

YEAR IN REVIEW

JUVENILE JUSTICE CASES

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BAIL

A Juvenile v. Commonwealth, 480 Mass. 1012 (8/13/18)

- Multisystem youth, on run, held on \$50K cash bail, accessory to murder/ABDW
- Did bail order violate due process rights under Brangan, equal protection, or art. 30 separation of powers?
- “In the particular circumstances presented here, and in particular on the record before us”, no DP violation
 - Not required to set bail juvenile can post, but required findings and reasons for bail=detention
 - “This holds true regardless of whether the bail determination pertains to a juvenile or adult defendant”
 - Petitioner’s obligation to show judge did not engage in fair and meaningful consideration of reasonable alternatives to bail
 - Include transcript, affidavit of counsel (audio file), “some other reliable source” of content of bail hearing
- SJC recommended bail form be revised to “better reflect” need for alternative nonfinancial conditions for juveniles
- Did not reach separation of powers, no EP (DCF custody v. parental custody)

BAIL, cont'd

Josh J. v. Commonwealth, 478 Mass. 716 (1/31/18)

- Juvenile arraigned May, cash bail set, G.L. c. 276, § 58 bail warnings given. August, new charges. C moved to revoke bail under § 58. Allowed (w/o reference to § 58 or § 58B or length of revocation), bail revoked, bail review January (90 days).
- Before bail review date, new offenses resolved, juvenile held on original charges. Moved to vacate bail revocation order. Denied. 211/3 petition, hearing, interim order, original charges resolved (Del/prob), reserved and reported.
- Ambiguous bail revocation framework....which controls: 60 day revocation under § 58 or 90 day revocation under § 58B?
- Either, C's discretion. If under § 58B, "heightened showing"
 - No substantive or procedural DP violation in § 58B, citing Paquette/58
- NB: Bail statute amended as part of CJRA. Codified Brangan

SENTENCING

Commonwealth v. Perez, 480 Mass. 562 (9/14/18)

- Non-homicide offender, PE longer than 15 years for aggregate sentence
- PE presumptively disproportionate, violates art. 26
 - BUT does not require “shorter aggregate sentence”
- Miller hearing to consider whether “extraordinary circumstances” warrant longer PE
 - (1) Attributes of the offender
 - (2) Home and family environment
 - (3) Circumstances of the offense
- On remand from Perez I, trial judge found #3 outweighed #2
- Reversed: criminal conduct alone not sufficient. All 3 have to be considered
 - Crime so bad and juvenile so irredeemable, longer PIP warranted
 - C has to show “no reasonable possibility of juvenile being rehabilitated”
- Clarified SOR: abuse of discretion or error of law
- C burden of proof not decided: argue clear and convincing, judge should put on record if result different under C&C v. preponderance
- New sentencing hearing v. resentencing
 - Resentenced: restructure sentences already received
 - New hearing: evidence of conduct since original hearing

SENTENCING, cont'd

Commonwealth v. Lutskov, 480 Mass. 575 (9/14/18)

- 1999 YO armed home invasion and other offenses
 - AHO: min man of 20 years
 - After Diatchenko, juvenile filed Rule 30 motion
- Non-homicide min man that creates longer period of incarceration than 15 yrs violates art. 26 and Perez
- Remanded for resentencing
 - may impose committed sentence with PE > 15 yrs only after Miller hearing / Perez factors
 - at resentencing, judge could consider “postconviction rehabilitation”
 - IF committed sentence imposed, “may not impose a sentence below the minimum 20 year sentence required by statute”
 - but, unless absent extraordinary circumstances, PE in 15 yrs
 - Lutskov sentences may create wrinkles when MPB calculates PE dates

PREDICATE OFFENSES/ACCA

Commonwealth v. Baez, 480 Mass. 328 (8/23/18)

- 18 yo indicted unlawful possession F/A as ACC: 10-15 yrs
 - Judge raised issue of Miller, reported question
- ACCA G. L. c. 269, § 10G enhanced penalties if “previously convicted” of a “violent crime” or “serious drug offense”
 - Violent crime definition from G. L. c. 140, § 121, which includes delinquency
 - Expressly declined to decide if applies to delinquencies for “serious drug offense”
- Enhanced sentence not unconstitutional because D is an adult, not being punished for juvenile misdeeds
- Gants concurrence: encouraged legislature to “consider the wisdom and fairness” of min man enhanced sentences for predicate delinquencies in light of 2018 CJRA

MURDER

Commonwealth v. Fernandez, 480 Mass. 334 (8/24/18)

