

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Shifflett

Commonwealth v. Shifflett · No. 26 MAP 2024 · Decided May 30, 2025

SUMMARY

This is a dissenting opinion by Justice Brobson of the Supreme Court of Pennsylvania in Commonwealth v. Shifflett. The opinion addresses whether Pennsylvania's Vehicle Code provision treating acceptance of Accelerated Rehabilitative Disposition (ARD) as a prior DUI offense violates Apprendi and Alleyne. Justice Brobson would uphold the provision, or alternatively treat any deficiency as an as-applied issue remediable through an augmented ARD colloquy rather than declaring the statute facially unconstitutional.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Brobson
JURISDICTION	Supreme Court of Pennsylvania
DECIDED	May 30, 2025
DOCKET	26 MAP 2024
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the Superior Court's order reversing, vacating, and remanding the judgment of sentence entered by the Adams County Court of Common Pleas after Appellant's guilty plea to a second-offense DUI charge.
STANDARD OF REVIEW	Constitutional challenge to the facial validity of a statute, including whether the statute conflicts with the constitutional rules announced in Apprendi and Alleyne.
PRECEDENTIAL VALUE	Published dissenting opinion; the legal propositions described are the dissent's proposed reasoning rather than the court's binding majority holding.
PARTIES	George Thomas Shifflett v. Commonwealth of Pennsylvania

TOPICS

- criminal procedure
- sentencing
- sixth amendment
- due process
- statutory interpretation

PRACTICE AREAS

criminal law

criminal procedure

DUI sentencing

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether a defendant's prior acceptance of ARD may constitute a prior offense for sentencing on a subsequent DUI conviction under 75 Pa. C.S. § 3806(a) without violating Apprendi and Alleyne.
2. Whether acceptance into ARD constitutes a voluntary waiver of procedural safeguards, including the right to a jury trial and the requirement that the Commonwealth prove every element of the prior DUI beyond a reasonable doubt.
3. Whether Section 3806(a), even if constitutionally deficient in some circumstances, should be declared facially unconstitutional or instead applied only to defendants who were not adequately informed of the consequences of accepting ARD.

HOLDINGS

1. In Justice Brobson's view, a defendant who requests and accepts ARD voluntarily waives certain procedural safeguards in exchange for the ARD disposition, and Section 3806(a) is therefore not unconstitutional insofar as it treats the prior ARD acceptance as a prior offense for sentencing after a subsequent DUI conviction.
2. In Justice Brobson's view, a defendant's request for and acceptance into ARD alone constitutes a valid waiver of the relevant constitutional safeguards; a separate written waiver is not required, although a colloquy is a useful procedural device.
3. Even assuming that Section 3806(a) and the ARD rules create a constitutional deficiency because defendants are not specifically informed that ARD may be used as a prior offense or that acceptance may waive Apprendi- and Alleyne-related safeguards, the proper remedy would be as-applied relief for defendants who were not adequately colloquied, not facial invalidation of the statute.

KEY QUOTATIONS

"In sum, I would conclude that a defendant who requests acceptance into ARD validly waives constitutional procedural safeguards in favor of ARD and, therefore, Section 3806(a) of the Vehicle Code is not unconstitutional insofar as it provides that the defendant's prior acceptance of ARD will constitute a "prior offense" for sentencing purposes in the event of a subsequent DUI conviction." (7)

"Instead, like Justice Dougherty, I believe the statute can and should survive the facial constitutional challenge in this case." (9)

FACTUAL BACKGROUND

Shifflett was charged with DUI under 75 Pa. C.S. § 3802(d)(3) in 2012 and later accepted ARD. In March 2022, he was involved in another DUI incident and was charged with DUI as a second offense based on the prior ARD acceptance. He pleaded generally to the 2022 DUI charge but contested using the prior ARD acceptance as a prior offense for sentencing under Section 3806(a).

PROCEDURAL HISTORY

Shifflett was charged with a 2022 DUI as a second offense because he had previously accepted Accelerated Rehabilitative Disposition for a 2012 DUI. He pleaded generally to one count of DUI and challenged the Commonwealth's ability to use the prior ARD acceptance as a prior offense under 75 Pa. C.S. § 3806(a). The Adams County Court of Common Pleas entered judgment of sentence on September 22, 2022. The Superior Court, at No. 1480 MDA 2022, entered an order dated April 24, 2023, reversing, vacating, and remanding the judgment of sentence. Justice Brobson dissented from the Supreme Court's decision affirming the facial constitutional challenge to Section 3806(a).

DISPOSITION

other

REMAND INSTRUCTIONS

Justice Brobson would provide relief only as applied to Shifflett, and potentially similarly situated defendants who were not specifically colloquied about the sentencing consequences of ARD acceptance. He would also direct the Rules Committee to amend the Rules consistently with that approach.

CASES CITED

- Commonwealth v. Lutz, 495 A.2d 928 (Pa. 1985)
- Whalen v. Dep't of Transp., Bureau of Driver Licensing, 32 A.3d 677 (Pa. 2011)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- Almendarez-Torres v. United States, 523 U.S. 224 (1998)
- Alleyne v. United States, 570 U.S. 99 (2013)
- Blakely v. Washington, 542 U.S. 296 (2004)
- Peretz v. United States, 501 U.S. 923 (1991)
- Commonwealth v. Newman, 285 A.2d 523 (Pa. 1971)
- Commonwealth v. Mallory, 941 A.2d 686 (Pa. 2008)
- Commonwealth v. Verbeck, 290 A.3d 260 (Pa. 2023)
- Birchfield v. North Dakota, 579 U.S. 438 (2016)
- Mackey v. Montrym, 443 U.S. 1 (1979)

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