



SENTENCING GUIDELINES

Virginia

**Criminal Sentencing
Commission**

**Probation Violations
Recent Court Decisions
November 2, 2022**



Recent Court Decisions

The Court of Appeals of Virginia



Jessie Lee Green v. Commonwealth of Virginia (Handout 1-12)

June 14, 2022 - Published



Kristopher Ryan Smith v. Commonwealth of Virginia (Handout 1-5)

June 21, 2022 - Unpublished



Devinceo Dontre Heart v. Commonwealth of Virginia (Handout 1-18)

September 13, 2022 - Published

Jessie Lee Green v. Commonwealth of Virginia (Handout 1-12)



“... the record shows that the judicial proceedings related to the revocation of Green’s suspended sentences began before the statutory amendments took effect on July 1, 2021.”

“The amended version of Code § 19.2-306 certainly does not “contain an express provision that the statutory changes would be effective retroactively on a specified date.” and “[t]he absence of this required language from the bill compels a conclusion that the amendments to those sections are effective prospectively, not retroactively.”

Staff’s Response: Suggested courts use the Technical Violation Guidelines recommended by the Commission in December of 2020 and agreed to by the General Assembly in 2021.

Kristopher Ryan Smith v. Commonwealth of Virginia (Handout 1-5)



“Only Code § 19.2-306 directs the circuit court to adhere to § 19.2-306.1's limiting provisions. Without the amended Code § 19.2-306's directive, Code § 19.2-306.1 cannot apply to Smith's case.⁷”

Conclusion: “For these reasons, the new code sections do not apply to Smith's case. The circuit court had discretion to sentence Smith up to the remaining time of his suspended sentence under the previous version of Code § 19.2-306 that applied to Smith’s revocation hearing. Accordingly, the circuit court did not err in sentencing Smith to eighteen months' incarceration.”

⁷ “Accordingly, we do not reach the issue of whether Smith's violation was technical or non-technical under Code § 19.2-306.1.”

Staff's Response: *SWIFT* was modified to allow users to use the Technical Violation 3/Special Conditions Violation Guidelines when the court requested “old” guidelines. The **TV3/SCV/TV*** Guidelines reflect a historically based recommendation for all technical violations. The Guidelines were recommended for use in technical violations by the VCSC in December of 2020 and agreed to by the General Assembly in 2021. Prior to the statutory changes (§§ 19.2-306 and 19.2-306.1), one worksheet was approved for all technical violations. Technical Violation 1/2 worksheets were engineered to reflect the statutory requirements of §§ 19.2-306 and 19.2-306.1.



Emails about the policy were sent to Judges, Commonwealth’s Attorneys, Public Defenders and Chief Probation Officers. A text with a link to the policy was sent to all *SWIFT* users and the policy is posted on the VCSC websites.

Devinceo Dontre Heart v. Commonwealth of Virginia (Handout 1-18)



“A. The penalty provisions of Code§ 19.2-306.1 applied because the parties agreed to proceed under the statute.”

“B. Code§ 19.2-306.1 requires evidence of two prior technical violations before a defendant is sentenced for a third technical violation”.

“C. Because the Commonwealth did not present evidence that Heart's first two violations were technical violations, the court erred by sentencing him for a third technical violation.”

Staff's Response: Staff has reached out to various attorneys and probation officers to determine what documents are available to document prior technical violations of probation. The answers vary by court. Most are unable to identify one unique document.

Staff has recommended using prior Probation Violation Guidelines as a source. On the disposition page of the Probation Guidelines the judge could identify the conditions violated.



QUESTIONS

DISCUSSION