



Monitor

McKnight Elected Vice-Chair

During the May 2003 Quarterly Meeting, District Attorney Merritt E. "Ted" McKnight was elected Vice-Chair of the Commission, replacing Centre County President Judge Charles C. Brown, Jr.,



District Attorney Merritt E. "Ted" McKnight-

whose term on the Commission had expired. District Attorney McKnight was appointed to the Commission by Governor Tom Ridge in March 1996, and reappointed in 1998, 2000, and 2002. He serves as a member of the Research and the Budget & Management Committees.

Mr. McKnight received his A.B. degree from Grove City College (1969) and his J.D. degree from Dickenson School of Law (1972). He has served as District Attorney of Clinton County since his initial election in 1984, and also maintains a private law practice. He is a former president of both the Pennsylvania District At-

torneys Association and the Pennsylvania District Attorneys Institute, and previously headed the Association's Sentencing Guidelines Committee. Prior to becoming District Attorney, Mr. McKnight served as a public defender for seven years.



During the same meeting, Mr. McKnight was appointed to Chair the Commission's newly created Guidelines Revision Subcommittee. The other members of the subcommittee are: Judge Michael Conahan, Judge Jeffrey Manning, and Attorney William Tully.

SGS Web/AOPC DJ Interface Deployed

A new feature has been added to the SGS Web application: an interface with the Administrative Office of the Pennsylvania Court (AOPC) District Justice (DJ) system.

The implementation of this interface promises to be the first in a series of cooperative arrangements between the Commission and the AOPC which are aimed at streamlining the information and data entry tasks

involved in the conviction and sentencing of offenders in the Commonwealth.

Through this interface, SGS Web users will be able to import the offender and charge information on cases bound over to Common Pleas court, thus eliminating redundant data entry while increasing the accuracy of the information.

The design of the inter-

face allows users to search the District Justice database for specific Offense Tracking Numbers (OTNs). The search can be conducted either on a case by case basis, or the users may choose to enter a list of OTNs, submit the request, and return to the application later to process the results.



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2003 Scheduled Training Sessions

- Wednesday, Aug. 27 (PCCD, Harrisburg)*
- Intro to Sentencing (3 CLE)
- Wednesday, Sept. 24 (Penn Stater, State College)*
- 5th Edition Guidelines (6 CLE)
- Wednesday, Oct. 29 (PCCD, Harrisburg)*
- In-Depth Look at Sentencing (3 CLE)
- Wednesday, Nov. 19 (PCCD, Harrisburg)*
- 5th Edition Guidelines (6 CLE)

For more information, or to schedule an on-site training session, contact Carrie Peters [(814) 863-2797, ext. 2 or carriep@psu.edu].

2003 Appointments to the Commission

Legislative Appointments



- « « REPRESENTATIVE FRANK DERMODY (D, Allegheny)

Reappointment. Rep. Dermody was appointed to the Commission in January 1991 and has served as Chair of the Commission since October 1997. He was elected to the House of Representatives in 1990 and serves as a member of the Judiciary, Professional Licensure, Tourism & Recreational Development, and Transportation committees.

- REPRESENTATIVE MARK McNAUGHTON (R, Dauphin) » »

Appointment. Rep. McNaughton was appointed to the Commission on March 18, 2003. He serves as a member of the Commission's Budget & Management and Data & Field Services Committees. He was elected to the House of Representatives since 1996 and serves as a member of the Judiciary, Games & Fisheries, Liquor Control, and Local Government Committees.



- « « SENATOR JAY COSTA (D, Allegheny)

Reappointment. Sen. Costa was appointed to the Commission in February 1997. He serves on the Commission's Budget & Management and Policy Committees. He was elected to the Senate of Pennsylvania in 1996 and is Democratic Chair of the Senate Judiciary Committee and a member of the Appropriations, Public Health & Welfare, and Transportation Committees.

- SENATOR MARY JO WHITE (R, Venango) » »

Appointment. Sen. White was appointed to the Commission on March 10, 2003. She serves as a member of the Commission's Budget & Management and Data & Field Services Committees. She was elected to the Senate of Pennsylvania in 1997 where she is Chair of the Environmental Resources & Energy Committee, Vice-Chair of the Consumer Protection & Professional Licensure Committee, and member of the Appropriations, Communications & Technology, Judiciary, and Public Health & Welfare Committees. She is Majority Caucus Administrator.



Judicial Appointments

- JUDGE JEFFREY A. MANNING (Allegheny)

Reappointment. Judge Manning was appointed to the Commission in June 2002 to complete the remaining term of the late Judge Robert E. Dauer, and was re-appointed in 2003. He is a member of the Commission's Policy Committee. Judge Manning was appointed a judge of the Court of Common Pleas of Allegheny County in April 1988, elected to a ten-year term in 1989, and retained for a second term in 1999.