- Juvenile murder trial in 2003
 - D motion for funds for expert on adolescent brain development eve of trial
 - Denied, untimely and insufficiently supported
 - Tried, convicted, appealed
- Affirmed. Treated motion for funds as motion for continuance, no A of D
- “Lack of support”
 - Counsel did not provide “any information suggesting that juvenile was a particularly psychologically troubled adolescent” falling into group of adolescents described in brain scan literature
- “Acknowledgement that adolescents are constitutionally different from adults has been precisely limited to our consideration of juvenile sentencing”
- 33E review?
 - Brown 2016 left open, dodged Q in James 2017
 - Applied here without mention at OA or analysis

STATUTORY RAPE

Romeo & Juliet

Commonwealth v. Wilbur W., 479 Mass. 397 (4/25/18)

- 12 yo juvenile charged with 2 counts of ROC by force, 8 yo V
 - Friends, playing video games, oral and anal sex, V's mom found picture of J's penis on V phone
 - Trial, delinquent of lesser included stat rape
- Strict liability stat rape does not violate fed and state DP and EP as to juvenile
 - Juvenile: policy behind state rape: protect children from sexual abuse, adults assume risk, makes little sense to impose on juvenile with adolescent brain limiters
- Rational basis review
 - Legislature established 16 as age of consent, stat rape laws protect all children < 16yo
- No arbitrary enforcement or experimentation among consenting juveniles
 - V testified afraid, compelled
- Selective enforcement claim
 - No showing based on impermissible classification, children not similarly situated
- Gants concurrence on Romeo & Juliet issue: “prosecutors potentially have the ability to prosecute at least one in five ninth and tenth graders for rape and abuse of a child.” Start requiring proof of “abuse” as well as intercourse.

MOTION TO DISMISS

Commonwealth v. Orbin O., 478 Mass. 759 (2/5/18)

- 14 yo, private delinquency complaint for A&B, school-based conduct (shouldered past a para) (2016)
- Dismissed for lack of PC under Humberto H., C Rule 15 appeal
- Reversed
 - PC for A&B, juvenile may have intended to leave but also intended to make contact
- For private complaints
 - ADA affirmatively moves for arraignment, judge can't dismiss in BI
 - If not, separation of powers does not apply and judge can review and dismiss in BI

MOTION TO DISMISS, cont'd

Commonwealth v. Newton N., 478 Mass. 747 (2/5/18)

- 10 yo, police complaint, multiple charges (B&E, larceny, disorderly)
 - Police: “deranged statements”, mental evaluation
 - Ambulance: punching himself in genitals, restrained
 - Autistic, medication not being managed
- Dismissed for lack of PC under Humberto H., C Rule 15 appeal
- Reversed
 - Intent not relevant to PC
 - Criminal responsibility and mental impairment/diminished capacity are affirmative defenses
 - Age/adolescent brain not within probable cause calculus
- Humberto H. only gave juvenile court judges authority to dismiss pre-ARR, not to dismiss in BI when supported by PC
 - Separation of powers
 - Unless legislative authorization (VALOR Act)
 - G.L. c. 119, § 58 gives discretion at dispo

MOTION TO DISMISS, cont'd

Commonwealth v. Geordi G., 94 Mass. App. Ct. 82 (9/20/18)

- 12 yo, private delinquency complaint for A&B, school-based conduct (pushed a teacher and hip-bumped principal) (2016)
 - No mention of IEP in application, school did not make ADA aware of special needs
- Dismissed for lack of PC under Humberto H., C Rule 15 appeal
- Reversed
 - PC for A&B, juvenile may have intended to leave but also intended to make contact
 - Newton and Orbin govern: C “consider carefully” whether to proceed, if moves to proceed, judge can’t dismiss.
- Obligation of school personnel/applicant to inform CM of IEP
 - Federal law required school to transmit SPED records to “appropriate authorities” = ADA
 - “Preterm question of whether O’Dell applies to private complaints or may be raised prearraignment”, withheld evidence would not have resulted in finding of no PC

PENDING CASES

Commonwealth v. Lugo, SJC-12546

- Argued 11/5/18
- Whether mandatory life with parole for second degree juvenile homicide offenders is unconstitutional and whether this cohort is entitled to an individualized sentencing hearing

Commonwealth v. LaPlante, SJC-12570

- Argued 3/5/19
- Whether sentence of 3 consecutive life sentences with a PIP of 45 yrs is unconstitutional denial of meaningful opportunity for release

Commonwealth v. A Juvenile, SJC-12625, -12660, -12669

- Argument 4/4/19
- Reform Act Cases: retroactivity and interpretation of first offense misd

QUESTIONS



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