

SUPREME COURT OF VIRGINIA

Botkin v. Commonwealth

819 S.E.2d 652 (Va. 2018) · No. Record No. 171555 · Decided November 1, 2018

SUMMARY

The Supreme Court of Virginia held that mandatory minimum terms imposed under Virginia Code § 18.2-308.2(A) must be served consecutively with any other sentence, including mandatory minimum terms imposed for other violations of the same statute. Because the circuit court ordered Botkin’s sentences to run concurrently, the court held the sentences void ab initio and remanded for a new sentencing hearing.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice S. Bernard Goodwyn; Lemons, C.J.; Goodwyn, J.; Mims, J.; Powell, J.; Kelsey, J.; McCullough, J.; Millette, S.J.
JURISDICTION	Virginia
DECIDED	November 1, 2018
DOCKET	Record No. 171555
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Botkin appealed the Court of Appeals of Virginia's published decision reversing the circuit court's order that his sentences for two convictions under Code § 18.2-308.2(A) run concurrently. The Supreme Court of Virginia affirmed the statutory interpretation but vacated the concurrent sentences and remanded for a new sentencing hearing.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Shawn Lynn Botkin v. Commonwealth of Virginia

TOPICS

- sentencing
- statutory interpretation
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Code § 18.2-308.2(A)'s requirement that mandatory minimum terms be served consecutively with any other sentence requires consecutive service of multiple mandatory minimum terms imposed for multiple violations of that statute.
2. Whether the Court of Appeals properly remanded for resentencing, and whether Botkin was entitled to a new sentencing hearing rather than merely entry of a corrected sentencing order.

HOLDINGS

1. Code § 18.2-308.2(A) requires mandatory minimum terms imposed for multiple violations of that section to be served consecutively with any other sentence, including other mandatory minimum terms imposed under the same section.
2. Because the circuit court imposed sentences in violation of the statutory requirement that they run consecutively, the sentences were void ab initio, and Botkin was entitled to a new sentencing hearing on both sentences.

KEY QUOTATIONS

"In other words, "any" means "any."" (at 5)

"Mandatory minimum terms of confinement ordered pursuant to Code § 18.2-308.2(A) must run consecutively with any other sentence, including other mandatory minimum terms ordered pursuant to Code § 18.2-308.2(A)." (at 8)

FACTUAL BACKGROUND

Botkin was charged with two firearm-possession offenses under Code § 18.2-308.2(A), based on possessions alleged to have occurred on separate occasions in November 2015. He pleaded guilty to both offenses. The circuit court imposed five-year sentences for each conviction, suspended three years of each sentence, and ordered the sentences to run concurrently.

PROCEDURAL HISTORY

Botkin pleaded guilty in the Circuit Court of Scott County to two counts of possessing a firearm within ten years after a felony conviction. The circuit court imposed five-year sentences on each count, with three years suspended on each, and ordered the sentences to run concurrently. The Commonwealth appealed, and the Court of Appeals reversed and remanded for sentencing consistent with its interpretation that the mandatory minimum terms must run consecutively. The Supreme Court of Virginia affirmed that interpretation but held that Botkin was entitled to a new sentencing hearing because the concurrent sentences were void ab initio.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of the Court of Appeals was affirmed as to its interpretation of Code § 18.2-308.2(A). The concurrent sentences were vacated, and the case was remanded to the Court of Appeals with direction to remand to the Circuit Court of Scott County for a new sentencing hearing on both sentences consistent with the opinion.

CASES CITED

- Commonwealth v. Botkin, 68 Va. App. 177 (2017)
- Graves v. Commonwealth, 294 Va. 196, 805 S.E.2d 226 (2017)
- Brown v. Commonwealth, 284 Va. 538 (2012)
- Alger v. Commonwealth, 267 Va. 255 (2004)
- Sussex Community Services Ass'n v. Virginia Society for Mentally Retarded Children, 251 Va. 240 (1996)
- Rawls v. Commonwealth, 278 Va. 213 (2009)
- Grafmuller v. Commonwealth, 290 Va. 525 (2015)
- Burrell v. Commonwealth, 283 Va. 474 (2012)
- Carter v. Commonwealth, 199 Va. 466 (1957)