

The question on the severity of his excessive sentence does not end there, Shea then had a sentence reimposed of 20 years for an embezzlement of \$246.76 that he also has to serve. After the suspension of time given to him, Shea will have to satisfy a term of 58 year, 52 years with good behavior, leaving him 72 to 78-years-old upon his release for crimes that left no one physically injured.

During the robbery, Shea took measures to ensure no one was physically injured. He waited until the place was closed so that no other bystanders would be present. And to further ensure no one would be injured, he used a BB gun instead of a real firearm. We do not mention this fact to lessen the seriousness of the crimes committed by Shea and his codefendant, but to simply show that Shea neither planned nor took steps to harm anyone.

At the time of Shea's sentencing for the 4 counts of "Use of a Firearm in the Commission of a Felony" the matter of the trial court being prohibited from running multiple sentences imposed for convictions under §18.2-53.1 to concurrent terms had not been fully examined by the Virginia Supreme Court. As a result, many courts, including Shea's at the time, believed that they were mandated by §18.2-53.1 to sentence such convictions consecutively. The matter before this honorable office in this petition for clemency happens to be one such case.

The trial court believed it was mandated under §18.2-53.1 to sentence Shea to 4 consecutive terms for conviction of the statute. In doing so, the trial court was in complete contrast to the Virginia Supreme Court's more current belief that §18.2-53.1 does not mandate multiple sentences under §18.2-53.1 to run consecutively.

To elaborate, §18.2-53.1 mandates that "any person found guilty thereof shall be sentenced to a mandatory minimum term of imprisonment of three years for a first conviction, and a mandatory minimum term of five years for a second or subsequent conviction under the provisions of this section. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony."

Nevertheless, Shea was sentenced before a 2004 amendment to Code §18.2-53.1 which placed the mandatory minimums requirement into the statute. Yet, Shea's trial court still had mandated that Shea's §18.2-53.1 convictions run consecutively (see attachment, court transcripts) making it evident that Shea's trial court believed that sentencing multiple convictions of Code §18.2-53.1 consecutively to be the law at that time. (*Bullock v. Commonwealth* 48 Va. App. 359, 631 S.E. 2d 334 (2006) "We hold, therefore, that the trial court did not err in the ruling that Bullock's 'mandatory minimum' sentences on his firearm convictions 'must run