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Recent Developments: State v. Thompson: Repeat Drug Offender Who Successfully Completes Drug Treatment Program Is Not Required to Serve Remainder of Mandatory Jail Sentence

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State v. Thompson

**REPEAT
DRUG OFFENDER
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TO SERVE REMAINDER
OF MANDATORY
JAIL SENTENCE.**

In a precedent setting case, the Court of Appeals of Maryland held in *State v. Thompson*, 332 Md. 1, 629 A.2d 731 (1993), that a repeat drug offender does not have to serve the remainder of a mandatory jail sentence, prescribed by the Maryland Code, after successful completion of drug rehabilitation. In so ruling, the court of appeals declared that a repeat drug offender may forego a mandatory sentence after completion of drug rehabilitation.

William Thompson, a two time drug offender, was convicted in the Circuit Court for Baltimore County of numerous controlled substance offenses. Three of the five counts were merged into the first two counts. For each of the two counts, the court imposed concurrent fifteen year jail terms of which ten years were to be served without parole. The five year balance was suspended and the defendant was placed on probation. As a condition of probation, Thompson was remanded into Second Genesis, a drug treatment center. After release from this program, Thompson was required to participate in any after-care programs as recommended and to submit to periodic drug tests. At sentencing, the State requested that Thompson be required to serve his remaining jail sentence after completion of his treatment. The circuit court rejected this argument and committed the appellee to drug treatment.

The State appealed the circuit court's ruling. On its own motion, the Court of Appeals of Maryland granted certiorari to rule on this ground breaking issue prior to consideration by the Court of Special Appeals of Maryland.

In order to resolve this issue, the court of appeals had to interpret two statutes in the Maryland Code. Section 8-507 of the Health General Article permits a court in a criminal case, at any stage of the proceeding, to commit a drug dependant defendant to treatment. *Thompson*, 332

Md. at 5, 629 A.2d at 733. Article 27, section 286(c) provides for mandatory sentences for repeat drug offenders as well as allowing some offenders to be eligible for treatment. *Id.* Since these two statutes dealt with the same subject matter, the court construed them together and tried to harmonize their conclusions. *Id.* at 7, 629 A.2d at 734 (paraphrasing *State v. Bricker*, 321 Md. 86, 93, 581 A.2d 9, 12 (1990)).

To discern legislative intent, the court began with the construction of the language of the two statutes. *Id.* at 6-7, 629 A.2d at 734 (quoting *Harris v. State*, 331 Md. 137, 146, 626 A.2d 946, 950 (1993)). Both parties conceded that section 286(c) required a two time drug offender to be sentenced to a mandatory ten year sentence. *Id.* at 8, 629 A.2d at 735. The appellee, however, argued that commitment to a drug treatment center may be imposed in lieu of the mandatory sentence. *Id.* at 9, 629 A.2d at 735. The appellee further contended that a trial judge has the discretion to determine whether the defendant must serve a mandatory sentence, be remanded into treatment, or both. *Id.* The State opposed this argument and urged that the repeat offender must serve the compulsory sentence. *Id.* To resolve this conflict of construction, the court turned to section 286 and its construction in other cases.

The court recognized that second time drug offenders who violate subsection (b)(1) or (2) must be sentenced to a mandatory sentence of ten years, and that pursuant to subsection (c)(2), the sentence shall be served without parole. *Id.* at 9, 629 A.2d at 735. Furthermore, the court noted that pursuant to subsection (c)(3), repeat offenders may be eligible for drug treatment programs. *Id.*

In *Collins v. State*, the court of special appeals held that a two time drug offender may be ordered to drug treatment. *Thompson*, 332 Md. at 9, 629 A.2d at 735 (citing *Collins v.*

State, 89 Md. App. 273, 598 A.2d 8 (1991)). The holding was based on the General Assembly's amendment of section 286, whereby the mandatory sentences for third and fourth time offenders was increased, while the mandatory sentences and eligibility for drug treatment for second time offenders remained the same. *Id.* at 10, 629 A.2d at 736. The court of appeals agreed with this analysis and extended the scope of the trial court's discretion by holding that it is within the judgment of the trial judge to determine whether a drug offender must serve the remainder of his or her term after successful drug rehabilitation. *Id.* at 11, 629 A.2d at 736.

The court then turned to the State's argument that section 8-507(i), construed with 8-507(l), leads to the conclusion that a defendant who is rehabilitated pursuant to Article 27, section 286(b)(1), should be returned to the court to serve the remainder of the mandatory sentence. *Id.* at 12, 629 A.2d at 737. The court rejected this argument as contrary to the plain meaning of the statute. *Id.* at 13, 629 A.2d at 737. The only explicit language in section 8-507 is contained in subsection (f), which requires a defendant to be returned to the court after the consent to treatment is withdrawn. *Id.* at 12, 629 A.2d at 737. The court noted that neither such requirement nor such language exists in subsection (i). *Id.* The court rea-

soned that the legislature knew, in section 8-507(f), how to prescribe treatment and mandatory jail time pursuant to Art. 27 section 286 (b)(1), and had it wanted such an outcome in section 8-507(i), it would have clearly stated its intent. *Id.*

In 1966, Maryland acknowledged that drug addiction is a disease and as such, recognized the need to enunciate an overall policy on drug addiction by enacting its first drug treatment statute. *Thompson*, 332 Md. at 13, 629 A.2d at 737. The court discussed the history of such enactments and concluded that it is apparent that the Legislature has rarely deviated from its original policy. *Id.* at 17, 629 A.2d at 740. The court also pointed out that in every version of legislation in which a defendant's commitment terminates before or after rehabilitation occurs, the defendant must appear before the court for further criminal proceedings, notwithstanding section 8-507. *Id.* at 18, 629 A.2d at 740. The court concluded that had the legislature intended in the present statute that defendants be remanded to serve remaining mandatory sentences after treatment, it would have specifically stated this intent. *Id.* This conclusion disposed of the State's argument that defendants must serve the balance of remaining mandatory sentences. *Id.* at 19, 629 A.2d at 741.

The circuit court, in addition to

sending Thompson to drug treatment, placed the appellee on probation and prescribed probationary conditions to be followed after treatment. The court of appeals held that since the trial court had no way of knowing if the appellee would be successful in treatment, placing these conditions upon the appellee was an abuse of discretion. *Id.* at 20-21, 629 A.2d at 741. Therefore, the court struck that portion of the trial judge's sentence. *Id.* at 20, 629 A.2d at 740.

By holding that criminal defendants who have a drug dependency may be placed in drug treatment in lieu of a mandatory sentence, the court of appeals clarified the scope of Maryland law concerning the procedures used to deal with repeat drug offenders. This holding is consistent with the policy decision to rehabilitate drug addicts rather than place them in the criminal justice system with no guidance. This case now places the decision of whether to rehabilitate a drug addict or require a mandatory jail sentence, within the discretion of the trial judge. By doing so, the court of appeals placed the discretion in the hands of persons best able to determine whether an individual is a drug addict truly seeking rehabilitation or a criminal defendant attempting to escape a mandatory jail term.

- Kristen Coyle

