In the 20th Judicial Circuit of Virginia
County of Loudoun

COMMONWEALTH OF VIRGINIA

v.	*1032817-00*
	1032817-02
PATRICIA MENEVA COPPAGE	*1032817-03*

OPINION & ORDER

The mitigations of penalty contained within newly enacted § 19.2-306.1 of the Code of Virginia may, in the discretion of the court, be applied retroactively to probationers who are already subject to a court's order of a suspended sentence having been entered prior to the effective date of the new law. However, such statute, as presently composed, violates Article 3, Section 1 of the Virginia Constitution, and consequently such a retroactive application does not serve the interests of justice.

Brief Summary of Case

The Defendant, a probationer since 2018, violated probation supervision terms over the course of months, eventually absconding from supervision. The Commonwealth's Attorney and the Public Defender for Loudoun's agreement to release the Defendant without sanctions is rejected. Their agreement to apply a 2021 law of the General Assembly retroactively, while conceivably permissible as a matter of discretion, does not serve the interests of justice. The newly enacted statute violates the separation of powers provision of the Virginia Constitution by, in numerous instances, prohibiting the trial court from enforcing its sentencing order.

Factual Background and Material proceedings

On July 3, 2018, Deputy Zavala of the Loudoun County Sheriff's Office responded to 43310 Defender Drive in Chantilly, VA at approximately 2:00 p.m. Upon arrival he observed a vehicle parked in a field that was being used to store construction equipment. In front of the vehicle, the deputy saw three naked children playing around a vehicle. The deputy also saw the defendant in this matter, Patricia Meneva Coppage, near the same vehicle. The defendant was not wearing a shirt or bra. Thereupon, the deputy asked the defendant to put on a shirt, but she refused.

As the deputy continued to speak with the defendant, he observed her to have slurred speech, as well as being incoherent and lethargic. The defendant refused to provide her name or

date of birth to the deputy. She explained that her three children were naked because it was hot outside.

The deputy observed that all three children, aged three, two and one, were covered in fecal matter. One of the children was also seen carrying a cup around that had fecal matter on it. The deputy then examined the vehicle around which the children were playing and observed that the inside of the vehicle contained an overwhelming odor of urine, feces and rot. He observed old pizza and dirty diapers inside of the vehicle. He also observed that the immediate area where the children were playing was strewn with trash from the vehicle and that there was broken glass from the construction site upon the ground.

The deputy next observed that the defendant appeared to be wearing short pants that were wet. Upon inquiring of the defendant as to why she was wearing wet shorts, the defendant stated that her "water had broke" and that she was going into labor. The deputy called for emergency rescue assistance and the defendant was transported to Stone Springs Emergency Room. There it was determined that the defendant was not in labor but that her pants were merely soaked with urine.

Assisting Deputy Zavala was Deputy Nichols, who inspected the vehicle further. The glove box contained a glass pipe with burn residue, and he found a syringe in the pocket of the passenger side front door. The defendant denied knowledge of the existence of both items.

Based on the forgoing, the defendant was arrested and ultimately indicted on September 10, 2018 for three counts of felony child abuse and neglect in violation of Virginia Code section 18.2-371.1(B).

The Defendant was held without bail pending adjudication of the charges. Her prior criminal record included shoplifting (2011), false ID to law enforcement (2011), drive while suspended (2012 x2, 2015), embezzlement (2012), assault and battery (2015), disorderly conduct (2015), petit larceny (2015), possess schedule III drugs (2016), false statement in criminal investigation (2016), solicitation to commit felony (2016).

On December 5, 2018, the defendant appeared with counsel and acknowledged the facts herein by signing a written Proffer of Facts. She also entered a guilty plea and was sentenced pursuant to a plea agreement to one year in prison for each offense with a total of 2 years and one month suspended, which at that time was the midpoint of the Virginia Sentencing Guideline

recommendation. The suspended portion of each sentence was ordered to be subject to the following terms and conditions:

