761 A.2d 581	10/11/2000	PA Super	Sentence	Mandatory	Three-year mandatory minimum of enhanced sentencing statute applied to second conviction for unlawful delivery of cocaine, upon defendant's pleading guilty to two county of that offense, where defendant twice sold cocaine to undercover agent and was arrested on two separate dates. 18/7508.
	Wynn	760 A.2d 40	9/12/2000	PA Super	Sentence	Mandatory	Because the mandatory sentence imposed pursuant to the provisions of statute governing mandatory sentences for violent offenders properly placed proof by a preponderance of the evidence of the sentence enhancement factor upon the Commonwealth, the statute comports with due process principles. 42/9714.
	Campbell	758 A.2d 1231	8/24/2000	PA Super	Sentence	Mandatory	Mandatory sentencing statute was applicable to defendant convicted of drug dealing within 250 feet of playgrounds located on privately-owned apartment complex, though such playgrounds were not associated with a school (18/6317).

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	Hernandez	755 A.2d 1	5/22/2000	PA Super	Sentence	Mandatory	Lower court cannot itself invoke mandatory sentencing provisions, which require imposition of mandatory minimum sentence of five years if defendant is in visible possession of a firearm during the commission of robbery, among other crimes, where Commonwealth does not exercise its discretion to proceed under that mandatory sentencing provision.
	Townsend	747 A.2d 376	2/8/2000	PA Super	Sentence	Mandatory	Under sentencing statute governing violent offenses committed with firearms (42/9712), 'visible possession' means the firearm was seen by or had a visible effect on the victim. A person can visibly possess a hidden firearm under 42/9712 when it is a firearm that facilitated the offense.
	Thomas	743 A.2d 460	12/7/1999	PA Super	Sentence	Mandatory	Under three strikes sentencing law, defendant's prior juvenile adjudications could not be treated as predicate convictions.
	Chiari	741 A.2d 770	11/15/1999	PA Super	Sentence	Mandatory	Decision of whether to invoke provisions requiring imposition of a mandatory minimum sentence for crime of violence committed with a firearm rests solely within discretion of Commonwealth. Sentencing court has no discretion in refusing to apply the mandatory minimum sentence provision for crime of violence committed with a firearm.
	Fogel	741 A.2d 767	11/15/1999	PA Super	Sentence	Mandatory	Mandatory minimum sentence under motor vehicle code for third or subsequent DUI offense prevailed over conflicting sentencing guidelines, and thus, sentencing defendant for DUI as a first-degree misdemeanor rather than a second-degree misdemeanor was appropriate, in case in which defendant had five prior DUI convictions in his lifetime.
	Brown	741 A.2d 726	11/10/1999	PA Super	Sentence	Mandatory	Three strikes sentencing law that permitted court to impose an enhanced sentence upon conviction of third or subsequent crime of violence, which became effective prior to offense for which defendant received enhanced sentence did not violate ex post facto clause of state and federal constitutions as applied to defendant.
	Parker	718 A.2d 1266	10/13/1998	PA Super	Sentence	Mandatory	Robbery defendant's sentence under recidivist statute, 42/9714, based on third conviction for violent crime, was not grossly disproportionate to offense, and was therefore not cruel and unusual punishment, despite claim that no actual violence occurred.
	Vasquez	715 A.2d 468	7/28/1998	PA Super	Sentence	Mandatory	Under 18 Pa.C.S. 7508, prior convictions for mere possession of a controlled substance or conspiracy do not warrant enhanced mandatory minimum sentence for drug trafficking.
	Smith	710 A.2d 1179	4/15/1998	PA Super	Sentence	Mandatory	Mandatory life sentence was not required under 42 PaCS 9715 where defendant was found guilty at the same time and by the same jury of two counts of third-degree murder arising out of same incident.

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	Myers	681 A.2d 1348	7/22/1996	PA Super	Sentence	Mandatory	Because a jury convicted a defendant of possession of marijuana and the marijuana totaled more than ten pounds, the court was required to sentence the defendant to at least the mandatory minimum, and could not impose a more lenient sentence.
	Glenn	675 A.2d 343	4/25/1996	PA Super	Sentence	Mandatory	18 Pa.C.S. 7508 requires court to consider evidence presented at trial and subsequent post-trial proceedings relevant to defendant's personal drug use and base application of the mandatory on that finding. [preponderance of evidence].
	Lawson	671 A.2d 1161	2/16/1996	PA Super	Sentence	Mandatory	Where Commonwealth proved that defendant was in possession of more than 10 grams and less than 100 grams of cocaine, court must sentence consistent with mandatory, notwithstanding expert's failure to actually test 10 grams of 'rocks'.
	Barnyak	639 A.2d 40	1/25/1994	PA Super	Sentence	Mandatory	Reasonable notice of intent to seek a mandatory sentence found when pre-trial discussions between Commonwealth and defense counsel occurred and written notice was provided prior to sentencing.
	Butler	760 A.2d 384	10/27/2000	PA	Constitutionality	Mandatory	<b>Two/Three Strikes:</b> The 'strike two' sentencing statute which imposes a mandatory minimum sentence on a high risk dangerous offender violates due process by placing the burden on the defendant to rebut the presumption that he is a high risk dangerous offender. 42/9714.
	Burnsworth	669 A.2d 883	12/27/1995	PA	Constitutionality	Mandatory	Mandatory sentencing provisions of 18 PaCS7508(a)(1)(i)(ii)(iii) are not constitutionally vague or overbroad as related to penalties based on the number of plants, notwithstanding differences in plant size, maturity and intoxicating productivity.