

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

	Wilson	934 A.2d 1191	11/20/2007	PA	Sentence	Re-sentencing	Commonwealth could present evidence in support of school-zone enhancement at a sentencing hearing on remand after the original sentence for single count of delivery of controlled substance was vacated based on insufficiency of evidence to support the enhancement provision; vacation of original sentence allowed the trial court to treat the case anew for evidentiary purposes. 18 Pa.C.S.A. § 6317; 204 Pa.Code § 303.9(c).
	Whitmore	912 A.2d 827	12/29/2006	PA	Sentence	Re-sentencing	The Superior Court lacked authority to sua sponte remove trial court judge from resentencing for possession with intent to distribute controlled substance; neither defendant nor Commonwealth had sought judge's recusal and judge had not been given opportunity to address issue of recusal.
	Wallace	870 A.2d 838	3/29/2005	PA	Sentence	Re-sentencing	Trial court resentencing defendant after probation revocation may impose a longer sentence than sentence under the plea agreement at the time of the original sentencing; the court possesses the same sentencing alternatives that it had at the time of the initial sentencing; abrogating Commonwealth v. Anderson, 434 Pa.Super. 309, 643 A.2d 109. 42 Pa.C.S.A. § 9771.
	Wallace	870 A.2d 838	3/29/2005	PA	Sentence	Re-sentencing	The presiding judge can sentence the defendant who pleads guilty to any term allowed under the Sentencing Code, provided that the defendant has the chance to withdraw his guilty plea if the judge's sentence is not in accordance with his negotiated agreement. Rules Crim.Proc., Rule 591(A), 42 Pa.C.S.A.
	McHale	924 A.2d 664	5/9/2007	PA Super	Sentence	Re-sentencing	Re-sentence imposed on remand, for two counts of causing an accident with no license, insurance fraud, duty to stop in the event of an accident, and altering or forging credentials and documents after defendant's aggravated assault convictions were reversed, in which the new sentence imposed a greater prison term than the original sentence due to the imposition of a consecutive sentence, did not violate due process; sentence was not increased on remand since the total aggregate sentence remained the same, and thus there was no presumption of judicial vindictiveness. U.S.C.A. Const.Amend. 14.

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	McHale	924 A.2d 664	5/9/2007	PA Super	Sentence	Re-sentencing	The trial court provided an adequate explanation for re-sentencing defendant to a total aggregate prison term for the offenses of causing an accident with no license, insurance fraud, duty to stop in the event of an accident, and altering or forging credentials and documents identical to the sentence originally imposed before defendant's two convictions for aggravated assault were reversed; evidence established that defendant's car struck the victims with tremendous force, resulting in the victims being thrown 39 and 79 feet from the point of impact, defendant fled the scene and days later was still trying to hide his car from police. and defendant had refused to purchase insurance for his motor vehicle for a long time and had numerous citations over a long period of time for driving with a suspended license. 42 Pa.C.S.A. § 9721(b).
	Wilson	866 A.2d 1131	12/28/2004	PA Super	Sentence	Re-sentencing	The Commonwealth could not present evidence in support of sentencing enhancement for delivery of controlled substance within 1,000 yards of school at new sentencing hearing after reversal and remand based on lack of such supporting evidence at original sentencing hearing, and thus defendant was required to be resentenced without school-zone enhancement. 18 Pa.C.S.A. § 6317(b).
	Johnson	860 A.2d 146	9/24/2004	PA Super	Sentence	Re-sentencing	Sentencing court's imposition of consecutive sentences on resentencing following defendant's successful appeal violated defendant's due process rights and constituted an illegal sentence, where concurrent sentences were imposed at time of original sentencing, and imposition of consecutive sentences on resentencing resulted in harsher sentence. U.S.C.A. Const.Amend. 14.
	Johnson	860 A.2d 146	9/24/2004	PA Super	Sentence	Re-sentencing	Correction of a clerical error may result in an increased sentence where the sentencing judge clearly stated the sentence on the record; however, presumption that the written sentencing order is what the sentencing judge intended increases with the length of time that the written sentencing order goes unchallenged.
	Coleman	854 A.2d 978	6/15/2004	PA Super	Sentence	Re-sentencing	Trial court had jurisdiction over sentence, and could impose new sentence on reconsideration in prosecution for sexual assault, where Commonwealth filed motion for reconsideration of sentence within 10 days of imposition of sentence. Rules Crim.Proc., Rules 720-721, 42 Pa.C.S.A.

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	Bailey	818 A.2d 543	2/25/2003	PA Super	Sentence	Re-sentencing	Defendant's resentence for criminal conspiracy to deliver controlled substance and delivery of controlled substance was not illegal or contrary to general scheme of sentencing guidelines, even though it was nearly identical in severity to original sentence imposed, which Supreme Court vacated after concluding defendant was wrongly convicted of counts of corrupt organizations; issue on appeal was whether new sentence was legally sound on its own, not how it appeared in comparison to extinguished sentence.
	Robinson	817 A.2d 1153	2/14/2003	PA Super	Sentence	Re-sentencing	Remand for resentencing was not required upon Superior Court's reversal of aggravated assault conviction, where assault sentence was less than and to run concurrent to sentence imposed on a robbery conviction.
	Harclerode	768 A.2d 1132	2/5/2001	PA Super	Sentence	Re-sentencing	Where a defendant's illegal sentence is corrected at resentencing and neither the minimum nor maximum aggregate term of imprisonment is increased by virtue of the new sentence, there is no constitutional violation.
	Bartrug	732 A.2d 1287	6/7/1999	PA Super	Sentence	Re-sentencing	Postconviction court could vacate entire sentence prior to resentencing, rather than address only that part of sentence that was illegal.
	Serrano	727 A.2d 1168	3/16/1999	PA Super	Sentence	Re-sentencing	At resentencing following revocation of IP sentence, the procedural posture of the case is just as it is for sentence following guilty pleas, jury trials, and nonjury trials, including the right to timely request modification of sentence.
	Philipp	709 A.2d 920	4/14/1998	PA Super	Sentence	Re-sentencing	Rule of resentencing following revocation of IP is analogous to that set forth for resentencing following revocation of probation.
	Postell	693 A.2d 612	4/7/1997	PA Super	Sentence	Re-sentencing	Increasing defendant's sentence upon motion for reconsideration after defendant violated specific conditions of first sentence by telephoning victim did not violate 8th Amendment's prohibition of cruel & unusual punishment; telephone call was not quid pro