> *"**Good Behavior**. The Defendant shall keep the peace and be of general good behavior and violate no laws of this or any other jurisdiction from this date throughout any period of supervision.*
>
> ***Supervised Probation**. The Defendant is placed on probation from this date, under the supervision of the Adult Probation and Parole Office of this court for the term of three (3) years. The Defendant shall comply with all the rules and requirements set by the Probation and Parole Officer. Probation shall include substance abuse counseling and/or testing as prescribed by the Probation and Parole Officer.*
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> ***Substance Abuse**. The Defendant shall complete any substance abuse screening, assessment, testing and treatment as directed by the Probation and Parole Officer. The Defendant may be subject to payment of any fees associated with substance abuse treatment or intervention as required by the treatment or intervention program on an ability to pay basis."*

Thereafter, the defendant served an 11-month active sentence and afterwards became subject to the suspension terms, including supervised probation. Her court ordered supervised probation terms included 11 mandatory rules and requirements as follows:

1. Obey all Federal, State and local laws and ordinances,
2. Report any arrests within 3 days to her supervising probation officer,
3. Seek, maintain and report any changes in employment,
4. Report as instructed,
5. Allow probation officer to visit her home or place of employment,
6. Follow instructions and be truthful, cooperative and report,
7. Refrain from alcohol use,
8. Refrain from possession or distribution of controlled substances or paraphernalia thereof,
9. Refrain from ownership, use, possession or transportation of firearms,
10. Maintain residence in and stay within Virginia unless permission to leave state granted, and
11. Do not abscond or abandon probation supervision

In addition to the above rules of probation behavior that were subsumed as conditions of the Defendant's suspended sentences, the Defendant was required to complete a special condition of substance abuse assessment and treatment as directed and facilitated through supervised probation. A review of this portion of the order briefly on July 22, 2021 revealed that

the Defendant was assessed for substance abuse treatment early in her probation, but at that time no treatment was recommended.[1]

Midway through the Defendant's probationary term, she was alleged by the Office of Probation and Parole to have violated probation conditions 6, 10 and 11 above by a host of misconduct incidents or episodes spanning from September to December of 2020. Thus, this court, on December 30, 2020, ordered that a capias for her arrest be issued and that she be held without bail pending a probation violation hearing to be held on February 11, 2021. Her Pretrial Information report listed a number of admissions as to her conduct on probation. She revealed that she "used everything" regarding illegal drugs, she last used "meth and ketomine" on January 13, 2021. She stated that while she was "clean" from February 2020 to October 2020, she began using again from October 2020 to January 2021, which was the time frame generally when she began to abscond or otherwise fail to cooperate with the Office of Probation and Parole.

At the initial hearing on her probation violation, it was reported that the probation violation allegations should be amended to include a violation for a condition 1 violation arising out of a new arrest of the Defendant in Prince William County, Virginia for felony child abuse and neglect; the very charge(s) she was on probation for in the instant matter. This caused multiple continuances on the premise of waiting to see how the Prince William County charge was resolved. The Loudoun probation violation hearing was continued by a joint agreement of the parties to April 15, 2021, to May 20, 2021, to July 8, 2021. On July 1, 2021 a new statute took effect that dramatically altered the concept of probation violations in Virginia.

In the passage of Code § 19.2-306.1 during the 2021 session of the General Assembly, the legislature defined the probation terms and conditions set forth above from 2-11 as "technical violations" of probation for which the court may take no action to enforce its order regardless of the number of separate violations.[2] While the legislative prohibition against enforcing the

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[1] The Defendant volunteered that she was however compliant with a suboxone prescription which is somewhat anomalous as such medication assisted treatment more typically accompanies additional therapies and/or counseling. This appears to the court to be a serious gap in the Defendant's rehabilitation efforts particularly since later in the probation period, she admitted to serious and ongoing drug use and/or dependency.

[2] § 19.2-306.1. Limitation on sentence upon revocation of suspension of sentence; exceptions. —
A. For the purposes of this section, "technical violation" means a violation based on the probationer's failure to (i) report any arrest, including traffic tickets, within three days to the probation officer; (ii) maintain regular employment or notify the probation officer of any changes in employment; (iii) report within three days of release from incarceration; (iv) permit the probation officer to visit his home and place of employment; (v) follow the instructions of the probation officer, be truthful and cooperative, and report as instructed; (vi) refrain from the use of alcoholic beverages to the extent that it disrupts or interferes

court's order of probation through a revocation of a suspended sentence is purportedly for a first time "technical violation," a trial court is further prohibited from imposing any penalty or enforcing its order regardless of the number of such violations or the span of time over which they occurred if they are part of the same revocation proceeding. Thus, an offender such as the Defendant, who absconds from supervision after repeated probation failures, and who remains at large for a lengthy period of time, may be treated as a first offender for probation violation purposes, while a different offender who is brought to court immediately after each and every separate violation will after a third adjudication be subject to an enforcement penalty.[3]

