

ISSUE PRESENTED

If a juvenile age 14 or older is adjudicated delinquent to a charge of Possession of a Handgun by a Person Prohibited, an adjudication requiring for a first offense a minimum sentence of six months of Level V incarceration pursuant to 11 *Del. C.* §1448(f)(1)¹ and if this adjudication also constitutes the second felony adjudication for that juvenile within one year, requiring a sentence of at least a six-month period of institutional confinement, pursuant to 10 *Del. C.* §1009(e)(1)², must the Court impose the sentences consecutively or does the Court have discretion to impose the sentences concurrently?

CONCLUSION

This Court concludes that Family Court may, but is not required to, impose against a juvenile a minimum sentence mandated by 11 *Del. C.* §1448(f)(1) and a minimum sentence required by 10 *Del. C.* §1009(e)(1) consecutively, but has the discretion to impose the sentences concurrently.

BACKGROUND FACTS

C---- C----- (d.o.b. -/-/00) (Respondent), then 15 years old, was arrested on January 10, 2016 and charged with Robbery Second, a felony offense, to which he pled delinquent on April 25, 2016 and was sentenced to Level V, suspended for Level II probation. In between his arrest in January and the entry of his plea, in April, he was arrested three times for non-compliance with bond and once for offensive touching. These charges were *nolle prossed* with the Robbery Second plea in April.

¹ 11 *Del. C.* §1448(f)(1) states:

Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration...

² 10 *Del. C.* §1009(e)(1) states:

Any child who has been adjudicated delinquent by this Court of 1 or more offenses which would constitute a felony were the child charged as an adult under the laws of this State, and who shall thereafter within 12 months commit 1 or more offenses occurring subsequent to the said adjudication which offense or offenses would constitute a felony were the child charged as an adult under the laws of this State, and thereafter be adjudged delinquent of said offense or offenses, is declared a child in need of mandated institutional treatment, and this Court shall commit the child so designated to the Department of Services for Children, Youth and Their Families for at least a 6-month period of institutional confinement;

He was then charged on June 1, 2016 and pled delinquent on June 28, 2016 to misdemeanor Receiving Stolen Property and sentenced to Level III probation. Three charges of Disorderly Conduct, two charges of Offensive Touching, and one charge of Terroristic Threatening on which he was arrested on July 14, August 10, and August 27, 2016, were all dismissed.

On October 28, 2016, at the age of sixteen, he was again arrested at Dickinson High School in possession of a fully loaded handgun. On November 28, 2016, he entered a plea to and was adjudicated delinquent on a charge of Possession of a Handgun by a Prohibited Juvenile in violation of 11 *Del. C.* §1448.

When a juvenile age 16 or older is adjudicated delinquent of a second felony within one year of the first felony, 10 *Del. C.* §1009(e) requires that the juvenile be committed for a least a six-month period of institutional confinement. An adjudication on a Possession of a Handgun by a Prohibited Juvenile also requires a minimum sentence of six months of Level V incarceration.

At the time of the sentencing on November 28, 2016, a question arose as to whether a mandatory sentence required by 11 *Del. C.* §1448(f)(1) and a mandatory sentence required by 10 *Del. C.* §1009(e)(1) must be imposed consecutively or whether the Court had discretion to impose the two sentences concurrently.

The Court received opening memoranda of law from the State and from Respondent on December 16, 2016. Answering memoranda were permitted to be filed on December 19, 2016 but neither party filed one. Both the State and Respondent agreed, after reviewing the law, that consecutive sentencing was not mandatory, although the State argues that the Court should exercise its discretion to impose a sentence of twelve months.

DISCUSSION

In *Evans v. State*³, the Delaware Supreme Court reviewed a Family Court decision sentencing a juvenile to two consecutive periods of six-month confinement. The Family Court had imposed consecutive six-month terms of commitment on two of three counts of Burglary Second Degree which occurred within one year of a previously committed felony. After reviewing the legislative history and the wording of the statute, the Delaware Supreme Court concluded that consecutive sentencing was not mandated by the statute, in part because the amended statute, which had previously contained a provision in certain circumstances for consecutive sentences, contained no language mandating consecutive sentences. The Court also noted that the six-month period of confinement was a minimum mandatory sentence and that nothing precluded the Family Court, in a proper exercise of its discretion, from imposing consecutive sentences in appropriate cases.

Furthermore, 10 *Del. C.* §1002 provides that “the nature of the hearing and all [Family Court] proceedings shall be in the interest of rather than against the child.” As noted in *Evans*,⁴

³ 516 A.2d 477(Del. 1986)

⁴ *Id.* at 479-480.

this traditional mission of Family Court to foster the rehabilitation of youth in delinquency situations is also reflected in 10 *Del. C.* §1009(c)(2), the successor to the similar statute considered in *Evans*, which provides for the release under limited circumstances from institutional confinement on pass, on extended leave, or to aftercare if it is in the best interest of the youth's treatment, providing various approvals are received. Where the statutory language is not clear, this Court is inclined to interpret any ambiguity in favor of the juvenile's best interests.

The issue before this Court involves an additional statute, not at issue in the *Evans* case, related to the possession of a handgun by a prohibited juvenile. Nevertheless, following the holdings in *Evans*, because the relevant statutes do not require consecutive sentencing and because the Family Court has a mission to promote the rehabilitation of youth, this Court holds that consecutive sentencing is not mandated and that it has discretion to impose the sentences concurrently or consecutively so long as the sentence imposed is for a minimum of six months.

Sentencing on this matter will go forward on January 24, 2017 at 8:30 a.m. as previously scheduled.

IT IS SO ORDERED.

1/11/17
Date Written Order Issued

/Barbara D. Crowell
BARBARA D. CROWELL, Judge

1/11/17
Date Written Order Mailed