Virginia State Crime Commission

Deferred Disposition

2008

DEFERRED DISPOSITION

Background

In general, deferred disposition permits a court to withhold imposition of a sentence and place conditions on the defendant that, when met, allow for the charges to be dismissed. Deferred disposition is usually accompanied by the imposition of conditions similar to probation. Upon the satisfactory completion of all conditions, and if no other criminal offenses are committed during the period of deferment, the original charge may be dismissed.

Currently, there are nine sections in the Code of Virginia that expressly permit a court to use deferred disposition:

- § 4.1-305: Underage purchase and possession of alcohol - first offense;
- § 16.1-278.8 & 16.1-278.9: Juvenile delinquency cases, with "due regard for the gravity of the offense and the juvenile's history;"
- § 18.2-57.1: Assault against family member cases;
- § 18.2-61: Marital rape cases - when the spouse is the complaining witness and with consent of the CA;
- § 18.2 67.1 & 18.2-67.2: Forcible sodomy and object penetration - when the spouse, as the complaining witness, consents and with consent of the CA;
- § 18.2-251: First time possession of controlled substances or marijuana; and,
- § 19.2-303.2: First offense misdemeanor property cases - if the individual was "not previously convicted of a felony."

Additionally, there are two code sections that allow a court to suspend a sentence, after conviction (§ 19.2-303), or a finding of guilt (§ 19.2-298).

Although deferred disposition was an issue in Moreau v. Fuller, the Supreme Court of Virginia failed to articulate clear guidance for future use of deferred disposition by Virginia courts. In Moreau, during a bench trial in a juvenile court, a judge found "sufficient" evidence to find the defendant guilty of contributing to the delinquency of a minor (§ 18.2-371). The judge, on request of the victim's mother, did not enter judgment and took the case under advisement to issue a future disposition. The Commonwealth's Attorney objected to the judge's decision and filed a writ of mandamus with the circuit court. In filing the writ, the Commonwealth's Attorney argued that the judge did not have the discretion to defer the final disposition once she made a finding of guilt. The circuit court ordered the judge to make a decision, holding that once the judge makes a finding of guilt or innocence, there is no further discretion to withhold judgment.

The judge appealed the circuit court's decision to the Virginia Supreme Court, where the Court overruled the circuit court's holding. The Court held that "the act of rendering judgment is within the inherent power of the court and that the very essence of adjudication and entry of judgment by a judge involves discretionary power of the court." Since the act of rendering judgment is "discretionary" and not "ministerial," the court held that writ of mandamus was improperly applied.

This decision, however, did little to define what, if any, authority courts have to apply deferred disposition outside what is already permitted by statute. Justice Koontz noted in his concurrence that the decision "necessarily leaves unresolved a significant issue concerning the inherent authority of the trial courts of this Commonwealth to defer rendering final judgments in criminal cases." Justice Koontz also noted in his opinion that deferred disposition is a "matter of common knowledge and practice of long standing" in the Commonwealth. Likewise, Justice Kinser stated in her separate concurrence:

> *"The record on appeal does not permit us to decide the question whether a trial court has the inherent authority, as opposed to the statutory authority in certain situations...to decline to render judgment in a criminal case and continue the case with or without probationary-type terms with the understanding or promise that the court will ultimately render a particular disposition after a specified period of time."*

While it appears that the Supreme Court of Virginia in Moreau avoided directly deciding whether courts have authority, absent a statute, to use deferred disposition, the Court did overrule a previous decision of the Court of Appeals of Virginia in Gibson v. Commonwealth**.** In Gibson, the Court of Appeals held that, absent statutory authority, a court does not have the authority to use deferred disposition. The Supreme Court of Virginia overruled the Court of Appeals' Gibson decision in footnote No. 5 in Moreau, stating that "to the extent that the decision of the Court of Appeals in Gibson v. Commonwealth, 50 Va.App. 285, 649 S.E.2d 214 (2007), is inconsistent with the holding of this case, it is expressly overruled."

While the Supreme Court of Virginia seems to have been vacating the Court Of Appeals' holding that limited deferred disposition to cases where there is explicit statutory authority authorizing such outcome, the precise significance of this footnote is more uncertain. The holding of Moreau, as previously discussed, dealt with the civil issue of mandamus and whether such writ could be issued against a judge to force her to render a final verdict. The Moreau case did not explicitly deal with the validity of deferred dispositions. The reluctance of the concurrences in Moreau to adopt a broad judicial power allowing a use of use deferred dispositions also creates confusion as to the scope of the holding. Finally, to make matters more confusing, the Supreme Court of Virginia actually upheld the conviction in Gibson, but on completely different grounds.

Conclusion

Overall, the Virginia Supreme Court's decision in Moreau did little to settle the issue of whether courts have the authority, absent explicit statutory permission, to use deferred disposition in criminal cases. As it currently stands, deferred disposition is available only when permitted by statute in some courtrooms across the Commonwealth, while in other courts it is, as stated by Justice Koontz, a "matter of common knowledge and practice of long standing."