At the July 8, 2021 probation violation hearing, the Defendant promptly conceded that she was in violation of conditions 6, 10 and 11, but that the condition 1 violation (a new charge of felony child abuse and neglect) had, according to representations of counsel to the court, been dismissed by *nolle prosequi* in Prince William County by the Commonwealth's Attorney, such that it should be struck as a basis for any probation violation in the instant matter in Loudoun County.

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with his employment or orderly conduct; (vii) refrain from the use, possession, or distribution of controlled substances or related paraphernalia; (viii) refrain from the use, ownership, possession, or transportation of a firearm; (ix) gain permission to change his residence or remain in the Commonwealth or other designated area without permission of the probation officer; or (x) maintain contact with the probation officer whereby his whereabouts are no longer known to the probation officer. Multiple technical violations arising from a single course of conduct or a single incident or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing pursuant to this section.

B. If the court finds the basis of a violation of the terms and conditions of a suspended sentence or probation is that the defendant was convicted of a criminal offense that was committed after the date of the suspension, or has violated another condition other than (i) a technical violation or (ii) a good conduct violation that did not result in a criminal conviction, then the court may revoke the suspension and impose or resuspend any or all of that period previously suspended.

C. The court shall not impose a sentence of a term of active incarceration upon a first technical violation of the terms and conditions of a suspended sentence or probation, and there shall be a presumption against imposing a sentence of a term of active incarceration for any second technical violation of the terms and conditions of a suspended sentence or probation. However, if the court finds, by a preponderance of the evidence, that the defendant committed a second technical violation and he cannot be safely diverted from active incarceration through less restrictive means, the court may impose not more than 14 days of active incarceration for a second technical violation. The court may impose whatever sentence might have been originally imposed for a third or subsequent technical violation. For the purposes of this subsection, a first technical violation based on clause (viii) or (x) of subsection A shall be considered a second technical violation, and any subsequent technical violation also based on clause (viii) or (x) of subsection A shall be considered a third or subsequent technical violation.

D. The limitations on sentencing in this section shall not apply to the extent that an additional term of incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered drug, alcohol, or mental health treatment program. In such case, the court shall order the shortest term of incarceration possible to achieve the required evaluation or participation. (2021, Sp. Sess. I, c. 538.)

[3] A second violation of probation under the statute in question is rebuttably presumed to be one where the court may not enforce its order.

For reasons that are unclear, the Commonwealth's Attorney for Loudoun County has agreed with the Public Defender for Loudoun County that the new code section referenced above must apply retroactively to the Defendant and that she should be released without sanction. The parties believe the new code section is binding on the court and thus the court may not impose any penalties for her misconduct during the term of her suspended sentence and supervised probation. The Commonwealth's Attorney cites Code § 1-239 as requiring retroactive application of the new law. On July 22, 2021 the parties appeared again before the court and counsel for the defendant indicated that the Commonwealth and the Defendant might be able to come to an agreement to go forward on the pre-July 1st Guidelines if the court were amenable. However, the parties had not so agreed at that time and the court could not provide an advisory opinion as to a potential agreement in the future.

Findings of Fact and Conclusions of Law

Retroactivity

The parties seek to have the court adopt their agreement to apply newly enacted Code § 19.2-306.1 to an existing probationer retroactively, and thus order the Defendant released without sanction. They cite an exception to the savings provisions set forth in Code § 1-239 as authority, and argue that retroactive application to this Defendant is required. The section is set out below with emphasis added.

Code § 1-239

> Repeal not to affect liabilities; mitigation of punishment. — No new act of the General Assembly shall be construed to repeal a former law, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture, or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture, or punishment so incurred, or any right accrued, or claim arising before the new act of the General Assembly takes effect; except that the proceedings thereafter held shall conform, so far as practicable, to the laws in force at the time of such proceedings; ***and if any penalty, forfeiture, or punishment be mitigated by any provision of the new act of the General Assembly, such provision may, with the consent of the party affected, be applied to any judgment pronounced after the new act of the General Assembly takes effect.*** (Code 1919, § 6, § 1-16; 2005, c. 839.)(Emphasis added).

