

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
DANIEL C. MCINTYRE	:	
	:	
Appellant	:	No. 2019 EDA 2025

Appeal from the Judgment of Sentence Entered April 1, 2025
 In the Court of Common Pleas of Montgomery County Criminal Division
 at No(s): CP-46-CR-0003258-2023

BEFORE: LAZARUS, P.J., SULLIVAN, J., and STEVENS, P.J.E.*

OPINION BY STEVENS, P.J.E.:

FILED AUGUST 27, 2026

Appellant, Daniel C. McIntyre, appeals from the judgment of sentence entered April 1, 2025, in the Court of Common Pleas of Montgomery County, following his entry of an open guilty plea to thirteen counts of creation of child pornography¹, nineteen (19) counts of possession of child pornography², and one count of corruption of the morals of a minor³. Appellant was subsequently found to be a sexually violent predator (hereinafter "SVP") and sentenced to an aggregate term of incarceration of thirty-eight to ninety-two years. After careful review, we affirm.

The sentencing court set forth the factual and procedural history as follows:

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S.A. § 6312(b)(1) (F2)

² 18 Pa.C.S.A. § 6312(d) (F3)

³ 18 Pa.C.S.A. § 6301(a)(1)(ii) (F3)

On April 14, 2023, Springfield Township Police filed a criminal complaint against Appellant for conduct related to sexual abuse of children and corruption of the morals of a minor. On June 21, 2023, Appellant waived his formal arraignment. On September 11, 2023, the Commonwealth filed bills of information charging Appellant with fifty-six (56) counts of sexual abuse of children – photograph, film, depict sex act on computer for creation of child pornography; one hundred twenty-six (126) counts of sexual abuse of children – possession of child pornography; fifty-six (56) counts of sexual abuse of children-dissemination of photos, computer depiction, film; one (1) count of criminal use of a communication facility; and two (2) counts of corruption of the morals of a minor.

On October 17, 2024, Appellant entered an open guilty plea before the Honorable Thomas P. Rogers. Appellant pleaded guilty to thirteen (13) counts of sexual abuse of children, creation of child pornography; nineteen (19) counts of sexual abuse of children, possession of child pornography; and one (1) count of corruption of the morals of a minor. As a factual basis for the guilty plea, Appellant admitted that in June of 2022, police discovered he had taken photographs of a juvenile child who was twelve (12) to thirteen (13) years old. The pictures depicted the child in various stages of undress and, at times, with narcotics. Appellant admitted that when police downloaded Appellant's devices, including cellular phones, computers, etc., in fall of 2022, police discovered Appellant in possession of 3,082 individual images depicting child pornography, 134 videos of child pornography, all of which were for Appellant's own sexual gratification. In addition, Appellant admitted that taking photographs of the child, and the child having narcotics in Appellant's presence, corrupted the child's morals. (N.T. Open Guilty Plea 10/ 17 /24 at 11-12).

Judge Rogers deferred sentencing for the court to obtain a presentence investigation, a psychosexual investigation and a sexually violent predator assessment. The Commonwealth advised the court that they were seeking sentencing guideline enhancements to impose the 500-image enhancement, and the nature of the images enhancement given the indecent contact depicted throughout the thousands of images of child pornography. Id. at 14. Judge Rogers determined Appellant knowingly, intelligently and voluntarily entered open pleas of

guilty to the charges set forth above. Sentencing was scheduled for December 19, 2024. Id. at 17.

On November 6, 2024, Judge Rogers rescheduled the sentencing hearing for January 16, 2025. On December 17, 2024, the Commonwealth filed a praecipe for a sexually violent predator hearing. On January 10, 2025, this case was re-assigned to the [the sentencing court]. On January 29, 2025, [the sentencing] court attached the attorneys for sentencing and scheduled a sentencing hearing and a sexually violent predator hearing for April 1, 2025.

