

CASES OF INTEREST
May 2011

People v. Robert Franov
Court of Appeals
2011 WL 1752230
May 10, 2011

This case is one to beware of. The Court found that **unauthorized use of a motor vehicle** is **not** limited to joyriding or to situations in which the vehicle is actually driven. Rather, although mere entry into the vehicle would not be enough, when a person enters **and** takes actions that interfere with or are detrimental to the owner's possession or use of the vehicle, the evidence is sufficient to support such a conviction.

Here, damage to the interior and the taking of a part from the vehicle constituted interference sufficient to indicate control over or use of that vehicle, and therefore could be considered a violation of this statute.

People v. John Lingle
Court of Appeals
2011 WL 1583943
April 28, 2011

For those of you following the trail of post release supervision (PRS) cases, this is the most recent pronouncement. First, the Court discussed their prior holdings in this area. They reiterated that their holding in *Sparber*¹ dictated that when a Judge had simply failed to pronounce the PRS portion of a sentence, even though it was a state prison sentence on a violent crime which required PRS, or some other entity has attempted to attach the PRS portion to a sentence, that case must be returned to have a trial judge pronounce the relevant PRS term.

Then, they reiterated that their holding in *Williams*² concluded that there must be a temporal limitation on the court's ability to re-sentence a defendant, which they chose to be the point at which the initial prison sentence has been served and the direct appeal has been completed.

Finally, they determined here that re-sentencing is proper if the case does not fall under *Williams*. So, the defendant may be re-sentenced at any time **before** completion of the originally-imposed sentence. However, they included in the definition of 'before completion' both a defendant who is still serving the prison sentence imposed, **and** one who has served his six-sevenths and been conditionally released from prison. Therefore, a judge can re-sentence someone who, though "on the street", has not yet completed the remaining one-seventh of his original sentence.

¹ People v. Sparber, 10 NY3d 457 (2008)

² People v. Williams, 14 NY3d 198 (2010)