The parties are mistaken as to at least two legal concepts.

First, the court's consideration of revocation of the defendant's probation or suspended sentence for a past crime is not a new offense that is subject to an agreement of the parties. Rather, the court's role is one of monitoring its orders and enforcing them in the context of a

limited hearing which observes certain basic fundamentals of due process without amounting to a full blown reconstituted evidentiary proceeding. See generally, *Henderson v. Commonwealth*, 285 Va. 318, 325, 736 S.E.2d 901, 905 (2013). While, in occasion, it is perfectly permissible for the Commonwealth to inform the court as to a potential violation of its sentencing orders in any given case, most cases, as was done here, result from reports coming to the court's attention from its statutory "officer of the court." The state probation officer is charged by code with the specific duties of monitoring compliance with such orders, and reporting either progress or noncompliance therewith. *VA Code Ann.* §§ 53.1-143, 53.1-148, 53.1-145. Based upon a report from such officer, the court takes action *sua sponte* to bring the probationer before the court for a hearing by issuing process such as a capias or rule to show cause. By statute, the Commonwealth and Defendant are interested and necessary parties to such an action, and are entitled to notice. Code § 19.2-304. However, they may not bind the court in the enforcement of its orders by agreement or otherwise.

Second, Code § 1-239 conspicuously uses the word "may" when it authorizes retroactivity as to the application of newly enacted mitigations of punishment to past offenses. The Virginia Supreme Court has recently explained, in construing statutes, "[courts] will apply the ordinary meaning of the word 'may,' which is, 'permission, importing discretion' where, as here, no "contrary legislative intention plainly appears." *Sauder v. Ferguson*, 289 Va. 449, 457, 771 S.E.2d 664, 668–669 (2015) (quoting *Masters v. Hart*, 189 Va. 969, 979, 55 S.E.2d 205, 210 (1949)); *see Small v. Federal Nat'l Mortg. Ass'n*, 286 Va. 119, 131, 747 S.E.2d 817, 824 (2013)) ('[T]he word "may" is prima facie permissive, importing discretion.'); *Advanced Towing Co. v. Fairfax Cnty. Bd. of Supervisors*, 280 Va. 187, 193, 694 S.E.2d 621, 625 (2010) (same)." *Bd. of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454, 790 S.E.2d 460, 465 (2016).

Thus, this court finds that the language in Code § 1-239 is discretionary rather than mandatory. A court may certainly apply newly enacted mitigations of punishment to an existing probationer. But there should be some showing of good cause for exercising its discretion to do so, such that a court may make an informed judgment as to the appropriateness of extending such mitigation. Such a showing might include, among other things, the history of the offender in the criminal justice system, or their past performance on probation as a whole. In sum, there should be a reason, predicated upon reliable and convincing evidence and argument of counsel, that the

court finds to be suitable and appropriate to the case and the offender. Here, none was offered that the court finds convincing.

In addition, any extension of a newly enacted mitigation of punishment to an existing probationer should be accomplished by legislation that does not impermissibly encroach upon the independent function of the judiciary. It would not serve the finer notions of discretion to apply newly enacted statutory authority that is of an unconstitutional design.

Separation of Powers

Virginia courts have spoken at great length, and on numerous occasions, as to the judiciary's obligation to safeguard the boundaries of divided power. Separation of governing power into independent branches is embedded in the fabric of the Commonwealth. In fact, one may reasonably argue that Virginia led the way in proposing the concept of divided power.

> Adopted over a decade before the United States Constitution, the 1776 Virginia Declaration of Rights provided that "the legislative and executive powers of the State should be separate and distinct from the judiciary." Va. Decl. of Rights § 5 (1776); *see also* Va. Const. ¶ 2 (1776). The original principle has endured to this day, ensuring that the legislative, executive, and judicial branches of government "shall be separate and distinct" and that no one branch could "exercise the powers properly belonging to the others." Va. Const. art. III § 1 (1971) *Taylor v. Commonwealth*, 58 Va. App. 435, 439–40, 710 S.E.2d 518, 520 (2011).[4]

However, to be sure, in a complex society, it is inevitable that one branch of government may, in carrying out its lawful constitutional duties, incidentally exercise some degree of power traditionally belonging to another branch of government. Thus, courts are compelled to look beyond bright and absolute lines when analyzing whether or not a branch of government has violated the constitutional provision requiring separation of powers.