On April 1, 2025, following a sentencing hearing and a sexually violent predator hearing, this court found, by agreement of the parties, that Appellant was a sexually violent predator as defined in 42 Pa.C.S.A. § 9799.12. The court imposed sentence as follows. For corruption of the morals of a minor (count 240), the court sentenced Appellant to imprisonment for not less than two (2) years nor more than seven (7) years in a state correctional institution. This sentence is above the standard range of the sentencing guidelines and below the aggravated range of the guidelines. The court imposed thirteen (13) consecutive sentences for the crimes sexual abuse of children-photograph, film, depict sex act on computer for creation of child pornography (counts 1-3) for not less than two (2) nor more than five (5) years for each count. These sentences are mitigated sentences. The court imposed these sentences to run consecutive to the sentence for corruption of minors and consecutive to each other. For ten (10) counts of sexual abuse of children-possession of child pornography (counts 57-66), the court imposed sentences of imprisonment for not less than five (5) years nor more than ten (10) years to run concurrent to each other and consecutive to count 13. For the additional nine (9) counts of sexual abuse of children – possession of child pornography (counts 67-75), the court imposed sentences of imprisonment for not less than five (5) years nor more than ten (10) years to run concurrent to each other and consecutive to counts 57-66. These sentences are standard range sentences. The court imposed an aggregate sentence of thirty-eight (38) to ninety-two (92) years. The court imposed costs separately for counts 1-13 and 57. The court ordered Appellant to comply with 42 Pa.C.S. § 9799.15 Tier 3 lifetime sex offender registration, to comply with the rules and regulations of probation, parole and

special conditions for sexual offenders as incorporated into his sentence, and to have no contact with the victim or victim's family.

Trial Court Opinion dated 9/26/2025 at 1-4.

Appellant filed a timely post-sentence motion for reconsideration on April 10, 2025, and an amended motion on April 28, 2025. The sentencing court denied Appellant's motion on July 25, 2025, without hearing, and Appellant timely filed his notice of appeal and statement of matters complained of on appeal thereafter.

On October 16, 2025, Appellant filed a motion to extend time to file his direct appellate brief, which this Court granted. Appellant thus timely filed his direct appeal brief on January 8, 2026. The Commonwealth filed their Appellee's brief on February 9, 2026, which included an objection to Appellant's failure to include statement as required by Pa.R.A.P. 2119(f) addressing the reasons relied upon in support of Appellant's petition for allowance to appeal the discretionary aspects of his sentence. On February 10, 2026, Appellant filed a reply brief responding solely to the Commonwealth's objection to Appellant's clear failure to comply with Pa.R.A.P. 2119(f). This Court granted Appellant's subsequent motion to amend his brief with an attached 2119(f) statement, thus bringing it into compliance with the Rules of Appellate Procedure.

Appellant raises the following issues for this Court's review:

1. Did the trial court abuse its discretion by failing to hold an evidentiary hearing after Mr. McIntyre filed post sentence motions that raised factual and legal arguments that were not included in this sentencing presentation?

2. Was the Court's sentence a manifest abuse of discretion in imposing a sentence of thirty-eight (38) to ninety-two (92) years so far as:
 - a. It was an excessive, *de facto* life sentence and therefore was a manifest abuse of discretion;
 - b. It was more than double the amount of time sought by the Commonwealth and therefore was a manifest abuse of discretion;
 - c. It did not take into consideration Mr. McIntyre's life expectancy and the detrimental effect that incarceration has on a person's life span and therefore was a manifest abuse of discretion;
 - d. It was not proportionate to the offenses committed nor the sentences meted out to other similarly situated individuals and therefore was a manifest abuse of discretion; and
 - e. It ignored the mitigating factors of Mr. McIntyre's tragic life and upbringing and considered inadmissible evidence and facts to which Mr. McIntyre did not plead and was therefore a violation of the 14th Amendment to the Constitution of the United States and Article I, §9 of the Pennsylvania Constitution and therefore a manifest abuse of discretion?
3. Was the Court's sentence illegal as it violated the 8th and 14th Amendments to the Constitution of the United States as it was cruel and unusual punishment and a *de facto* life sentence?
4. Was the Court's sentence illegal as it violated Article I, § 13 of the Constitution of the Commonwealth of Pennsylvania as it was cruel punishment and a *de facto* life sentence?

Appellant's Brief at 11-12.

In addressing Appellant's first issue, we note that the plain language of Pa.R.Crim.P. 720(B)(2)(b) instructs the court before whom a post-sentence

motion is brought to “determine whether a hearing or argument on the motion is required, and if so, [the rule requires said court to] schedule a date or dates certain for one or both.” Thus, the plain language of Rule 720 leaves the decision of whether to hold an evidentiary hearing to the discretion of the lower court, and this Court will not reverse less the lower court abuses that discretion. “An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.” ***Commonwealth v. Dengler***, 586 Pa. 54, 890 A.2d 372, 379 (Pa. 2005). Here, there is no reason to conclude that such an abuse of discretion took place.

Appellant contends that, in essence, because he raises arguments in his post-sentence motion which were not made, and thus which were not explicitly discussed or responded to by the lower court prior to imposition of his sentence, the record before said court was “inadequate for a determination of the claims raised in [his] post sentence motion,” and thus the lower court was required to hold an evidentiary hearing. Appellant’s Brief at 24, *citing* ***Commonwealth v. Hubbard***, 372 A.2d 687 (Pa. 1977); ***Commonwealth v. Dancer***, 331 A.2d 435 (Pa. 1975). We disagree.

