

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

	Shaw	744 A.2d 739	1/20/2000	PA	Sentence	Prior Record	[DUI] New York offense of driving while ability impaired (DWAI) was not an equivalent offense to PA offense of DUI, for purposes of determining defendant's mandatory minimum sentence as repeat offender; NY DWAI offense required an appreciably lesser degree of impairment than did PA DUI.
	Dickerson	621 A.2d 990	3/17/1993	PA	Sentence	Prior Record	Prior record score under sentencing guidelines cannot include prior offense which has not resulted in conviction before latter offense was committed.
McGowan	DOT	699 A.2d 1344	8/12/1997	PA Cmwlth	Sentence	Prior Record	Although two of driver's DUI convictions were related to one episode of intoxication and occurred one and one-half hours apart, that relationship did not change the fact that the offenses arose from separate acts, and thus, those two convictions could be
	Coleman	854 A.2d 978	6/15/2004	PA Super	Sentence	Prior Record	Defendant's military court martial conviction for committing indecent act could not be considered as federal conviction for purposes of calculating defendant's prior record score under sentencing guidelines in prosecution for sexual assault; proof of indecent assault under state law required proof of lack of consent, but there was no indication that there was judicial finding that acts for which defendant was court martialed were non-consensual. 204 Pa.C.S.A. § 303.8(f)(1).
	Coleman	854 A.2d 978	6/15/2004	PA Super	Sentence	Prior Record	When determining whether military court martial conviction constitutes "federal conviction" for purposes of determining prior record score for state sentencing guidelines, court martials conducted under "catchall" provision of Uniform Code of Military Justice (UCMJ) can be founded on conduct that would be deemed criminal in most jurisdictions, but can also encompass conduct that would not be deemed criminal in most jurisdictions. 10 U.S.C.A. § 934; 204 Pa.C.S.A. § 303.8(f)(1).
	Anderson	830 A.2d 1013	8/7/2003	PA Super	Sentence	Prior Record	TOTALLY CONCURRENT. Although defendant's prior sentences were to be served concurrently, they were not totally concurrent, for purposes of calculating defendant's prior record score; original sentencing court did not intend sentences to be totally concurrent, given that it did not sentence the most serious conviction offense first, and each sentence imposed actually increased maximum sentence.
	Lowery	784 A.2d 795	10/4/2001	PA Super	Sentence	Prior Record	Rule of <i>Apprendi</i> , requiring that any fact except a prior conviction increasing penalty for crime beyond prescribed statutory maximum be submitted to jury and proved beyond a reasonable doubt, did not apply to defendant convicted aggravated assault and sentenced to 54-108 months' imprisonment, despite application of deadly weapon enhancement; defendant's sentence was within statutory maximum for aggravated assault.

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	Ray	751 A.2d 233	4/20/2000	PA Super	Sentence	Prior Record	Under 1991 guidelines, trial court improperly attributed prior record score to both murder and VUFA convictions, where convictions were part of the same transaction.
	Robertson	690 A.2d 254	1/29/1997	PA Super	Sentence	Prior Record	[DUI] A prior Maryland conviction of driving while intoxicated is substantially equivalent to the PA offense of DUI, and therefore is properly used in sentencing offender as a DUI recidivist under 75pa3731(e)(1)(iv).
	Gibson	668 A.2d 552	12/26/1995	PA Super	Sentence	Prior Record	Defendant's sentence for criminal conspiracy, which was enhanced via section 3929(b)(1)(iv) [retail theft], was illegal where Commonwealth failed to allege the defendant's prior retail theft convictions in the criminal information.
	Beatty	601 A.2d 1253	1/21/1992	PA Super	Sentence	Prior Record	[DUI] When determining penalty enhancement for DUI, court must utilize date of offense for which defendant is to be sentenced, and determine number of prior convictions as of that date within 7 year look-back period (i.e. =present viol./prev. conviction).
	Eyster	585 A.2d 1027	1/18/1991	PA Super	Sentence	Prior Record	In order for a prior conviction to apply to the prior record score, the person must have been previously convicted for a crime committed before the current offense, whether or not sentence has been imposed on the prior offense.
	Whisnant	568 A.2d 259	1/10/1990	PA Super	Sentence	Prior Record	[DUI] A prior New Jersey DUI conviction found to be equivalent to PA DUI offense since the statutes are substantially identical.
	Perkins	538 A.2d 930	3/7/1988	PA Super	Sentence	Prior Record	[DUI] Burden is on Commonwealth to prove by a preponderance of the evidence that a prior DUI conviction in New York is equivalent to a PA DUI for purposes of sentencing as a second or subsequent offender.
Lackawana Co. DA	Coss	532 US 394	4/25/2001	US	Sentence	Prior Record	Where the trial court sustained the defendant's objection and eliminated specific prior convictions from his prior record score, and prior record score is one of two determinants of the applicable sentencing range, it is clear that those prior convictions had no role in determining defendant's range of sentence.