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[4] The Constitution of Virginia [1971]
Article 3 Division of Powers
Section 1. Departments to be distinct. — The legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time; provided, however, administrative agencies may be created by the General Assembly with such authority and duties as the General Assembly may prescribe. Provision may be made for judicial review of any finding, order, or judgment of such administrative agencies.

The whole power doctrine has been the metric of analysis in Virginia. *Baliles v. Mazur*, 224 Va. 462, 472, 297 S.E.2d 695, 700 (1982); *Montgomery v. Commonwealth*, 62 Va. App. 656, 751 S.E.2d 692 (2013).

Generally speaking, the whole power doctrine holds that separation of powers is violated when one branch exercises the power of another branch completely as to a given issue.

> In considering constitutional challenges based on the separation of powers doctrine stated in Article III, § 1, we have long emphasized that reviewing courts must evaluate such challenges in the contextual framework of the "whole power" of a governmental department. We have defined both the scope of this "whole power" principle and the practical reasons underlying its application:
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> It is undoubtedly true that a sound and wise policy should keep these great departments of the government as separate and distinct from each other as practicable. But it is equally true that experience has shown that no government could be administered where an absolute and unqualified adherence to that maxim was enforced. **The universal construction of this maxim in practice has been that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments, but that either department may exercise the powers of another to a limited extent.**
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> *Winchester & Strasburg R.R. Co. v. Commonwealth*, 106 Va. 264, 268, 55 S.E. 692, 693 (1906); *accord, Roach v. Commonwealth*, 251 Va. 324, 338, 468 S.E.2d 98, 106 (1996); *Baliles v. Mazur*, 224 Va. 462, 472, 297 S.E.2d 695, 700 (1982).

In re Phillips, 265 Va. 81, 86–87, 574 S.E.2d 270, 273 (2003).

In considering whether the whole power of another branch of government has been exercised in violation of the constitutional requirement of separation of powers, "*the common determinative factor is whether the governmental branch constitutionally vested with authority retains the final decision-making power.*" *Montgomery v. Commonwealth*, 62 Va. App. 656, 667, 751 S.E.2d 692, 697 (2013)(emphasis added).

The General Assembly, by passing § 19.2-306.1, has assumed the power of judgment and discretion that a court would wield, and arbitrarily strips the court of the final decision-making authority as to the disposition of any given first case of probation violations. Moreover, it does so in a vast and comprehensive way by predetermining the disposition of 10 categories of probation violation, all of which are conditions of a court's order suspending a sentence and placing a defendant on probation. This assumption of the enforcement power of a court order leaves the court with nothing to do that is not ministerial in nature. The statute globally and equally defines misconduct on probation ranging from failure to return a phone call, to peddling

drugs and possessing firearms, and thereafter determines that the penalty or disposition of such probation violation is nothing.

Inherent Authority: Judgment & Discretion

Determining the disposition of a case concerning a violated court order is traditionally the function of the judiciary. It necessarily requires the application of judgment and discretion as to what disposition suits the violation, as well as the offender. While the General Assembly may, and routinely does, prescribe the punishment for crime, enforcement of a court order is a fundamentally different matter.

"[T]he essential function of the judiciary [is] the act of rendering judgment in matters properly before it." *Moreau v. Fuller*, 276 Va. 127, 136, 661 S.E.2d 841, 846 (2008). The rendition of a judgment is the judicial act of the court. *In re Commonwealth's Attorney*, 265 Va. 313, 319, 576 S.E.2d 458, 462 (2003) (citing *Rollins v. Bazile*, 205 Va. 613, 617, 139 S.E.2d 114, 117 (1964)). A judgment is the determination by a court of the rights of the parties, as those rights presently exist, upon matters submitted to it in an action or proceeding. *Rollins*, 205 Va. at 617, 139 S.E.2d at 117.

The Supreme Court has explained that "[t]he judiciary's inherent power derives from its existence as an institution entrusted with the function of rendering judgment. To deny this function is to deny the very institution itself." And further, "the court's inherent power has been recognized to extend to matters incident to the exercise of the judicial power which is vested in it." *Moreau*, 276 Va. at 136, 661 S.E.2d at 846 (quoting *Button v. Day*, 204 Va. 547, 553, 132 S.E.2d 292, 296 (1963)) *Starrs v. Commonwealth*, 287 Va. 1, 7–8, 752 S.E.2d 812, 816 (2014).

By predetermining the enforcement and outcome of a violated court order as to a suspended sentence, Code § 19.2-306.1 impermissibly encroaches on the inherent authority of the court to render judgment.

"A Virginia court's authority comes from one of three sources: (i) the express and implied powers invested in the judiciary by the Virginia Constitution; (ii) the inherent common law authority inherited from England at the time of our Commonwealth's founding; and (iii) specific legislative enactments by the General Assembly." *Taylor v. Commonwealth*, 58 Va. App. 435, 439, 710 S.E.2d 518, 520 (2011).

"The separate and independent status of the judiciary in the Commonwealth's tripartite system of government implies certain inherent powers 'incident to the exercise of judicial power'

vested in the courts." *Taylor v. Commonwealth*, 58 Va. App. 435, 439–40, 710 S.E.2d 518, 520 (2011)(quoting 2 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 718–20 (1974)).

Exactly what to do with a given probationer when he or she violates the court's order of supervised probation is squarely within the realm of judicial discretion. It involves a determination of amenability to probation as a method of rehabilitation (i.e. "second chances" or "final warnings"). It involves assessments of credibility. It involves a potential reassessment of needs for both a probationer, or perhaps society, based upon additional information concerning the offender that may not have been known or in existence at the time of the original sentencing. It involves a weighing of the particular alleged violations of the court's order as either isolated incidents or cumulative aggravators. These considerations may not be justly micromanaged by legislation because they necessarily require individualized analysis of considerations and circumstances too numerous to detail. For this, judgment is required.

Conclusion

The suspension of a sentence on terms and conditions, including but not limited to supervised probation, is a court order. The judiciary, and its trial courts, operate through court orders as well as the lawful execution of court orders as to the parties before the court. When those orders are violated, their enforcement, and more particularly, the *outcome* of such enforcement is a separate function of the judiciary that may not be constitutionally reassigned to or assumed by another branch of government.

Similarly, the determination as to the disposition of a probation violation that is a condition of a suspended sentence, involves, indeed requires, the application of judgment and discretion. This is inherent in the function of a court and may not be delegated, reassigned or assumed.

Accordingly, for the reasons stated, the court finds that Code § 19.2-306.1 violates the Constitution of Virginia.

ORDERS

1. A sentencing proceeding shall be held in the above case for which the entire suspended sentence, or a portion thereof, may be revoked; the entire sentence, if any be revoked, may be re-suspended in whole or in part, and probation may be

continued, extended and/or modified, depending on the evidence adduced at the hearing. The defendant is entitled to a hearing on the appropriate disposition, and

2. The next court date shall be **Monday, July 26, 2021 at 9:00 a.m.** The hearing referenced above may be heard that day if the parties are amenable; alternatively, such date will be for further scheduling.
3. The Office of Probation and Parole, shall prepare in this case, and all future cases in this circuit, two sets of guidelines:
    a. as to probationers under court orders prior to July 1, 2021, the pre-July 1, 2021 guidelines are for this judge and others who may agree; the post July 1, 2021 guidelines should also be prepared for existing probationers for any judge of this circuit who disagrees with this opinion and seeks to dispose of a prior probationers case pursuant to newly enacted Code § 19.2-306.1.
    b. As to new offenders sentenced after July 1, 2021, two sets of guidelines, one being the pre-July 1, 2021 guidelines in all cases for this judge, and others who may agree, as this judge has declared the new statute unconstitutional, and one set in case that judgement is disagreed with by another judge of this circuit, or is set aside or reversed on appeal with a ruling that embraces newly enacted Code § 19.2-306.1.
4. The clerk shall deliver a copy of this opinion to counsel of record for all parties.
5. The clerk shall deliver a copy of this opinion to the office of Adult Probation and Parole.

Entered this 22nd day of July, 2021

James P. Fisher, Judge
20th Judicial Circuit of Virginia

Rule 1:13