From: ACLU of Pennsylvania
Re: Community service in traffic cases upon default of payment
Updated February 3, 2020

MEMORANDUM

Judges differ on whether they allow defendants to perform community service in traffic cases if they cannot afford to pay fines and costs. While some rationales have been put forth to suggest why this is not permitted, that perspective has never been backed by a detailed legal analysis. To the contrary, as this memorandum sets forth, a proper statutory interpretation analysis shows that community service *is* permitted in such cases.

Community service is authorized by 42 Pa.C.S. § 9730(b)(3), which provides that when the court holds a payment determination hearing (i.e. under Rule 456) and determines that the defendant is *unable* to pay, the court may "sentence the defendant to a period of community service as the issuing authority, senior judge or senior magisterial district judge finds to be just and practicable under the circumstances." The question is whether this applies to offenses arising under Title 75.

There are two main reasons proffered for why community service is not permitted for traffic offenses under Title 75. The first theory is centered on 75 Pa.C.S § 6504, titled "Inability to pay fine and costs," specifies that a defendant who is unable to pay may make payments in installments.[1] The theory is that because § 6504 does not specify that community service is another option, and because it is a more specific statute (governing only offenses under Title 75) than § 9730 (governing all offenses), then it alone governs. Such a theory represents a fundamental flaw in statutory interpretation.

Certainly the provisions in Title 42 apply equally to offenses under Title 75 as they do to those under Titles 18, 34, etc. *See*, *e.g.*, *Commonwealth v. Church*, 522 A.2d 30, 32-33 (Pa. 1987) (noting that pursuant to 42 Pa.C.S. § 9726, courts must consider a defendant's ability to pay when imposing non-mandatory fines under both the Criminal and Motor Vehicle Code). The question is therefore whether the generally-applicable provision in 42 Pa.C.S. § 9730 gives way to the more specific language in 75 Pa.C.S § 6504. Under the Rules of Construction, both § 9730 and § 6504 must be read *in pari materia* and construed as "one statute" because they both address the same topic of collecting fines and costs. 1 Pa.C.S. § 1932. Moreover, a specific statute trumps a more general one *only if* the two are "irreconcilable":

> Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted

[1] Section 6504 also permits a defendant to be jailed at a rate of $40/day if he fails to comply with a payment plan, although this of course can only occur if the defendant is able to pay and willfully refusing to pay—a point made clear in numerous appellate decisions. *See*, *e.g.*, *Commonwealth v. Mauk*, 185 A.3d 406(Pa. Super. Ct. 2018); *Commonwealth v. Smetana*, 191 A.3d 867 (Pa. Super. Ct. 2018).

> later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa.C.S. § 1933. Thus, the court's obligation is to read the two statutes in a way that gives simultaneous effect to each of their provisions. *See*, *e.g.*, *Commonwealth v. Smith*, 544 A.2d 991, 996 (Pa. Super. Ct. 1988) (en banc).

Here, the two statutes are rather plainly *not* irreconcilable. Section 6504 is simply silent about community service; it does not forbid community service, nor does it say that a payment plan is the *only* option when a defendant is unable to pay. It explicitly says that the court "*may* . . . order payment" in installments. 75 Pa.C.S. § 6504(a). Another perfectly valid option is that the court may also permit community service under § 9730(b)(3). Absent some explicit prohibition within § 6504, the statutes are not irreconcilable, as that is a high bar. *See Hoffman Mining Co., Inc. v. Zoning Hearing Bd. of Adam Twp.*, 32 A.3d 587, 594 (Pa. 2011) ("irreconcilable" means that "simultaneous compliance . . . is impossible"). An interpretation that views them as such is overly restrictive in light of the instruction given by 1 Pa.C.S. § 1933. The legislature adopted § 9730 in 1992, more than a decade after § 6504. It had the option of restricting the use of community service in traffic cases, but it did not.[2]

The second reason sometimes proffered as to why community service is not permitted in traffic cases is because 42 Pa.C.S. § 1520 permits a court to sentence a defendant to an "adjudication alternative program" *unless* it is a Title 75 or Title 34 case. The theory here is that because § 1520 excludes traffic offenses, it somehow indicates an intention on the part of the legislature to not permit community service for traffic cases under any circumstances. That, however, is not how statutory interpretation works: "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." *Paxon Maymar, Inc. v. Liquor Control Board*, 312 A.2d 115, 118 (Pa. Commw. Ct. 1973) (en banc). Sections 1520 and 9730 deal with two entirely different procedural postures. The alternative adjudication under § 1520 occurs *at the time of sentencing*, instead of a guilty conviction, as the court would assign the alternative "in lieu of making a disposition." By contrast, community service under § 9730 occurs only *after* a defendant is sentenced to pay fines and costs, defaults, and the court holds a payment determination hearing. Not only is there no conflict between these statutes, but the "intent" of the legislature in § 1520 is aimed at an entirely different type of outcome.[3]

The Court of Judicial Discipline decision in *In re Davis*, 954 A.2d 118, 124 (Pa. Ct. Jud. Disc. 2007) does not suggest otherwise. Among the various unlawful acts described in that case, the judge was "sentenc[ing] defendants charged with summary traffic offenses to community service even though Vehicle Code offenses are specifically excluded from alternative adjudication programs" due to § 1520. This is certainly not the same as sentencing a defendant to pay fines and costs and only later converting the fines and costs to community service *if* the defendant proves unable to pay them. Not only are these distinct parts of a case, which the legislature has

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[2] Rule 456 of the Rules of Criminal Procedure, governing payment of fines, costs, and restitution in summary cases, also makes no distinction between traffic and non-traffic cases. Indeed, the Comment to the rule specifically references 42 Pa.C.S. § 9730—not 75 Pa.C.S. § 6504.

[3] Section 1520 also predates § 9730.

chosen to treat distinctly,[4] but no principle of statutory interpretation would apply the bar in § 1520 to the type of community service explicitly authorized by § 9730.[5]

[4] Otherwise, §§ 1520 and 9730 would be duplicative.

[5] 75 Pa.C.S. § 6504 specifically references 42 Pa.C.S. § 9758 and its discussion of "installment payments." It does not, however, cite § 1520, again suggesting no intent on the part of the legislature to specifically limit community service.