First, Appellant’s reliance on ***Hubbard*** and ***Dancer*** is utterly inapposite. In these cases, our Supreme Court reviewed claims arising under the Post Conviction Hearing Act (hereinafter “PCHA”), asserting ineffective assistance

of counsel. Therein, our Supreme Court addressed the circumstances under which it may be necessary to hold evidentiary hearings prior to denial of PCHA relief where petitioners claims were predicated on abandonment of issues which thus did not appear in the trial record. **Hubbard** and **Dancer, supra**. As such, neither holding has any bearing whatsoever on whether a sentencing court is required to hold an evidentiary hearing to address novel arguments raised in a post-sentence motion filed pursuant to Pa.R.Crim.P. 720. The cases are entirely distinguishable, and therefore we find they do not guide this court's review of Appellant's claims instantly.

Here, trial counsel raised the sentencing arguments at issue in his post sentence motion, and thus they indeed appeared of record despite the sentencing court's decision not to hold either an evidentiary hearing or oral argument. Furthermore, Appellant's motion and accompanying memorandum of law were both thorough and supported by extensive attachments. **See** Appellant's Brief, Appendix at pp. 91-200. Indeed, it is evident that the trial court reviewed Appellant's motion, memorandum of law, and attached exhibits prior to denying his post-sentence motion. **See** Trial Court Opinion filed 9/26/2025 at 9, fn. 15. As noted by the trial court, the evidence and testimony adduced at the sentencing hearing itself was also extensive, and included a full pre-sentence investigation report (hereinafter "PSI"), as well as character and expert testimony favorable to Appellant. **Id.** at 2, 7-9.

Thus, Appellant's contention that the record was inadequate for a determination of his post-sentence motion is unsupported. We find no basis to conclude that the lower court abused its discretion in declining to hold an evidentiary hearing or argument prior to denying Appellant's post-sentence motion, and thus we find his first issue merits no relief.

As Appellant's second issue concerns the discretionary aspects of his sentence, we must first determine whether Appellant has properly invoked the jurisdiction of this Court to review the same. ***Commonwealth v. Buterbaugh***, 91 A.3d 1247, 1265 (Pa. Super. 2014).

Challenges to the discretionary aspects of sentencing do not entitle an appellant to an appeal as of right. Prior to reaching the merits of a discretionary sentencing issue[, w]e conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, see Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, see Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

Commonwealth v. Manivannan, 2018 PA Super 112, 186 A.3d 472, 489 (Pa.Super. 2018) (quotation marks, some citations, and emphasis omitted).

We observe that Rule 2119(f) requires the appellant to "set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence." Pa.R.A.P. 2119(f). Furthermore, this Court "cannot look beyond the

statement of questions presented and the prefatory [Rule] 2119(f) statement to determine whether a substantial question exists." ***Commonwealth v. Radecki***, 2018 PA Super 38, 180 A.3d 441, 468 (Pa.Super. 2018). Thus, to the extent that Appellant directed this Court in his Reply Brief to review his summary of the argument in *lieu* of the requisite Rule 2119(f) statement to determine whether he has raised a substantial question and thus successfully invoked the jurisdiction of this court, we will not do so. Our review is limited only to the statement of questions presented as appears in Appellant's initial brief and the 2119(f) statement amended to his brief as pages "22a" and "22b" by this Court's granting of his February 10, 2026, Application to Supplement Appellant's Brief, attached thereto as "EXHIBIT 1."

As discussed above, Appellant's notice of appeal was timely filed, he preserved his challenges to the discretionary aspects of his sentence in his post-sentence motion to reconsider, and his brief is now compliant with Pa.R.A.P. 2119(f). Thus, we proceed to review whether he has raised a substantial question that the sentence appealed from is not appropriate under the sentencing code.

"The determination of what constitutes a substantial question must be evaluated on a case-by-case basis." ***Commonwealth v. Prisk***, 2011 PA Super 22, 13 A.3d 526, 533 (Pa. Super. 2011). "A substantial question exists only when the appellant advances a colorable argument

that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Id.*** This Court has recognized that "an excessive sentence claim—in conjunction with an assertion that the court failed to consider mitigating factors—raises a substantial question." ***Commonwealth v. Caldwell***, 117 A.3d 763, 770 (Pa. Super. 2015) (*en banc*).