- JUDGE JEANNINE TURGEON (Dauphin)

Appointment. Judge Turgeon was appointed to the Commission on April 11, 2003. She serves as a member of the Commission's Research Committee. She has been a judge of the Court of Common Pleas of Dauphin County since 1992 and is an Associate Professor of Criminal Law at Penn State-Harrisburg.



Gubernatorial Appointment



- PROFESSOR STEVEN L. CHANENSON
(Villanova University School of Law)

Reappointment. Professor Chanenson was appointed to the Commission in January 2002 to complete the remaining term of Professor Laurie Magid, and was reappointed in 2002 and 2003. He is Chair of the Commission's Research Committee and a member of the Policy Committee. Professor Chanenson joined the faculty of the Villanova University School of Law in 2000 as a Visiting Professor, and is presently an Assistant Professor of Law.

42 Pa.C.S.A. §2152. Composition of the Commission

- ⇒ Two members of the House of Representatives
- ⇒ Two members of the Senate of Pennsylvania
- ⇒ Four judges of courts of record
- ⇒ Three persons appointed by the Governor:
 - a district attorney
 - a defense attorney
 - a professor of law or a criminologist

The members of the Commission shall serve for terms of two years and until a successor has been selected and qualified. A vacancy on the Commission shall be filled for the balance of the term.

Recent Commission Activities & Decisions

The Commission's second quarterly meeting of 2003 was held on May 13-14 In Scranton. During the Tuesday evening Work Session, the Commission noted the service of three former members: Senator Jeffrey Piccola, Representative Will Gabig, and Centre County President Judge Charles C. Brown, Jr. Chairman Dermody also discussed new committee assignments and the establishment of two Policy sub-committees to address the Guideline Revisions as well as long-term issues.

QUARTERLY MEETING

Budget & Management

The Commission welcomed three new members: Senator Mary Jo White (R, Venango), Representative Mark McNaughton (R, Dauphin), and Judge Jeannine Turgeon (Dauphin). Additionally, Clinton County District Attorney Merritt E. 'Ted' McKnight was elected Vice Chair for 2003-2004. A six-month extension to the MOU between the Commission and Penn State University was approved, as well as several amendments to the staff Policies & Procedures Manual. A number of fiscal matters

were approved, including:

- FY02/03 budget modifications;
- FY03/04 proposed operating budget;
- Service Purchase Contract with PSU;
- Service Purchase Contract with Professor Joseph Sabino Mistick for legal services;
- DCSI applications for :
 - Sentencing/Community Justice
 - Corrections Policy Research
 - Financial Resource Analyst
 - SGS Web Expansion/Support

Data & Field Services

The deployment of SGS Web continues, with demonstrations and/or training provided to over twenty counties. An interface with the AOPC/DJ system has been deployed, and an interface with the AOPC/CP system is being discussed. The Commission discussed several proposed changes to the *Release of Information Policy* to streamline notifications and reporting; the matter was referred back to the committee. Sentences for 2001, 2002, and 2003 are being entered using SGS Web; to date, nearly

50,000 2001 sentences have been entered.

Research

Work continues on three research projects: Boot Camp Evaluation; RIP/D&A Evaluation; and Victim Restitution/Compensation. A Boot Camp 'watch list' is being developed in conjunction with the JNET Office to allow the Commission to receive automatic electronic notifications of graduates who have been arrested. The Commission also approved participation in a intermediate punishment research project with the Vera Institute of Justice if funding is received from the US Department of Justice.

Policy

Two Policy Sub-Committees have been established: Long-Term Policy, chaired by Judge Hughes and Guideline Revisions chaired by District Attorney McKnight. The Executive Director provided an overview of the Commission to the House Judiciary Committee during an informational meeting, and both he and Judge Hughes have been appointed to an Advisory Committee on Geriatric and Seriously Ill Inmates.

Key Sentencing-Related Decisions (April 2003-July 2003)

Brief summaries of these and other cases are now found at the "Sentencing Guidelines & Information" tab on the Commission's web site: <http://pcs.la.psu.edu>

Appeal

Com. v. Mann (820 A.2d 788)

Credit

Com. v. VanSkiver (819 A.2d 69)

Com. v. Tout-Puissant (823 A.2d 186)

McMillian v. PBPP (824 A.2d 350)

Sentencing Issues

Com. v. Bailey (818 A.2d 543) (resentence)

Com. v. Gooding (818 A.2d 546) (Gdl)

Com. v. McNabb (819 A.2d 54) (Gdl) ▶▶

Com. v. Norris (819 A.2d 568) (mandatory)

Com. v. Moran (823 A.2d 923) (modif)

Com. v. Parlante (823 A.2d 927)(discretion)

Contrary to prior decisions of this court, the Pennsylvania Supreme Court in its December 19, 2002, *Mouzon* decision, held that a claim for excessiveness raised against a sentence within the statutory limits does *not* fail to raise a substantial question as a matter of law. In fact, the *Mouzon* Court interpreted section 9781 to require that an appellate court vacate a sentence and remand the case if it finds that a sentence within the sentencing guidelines is clearly unreasonable.

Sentencing Guidelines Q&A...

Topic... Driving Under Suspension (DUI related)

Is the offense of DUS/DUI-related [75 Pa. C.S.A. §1543(b)] subject to a mandatory penalty?

Yes. According to 75 Pa.C.S.A. §1543(b), the offense of DUS/DUI-related is a summary offense which includes a mandatory fine of \$1,000 and a mandatory period of imprisonment of not less than 90 days.

Can someone convicted of DUS/DUI-related be sentenced to something other than 90 days confinement?

Yes. A person convicted of 75 Pa.C.S.A. §1543(b) may be sentenced to 90 days In-

termediate Punishment in lieu of 90 days confinement. The only options that will satisfy the 90-day mandatory minimum are: (i) residential inpatient or a residential rehab center; (ii) house arrest and electronic surveillance combined with D&A treatment; or (iii) partial confinement program, such as work release, work camps and half-way facilities, combined with D&A treatment.

If someone is convicted of DUS/DUI-related, does it matter whether the individual was under the influence at the time he/she committed the offense?

Yes. As of December 3, 2002, 75 Pa.C.S.A. §1543(b) was amended to include a sec-

tion related to an individual who drives under suspension with a BAC equal to or greater than .02%, or under the influence of a controlled substance [75 Pa.C.S.A. §1543(b)(1.1)]. This new offense carries the following mandatory penalties:

⇒ 1st offense: Summary offense; identical punishment as 1543(b).

⇒ 2nd offense: M3; \$2,500 fine; mandatory minimum imprisonment of six months.

⇒ 3rd offense: M1; \$5,000 fine; mandatory minimum imprisonment of two years.

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The Pennsylvania Commission on Sentencing is an agency of the General Assembly located on the University Park campus of the Pennsylvania State University. The Commission was created in 1978 for the primary purpose of creating a consistent and rational statewide sentencing policy to promote fairer and more uniform sentencing practices.

The *Monitor* is a quarterly publication of the Commission. All inquiries should be directed to the Commission at the address or numbers listed above.

MONITOR (SUMMER 2003)

Commonwealth v. Eric Norris (819 A.2d 568) (PA Superior Court, 3/10/2003)

“...At sentencing, the trial court declined to impose the twenty-five year minimum sentence mandated by section 9714(a)(2) because the bill of information did not contain ‘proper notice of the third strike rather than a second strike.’ Trial Court Opinion (T.C.O.), 12/31/01, at 2. Accordingly, pursuant to the ‘second strike’ provision of section 9714(a)(1), the trial court sentenced Norris to ten to twenty years’ imprisonment for aggravated assault, with concurrent terms of two and one-half to five years’ imprisonment for PIC and six to twelve years’ imprisonment for criminal conspiracy. The remaining convictions merged for sentencing purposes...”

“...In the instant case, the trial court concluded that the Commonwealth’s notice of its intent to seek the mandatory sentence under section 9714 was misleading and, therefore, refused to impose the three strikes provision of

section 9714(a)(2)... Contrary to these conclusions, the Commonwealth argues that its notice was reasonable and not misleading and that the trial court’s refusal to impose the applicable three strikes provision resulted in an illegal sentence.

“...(W)e hereby conclude, as we did in *Vasquez*, that the Commonwealth’s notice, which invoked section 9714 generally, and without specifying whether it sought imposition of the two strikes provision of subsection (a)(1) or the three strikes provision of (a)(2), constituted ‘reasonable notice’ and was not misleading. The Commonwealth’s notice is deemed to have ‘encapsulated all relevant provisions’ of section 9714. See *Vasquez*, 744 A.2d at 1283. This conclusion makes sense in light of the remaining language of section 9714(d), which indicates that the applicability of section 9714 is to be *deter-*

mined at the time of sentencing, with the sentencing court having before it the benefit of a complete criminal record and determining, by a preponderance of the evidence, the defendant’s previous convictions of violent crimes. 42 Pa.C.S. §9714(d).

“In other words, the plain language of section 9714(d) indicates that the sentencing court, by reviewing the defendant’s criminal record at the time of sentencing, determines whether the defendant is subject to the two strikes provision of subsection (a)(1) or the three strikes provision of subsection (a)(2). If we were to require that the Commonwealth’s pre-sentence notice specify the Commonwealth’s intention to seek a mandatory sentence under the two strikes or three strikes provision, most of section 9714(d) would be deemed surplusage... Surely, the legislature did not intend such an absurd ...”