



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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March 2, 2026

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Re: *Commonwealth of Virginia v. Doniel Drake*
Case No. FE-2024-780

Dear Counsel:

The issue before the Court is whether a sentencing court may order, as a special condition of probation, that a defendant not possess an imitation firearm. The Court holds it may do so and will include this special condition in its sentencing order.

I. OVERVIEW.

The Court found Defendant Doniel Drake guilty of Voluntary Manslaughter after his *Alford* plea of guilty to the amended indictment. Among the probation conditions, the Court Ordered, as a special condition, that Mr. Drake not use, own, possess, or transport an imitation firearm. The law already prohibits Mr. Drake from possessing a firearm; the Court wants to make sure he does not invite conflict by possessing an imitation. In the present case, the victim had an airsoft gun and a BB gun in his car. The Court wants to make sure that Mr. Drake, who already may not possess a real firearm as a convicted felon, does not tempt conflict by having an analogue as his victim did.

Mr. Drake objects to this special condition because bans on possessing imitation firearms are within a class of possible technical violations which a court may not convert to special conditions of probation. The Court disagrees.

II. ANALYSIS.

The law limits probation violation punishments for a class of violations called “technical violations.” VA. CODE ANN. § 19.2-306.1. Courts may not evade the statutory limitations on sentencing for technical violations by casting them as “special conditions” in a sentencing order. *Burford v. Commonwealth*, 78 Va. App. 170, 183 (2023) (citing *Thomas v. Commonwealth*, 77 Va. App. 613, 625 (2023)). One “technical violation” is the use, ownership, possession, or transportation of a firearm. VA. CODE ANN. § 19.2-306.1(A)(viii).

By contrast, there are no limitations on sentences for violations of special conditions. A court may impose any sentence for a violation of a special condition up to the suspended portion of the original sentence. *Burford*, 78 Va. App. at 182-83.

When the Court issued a bench ruling declaring the possession of an imitation firearm to be a special condition violation, Mr. Drake objected, asserting any future violation could only be a technical violation. He argued that technical violations are viewed broadly, with courts focusing on the underlying violation conduct and not the label or language in a sentencing order. *Delaune v. Commonwealth*, 76 Va. App. 372, 383 (2023) (holding a probation condition to “remain drug free” was a technical violation because “the violation conduct matche[d] the conduct listed in [the statute]”).

Applying principles of statutory construction, Mr. Drake argues that an imitation firearm is subsumed in the category of firearms enumerated in the technical violations list.

First, he notes that the crime of a felon in possession of a firearm, Virginia Code § 18.2-308.2, adopts the definition of “firearm” from Virginia Code § 18.2-308(A)(i). Under the latter statute, a “firearm” is “any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material.”

Second, he argues that this puts § 18.2-308.2 in hopeless conflict with § 19.2-306.1. Under the former statute, possession of a firearm is a crime with no probation violation sentencing limitation. Under the latter statute, possession of a firearm is a technical violation with strict sentencing limitations. Thus, he concludes, the statutory protection of possession of firearms as a technical violation is meaningless unless the definition of “firearm” in § 19.2-306.1(A)(viii) is different than that of § 18.2-308.2(A). His proposed remedy is to expand the definition of firearms under § 19.2-306.1 to include “an instrument that gives the appearance of being a firearm.” (Def.’s Br. 3.)

The Court does not see the two statutes as being in conflict. Virginia Code § 19.2-306.1(A)(viii) makes *possession* of a firearm a technical violation. However, criminal *convictions* are not technical violations. VA. CODE ANN. § 19.2-306.1(B) (emphasis added).

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Thus, the law recognizes there will be some probationers who possess firearms who are never charged with the crime. Those probationers enjoy the statutory punishment limits of a technical violation of probation. Others will be indicted and convicted and will lose the benefit of the technical violation limits. This statutory distinction is better than the Court crafting its own definition of firearm that the legislature never selected, as Mr. Drake proposes. Accordingly, there is no need to expand the definition of Virginia Code § 19.2-306.1(A)(viii) for the purpose of statutory harmony.

The Court concludes it may proscribe possession of an imitation firearm as a special condition of probation. The statutory list of technical violations does not include imitation firearms. The Court rejects Mr. Drake's interpretation that imitation firearms are implicitly included within the definition of "firearm" under Virginia Code § 19.2-306.1(A)(viii).

III. CONCLUSION.

For the reasons stated herein, the Court holds possession of imitation firearms is not a technical violation. It is properly the subject of a special condition in a sentencing order.

The forthcoming Sentencing Order will include a special condition commanding that Mr. Drake not possess an imitation firearm.

Kind regards,

David A. Oblon
2026.03.02
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David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia