

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Eid

Commonwealth v. Eid, No. 10 EAP 2020 (Pa. 2021) · No. No. 10 EAP 2020 · Decided April 29, 2021

SUMMARY

The Pennsylvania Supreme Court held that a conviction for refusing a warrantless breath test under 75 Pa.C.S. § 1543(b)(1.1)(i) is constitutional because **Birchfield v. North Dakota** permits warrantless breath tests as a search incident to arrest. However, the sentencing provision is unconstitutionally vague under state and federal due process because it mandates a minimum of 90 days' imprisonment but fails to specify a maximum term, leaving the court unable to impose a lawful sentence of incarceration. The court upheld the conviction and the mandatory \$1,000 fine but vacated the imprisonment sentence, remanding for the legislature to remedy the statutory gap.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Wecht; Baer; Saylor; Todd; Donohue; Dougherty; Mundy
JURISDICTION	Pennsylvania
DECIDED	April 29, 2021
DOCKET	No. 10 EAP 2020
DISPOSITION	affirmed in part, vacated in part, and remanded
PROCEDURAL POSTURE	Appeal from the Judgment of Superior Court entered on 07/11/2019 at No. 1670 EDA 2017 (reargument denied 08/28/2019) affirming vacating and remanding the Judgment of Sentence entered 04/26/2017 in the Court of Common Pleas, Philadelphia County, Criminal Division at No. CP-51-CR-0003605-2016.
STANDARD OF REVIEW	Constitutional challenge to a sentencing statute presents a question of law, which we review de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Khalid Eid v. Commonwealth of Pennsylvania

TOPICS

[constitutional law](#)[criminal procedure](#)[sentencing](#)[due process](#)[statutory interpretation](#)

PRACTICE AREAS

Criminal Law

Constitutional Law

Appellate Practice

QUESTIONS PRESENTED

1. Whether the sentence under 75 Pa.C.S. § 1543(b)(1.1)(i) is illegal because the statute is unconstitutional under *Birchfield v. North Dakota*, Article I, Section 8, due process, and this Court's precedents because it increases punishment based on refusal to submit to a warrantless blood test.
2. Whether the sentence under 75 Pa.C.S. § 1543(b)(1.1)(i) is illegal because the statute is unconstitutionally vague in failing to provide a maximum penalty, violating state and federal Due Process Clauses.

HOLDINGS

1. The evidence was sufficient to sustain Eid's conviction because he refused both breath and blood testing, and warrantless breath tests are constitutionally permissible under *Birchfield* as a search incident to arrest.
2. The statute is unconstitutionally vague in violation of state and federal due process because it fails to provide a maximum term of imprisonment, depriving offenders of fair notice of the consequences of their actions.

KEY QUOTATIONS

“Although we conclude that the evidence was sufficient to sustain Khalid Eid's conviction for refusing to submit to a warrantless breath test—which, unlike a warrantless blood draw, does not violate established constitutional safeguards against unreasonable searches and seizures—we vacate his sentence of imprisonment because the sentencing statute in question fails to specify a maximum term, and thus is unconstitutionally vague in contravention of state and federal due process principles.” (at 1)

“Birchfield, 136 S.Ct. at 2184 (concluding 'that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving'); id. at 2185 ('Because breath tests are significantly less intrusive than blood tests and in most cases serve law enforcement interests, we conclude that a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving.')” (at 8)

“In pertinent part, a person who drives with a suspended license in Pennsylvania and who refuses a chemical breath test is guilty of a summary offense (upon a first conviction) 'and shall be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of not less than 90 days.' 75 Pa.C.S. § 1543(b)(1.1)(i).” (at 16)

“We hold that the absence of a maximum term renders the pertinent DUS sentencing provision unconstitutionally vague and inoperable for the time being. We leave it to the General Assembly to remedy this impediment, if it so chooses, either by amending the statute to provide for a maximum term of imprisonment or by expressly permitting flat sentencing within a range not to exceed that maximum sentence.” (at 21)

FACTUAL BACKGROUND

At approximately 11:30 p.m. on February 25, 2015, Philadelphia Police Officer Stephen Nagy observed Eid's parked car on a one-way street facing the wrong direction after colliding with two parked cars. Eid appeared disheveled, with red and glassy eyes, smelled of alcohol, and had difficulty retrieving his documents. His license was suspended. After transport to AID, Officer Harrison read O'Connell warnings to Eid. Eid refused chemical testing multiple times, including both breath and blood tests. Officer Harrison noted signs of intoxication including bloodshot eyes, urine on pants, slow speech, sweating, dilated pupils, moderate odor of alcohol, and marijuana debris in his mouth.

PROCEDURAL HISTORY

Eid was convicted in Municipal Court of Philadelphia for DUI and DUS. He appealed de novo to the Court of Common Pleas, where he was convicted again and sentenced to 90 days to 6 months imprisonment plus 2 years probation for both DUI and DUS. The Superior Court vacated the sentence as illegal because the probationary tails caused the total sentence to exceed the statutory maximum, and remanded for resentencing. The Pennsylvania Supreme Court granted review on the constitutionality of the DUS sentencing statute under 75 Pa.C.S. § 1543(b)(1.1)(i).

DISPOSITION

affirmed in part, vacated in part, and remanded

REMAND INSTRUCTIONS

The case is remanded to the Superior Court for further proceedings consistent with this opinion.

CASES CITED

- Birchfield v. North Dakota, 136 S.Ct. 2160 (2016)
- Commonwealth v. Monarch, 200 A.3d 51 (Pa. 2019)
- Commonwealth v. Bell, 645 A.2d 211 (Pa. 1994)
- Johnson v. United States, 576 U.S. 591 (2015)
- Beckles v. United States, 137 S.Ct. 886 (2017)
- Commonwealth v. Derhammer, 173 A.3d 723 (Pa. 2017) (Wecht, J., concurring)