

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 19th day of February, 2010.

Walter E. Cuadra Neria,
a/k/a Walter E. Cuadra, Appellant,

against Record No. 090813
Court of Appeals No. 3088-07-4

Commonwealth of Virginia, Appellee.

Upon an appeal from a
judgment rendered by the Court
of Appeals of Virginia.

Upon consideration of the record, the briefs, and the argument of counsel, the Court is of opinion that there is no error in the memorandum opinion of the Court of Appeals.

After a jury trial, Walter E. Cuadra Neria (Neria) was convicted in the Circuit Court of Fairfax County of driving while intoxicated, his fourth such offense within ten years, in violation of Code §§ 18.2-266 and 18.2-270(C). He was sentenced to four years and six months incarceration and fined \$2,500. Neria challenges the imposition of a fine of \$2,500 in conjunction with his sentence of four years and six months incarceration, claiming that the imposition of the fine, in addition to his period of incarceration, exceeds the lawful range of punishment set by Code § 18.2-10(f) for Class 6 felonies.

Code § 18.2-270(C) classifies driving under the influence, fourth or subsequent offense, as a Class 6 felony. Code § 18.2-270(C) further states:

The punishment of any person convicted of a fourth or subsequent offense committed within a 10-year period

shall, upon conviction, include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court.*

Code § 18.2-10(f) states that the punishment for a Class 6 felony is:

a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

Code § 18.2-10(f) addresses the subject of punishments available for Class 6 felonies in general. The provisions of Code § 18.2-270(C) address the specific subject of enhanced punishment for criminal defendants who commit multiple violations of Code § 18.2-266 in a given timeframe. There is no conflict between the statutes as to the maximum period of incarceration (up to five years) or maximum fine (up to \$2,500) which may be imposed upon conviction of a Class 6 felony. However, the language of Code § 18.2-270(C) does conflict with the language in Code § 18.2-10(f) to the extent that Code § 18.2-10(f) restricts imposition of a fine to instances when a defendant is sentenced to jail for twelve months or less.

In interpreting the two different statutes, we will review the Court of Appeals' application of the Code provisions de novo. See Washington v. Commonwealth, 272 Va. 449, 455, 634 S.E.2d 310, 313 (2006). "[W]hen one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized, if possible, and

* This language reflects the applicable 2003 version of Code § 18.2-270(C).

where they conflict, the latter prevails." Virginia Nat'l Bank v. Harris, 220 Va. 336, 340, 257 S.E.2d 867, 870 (1979).

Code § 18.2-270(C), the more specific statute, requires the imposition of a mandatory minimum fine along with a period of incarceration of one year or more. Because Code § 18.2-270(C), which is a more specific statute than Code § 18.2-10(f), allows imposition of a fine with a sentence greater than twelve months, it was not error for Neria to be sentenced to four years and six months incarceration and also fined \$2,500.

Neria claims that the jury was instructed erroneously because it was not informed of the mandatory minimum fine of \$1,000. However, because the punishment imposed is within the statutorily allowed punishment for a conviction under Code § 18.2-270(C), the Court of Appeals correctly ruled that Neria is not entitled to a new sentencing proceeding even though the jury was not informed that it was required to impose a mandatory minimum fine of \$1,000. See Code § 8.01-678; Turman v. Commonwealth, 276 Va. 558, 567-68, 667 S.E.2d 767, 771-72 (2008).

Accordingly, the judgment of the Court of Appeals is affirmed. Appellant shall pay to the Commonwealth of Virginia thirty dollars damages.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of Fairfax County.

A Copy,

Teste:

*original order signed by the
Clerk of the Supreme Court of
Virginia at the direction of the
Court*