



COMMONWEALTH of VIRGINIA

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The Honorable Lucretia A. Carrico
General District Court Judge, Retired
c/o Petersburg General District Court
35 East Tabb Street
Petersburg, Virginia 23803

Dear Judge Carrico:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether a General District Court has the authority to impose a two-year added term of postrelease supervision on an individual convicted in that court of two misdemeanor first offenses, by virtue of a plea agreement, of failing to register as a sex offender in violation of § 18.2-472.1. You further inquire whether the General District Court can order the Virginia Department of Corrections ("VDOC") to supervise such postrelease supervision.

Response

It is my opinion that a General District Court is authorized to order postrelease supervision of a person convicted of violating § 18.2-472.1(A), but in the case of misdemeanor convictions that period is limited to six months for each such conviction. It is further my opinion that the court can order VDOC to oversee such supervision.

Applicable Law and Discussion

Section 18.2-472.1(A) provides:

Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an offense under this subsection is a Class 6 felony.^[1]

Section 19.2-295.2:1 contains special postrelease supervision provisions for persons found guilty of violating § 18.2-472.1 after July 1, 2006. Specifically, it provides:

¹ VA. CODE ANN. § 18.2-472.1(A) (Supp. 2013).

1. At the time the court imposes a sentence upon a conviction for a first violation of subsection A of § 18.2-472.1 the court shall impose an added term of postrelease supervision of six months.

2. For a second or subsequent violation of subsection A of § 18.2-472.1 when both violations occurred after July 1, 2006, or a first violation of subsection B of § 18.2-472.1, the court shall impose an added term of postrelease supervision by the Department of Corrections of two years.^[2]

This statute further provides that “[a]ny terms of postrelease supervision imposed pursuant to this section shall be in addition to any other punishment imposed, including any periods of active incarceration or suspended periods of incarceration, if any.”³ This language evinces a clear intent by the General Assembly that § 19.2-295.2:1 operates to enhance the punishment prescribed by § 18.2-472.1.

Your specific inquiry involves a sex offender who was charged with two counts of felony failure to register in violation of § 18.2-472.1, but who, pursuant to a plea agreement, entered guilty pleas to two misdemeanor *first* violations of § 18.2-472.1. Under the plain terms of § 18.2-472.1(A), misdemeanor offenses are not second or subsequent offenses. Thus, under the legal fiction created by the plea agreement, the defendant was pleading guilty to two first violations of § 18.2-472.1.

Section 19.2-295.2:1 requires an added term of postrelease supervision of six months for *first* violations of § 18.2-472.1. Section 18.2-472.1(A) makes clear that *only* a first violation is a misdemeanor while a “second or subsequent conviction” is a felony. At issue here is how to interpret the conflict created by the misdemeanor plea agreement that essentially creates two first violations.

Under accepted principles of statutory construction, in construing statutes so as to ascertain the will of the General Assembly, courts must read statutes addressing the same subject “*in pari materia* in such manner as to reconcile, if possible, any discordant feature which may exist, and make the body of the laws harmonious and just in their operation.”⁴ When these sections of § 18.2-472.1(A) are read together, it appears the legislature intended for § 19.2-295.2:1(A)(1) to apply to misdemeanor violations of § 18.2-472.1(A), and § 19.2-295.2:1(A)(2) to apply to Class 6 felonies under § 18.2-472.1(A)(2).

Therefore, I conclude that proper postrelease supervision in the situation you describe is six months for each misdemeanor offense.⁵

In response to your question regarding which agency should supervise a defendant who receives postrelease supervision pursuant to § 19.2-295.2:1(A), I conclude that VDOC is the proper agency to

² VA. CODE ANN. § 19.2-295.2:1(A) (2008).

³ *Id.*

⁴ *Parker v. Commonwealth*, 42 Va. App. 358, 386, 592 S.E.2d 358, 372 (2004) (citing *Tyson v. Scott*, 116 Va. 243, 253, 81 S.E. 57, 61 (1914)).

⁵ This is not to say that a defendant could avoid, as part of a plea agreement, the mandatory requirement of postrelease supervision required by § 19.2-295.2:1. *See Wright v. Commonwealth*, 275 Va. 77, 81-82, 655 S.E.2d 7, 9-10 (2008) (holding that the defendant was not entitled to withdraw plea where plea agreement did not call for postrelease supervision under § 19.2-295.2(A) (2008), because the court was required to order postrelease supervision “as a matter of law,” and that requirement was thus a part of the plea agreement as though it had been “incorporated therein.”).

serve such function, and § 19.2-295.2:1(B) grants a General District Court the express authority to order such supervision by VDOC.⁶

Conclusion

Accordingly, it is my opinion that a General District Court is authorized to order supervision of a person convicted of violating § 18.2-472.1(A), but in the case of misdemeanor convictions that period is limited to six months for each such conviction. It is further my opinion that the court can order VDOC to oversee such supervision.

With kindest regards, I am

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

⁶ Section 19.2-25.2:1(B) clearly contemplates VDOC supervision and makes no distinction between misdemeanors and felonies for that supervision.