



LEGAL UPDATE

GUILTY-FILED ON SHOPLIFTING CHARGE IS A PRIOR OFFENSE

Commonwealth v. McNeill, 492 Mass 336 (2023).

RELEVANT FACTS

The defendant was charged with shoplifting, third offense, in violation of MGL c 266 § 30A. One of the predicate offenses was a guilty-filed disposition. The defendant moved to dismiss so much of the new complaint that alleged a third offense arguing that a guilty-filed cannot be used as a predicate offense.

DISCUSSION

A guilty-filed disposition is entered after a factual finding of guilt, such as a plea. A guilty-filed disposition allows the judge to suspend any sentence with the consent of both the defendant and the Commonwealth. When a charge is guilty-filed, the judge retains the ability to remove the case from the file and sentence the defendant at any time.

MGL c 266 § 30A has a graduated sentence structure. A first or second offense is punishable by a fine while a third offense is punishable by imprisonment. The term “offense” is not defined in the statute; however, sentencing statutes treat the word “offense” the same as “conviction” or “adjudication.”

The court found that graduated sentencing laws such as § 30A have a “generally recognized purpose” of punishing behavior more severely when a defendant “has exhibited an unwillingness to reform his miscreant ways and to conform his life according to the law.” *quoting* Commonwealth v. Resende, 474 Mass. 455, 467-468 (2016).

For specific guidance on the application of this case or any law, please consult your supervisor or your department’s legal advisor.

“While no sentence is imposed with the entry of a guilty-filed disposition there is a definitive adjudication of guilt, and therefore, in keeping with the statutory purpose of increased penalties for those who are repeatedly adjudged guilty of criminal wrongdoing, it is clear that a guilty-filed disposition constituted an offense under § 30A.”

The motion to dismiss was properly denied.