In his amended 2119(f) statement, Appellant alleges that:

In this case, the lower court issued an excessive sentence. It did so by imposing a *de facto* life sentence that was more than double what the Commonwealth sought; that it did not take into consideration Mr. McIntyre's life experiences; it was disproportionate to the sentence received by other similarly situated individuals, and it ignored mitigating factors. This amounts to an abuse of discretion and warrants invocation of this Court's jurisdiction.

Appellant's Amended Brief at 22a.

In light of the foregoing precedent, we conclude that Appellant's challenge to the imposition of an excessive sentence along with his claim that, *inter alia*, the sentencing court failed to consider mitigating factors does raise a substantial question, and thus we grant his petition for allowance of appeal and proceed to address the merits of his claim.

Our standard of review of a challenge to the discretionary aspects of sentence is well settled:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse

of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Reid, 2024 PA Super 200, 323 A.3d 26, 30-31 (Pa.Super. 2024) (quoting ***Commonwealth v. Gonzalez***, 2015 PA Super 13, 109 A.3d 711, 731 (Pa.Super. 2015) (citation omitted)). Where the court has the benefit of a PSI report, "we shall . . . presume that the sentencing judge was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors." ***Commonwealth v. Antidormi***, 2014 PA Super 10, 84 A.3d 736, 761 (Pa.Super. 2014) (citation omitted), appeal denied, 626 Pa. 681, 95 A.3d 275 (Pa. 2014). Furthermore, sentencing courts are afforded broad discretion in determining whether to run sentences consecutively. ***Commonwealth v. Radecki***, 2018 Pa. Super. 38, 180 A.3d 441, 470 (Pa. Super. 2018).

After review, we find no evidence that the trial court abused its discretion in imposing the challenged sentence. Rather, we find the trial court's opinion clearly and thoroughly sets forth the sound reasoning underlying its sentence. We note the following portions of the lower court's opinion:

Prior to imposing sentence upon Appellant in this case, the court considered a significant amount of information about Appellant and placed that on the record. The court considered the required sentencing principals set forth in Section 9721 (b) of the

Sentencing Code that the sentence must be consistent with the protection of the public, with the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court considered the materials submitted to the court prior to sentencing, and the testimony and evidence presented at the sentencing hearing. The court considered the transcript of the open guilty plea hearing that occurred before Judge Rogers. The court read the letters submitted on behalf of Appellant prior to court. The court heard and considered the victim impact statements presented at the sentencing hearing from the child victim and the child's mother about the devastating impact the crimes had on the family.

The court considered the letter submitted from the victim's grandfather. The court considered the testimony presented on behalf of Appellant from Appellant's uncle, who provided a personal recitation of what Appellant has endured in his life. The court considered the expert testimony of Dean Dickson who opined about how Appellant used certain parts of child pornography in relation to his personal history. The court considered the arguments of counsel and Appellant's statement to the court. The court considered the sentencing guidelines for each offense and the maximum penalties allowed for each offense.

In this case, the court had the benefit of various reports, including a presentence investigation report ("PSI"), psychosexual investigation and sexually violent predator assessment. The court carefully reviewed and considered these reports. The PSI provided details on Appellant's family situation and background; education; physical and mental condition; drug and alcohol use; education; economic status; and occupation and personal habits. The PSI provided the sentencing guidelines for each of the charges for which Appellant was found guilty with the applicable enhancement penalties. The PSI also described the offense conduct. The psychosexual evaluation provided a comprehensive risk and needs assessment of Appellant to aid in treatment. This evaluation includes a mental status exam and behavioral observations; a description of the offensive conduct from both the affidavit of probable cause and from Appellant's own version of the events; Appellant's personal history and social functioning; standardized risk assessment results indicating a high risk of recidivism; and amenability to treatment and supervision. The court noted that the psychosexual evaluation states that Appellant is twice as likely to recidivate as a typical offender. The sexually violent predator

assessment states that Appellant meets the criteria to be designated a sexually violent predator, to which Appellant agreed. (N.T. Sentencing 4/ 1/25 at 84-85).

The court clearly stated on the record that she is not considering or factoring into her decision any uncharged criminal conduct. Contrary to Appellant's claim, the court was clear in that it did not consider inadmissible evidence and facts to which Appellant did not plead.

The court described that the charges against Appellant fall into three (3) different categories. First, there is the corruption of minors charge, which represents the course of conduct felony for Appellant's acts and actions involving the child victim between the ages of eleven (11) to thirteen (13). Second, there are the thirteen (13) counts of sexual abuse of children for creation of pornography, sexual images which the court described encompass "thirteen (13) separate counts involving a real human being [the child victim in this case]. A child here, still a minor, who ironically participated willingly as much as a child can consent to things." (N.T. Sentencing 4/ 1/25, at 78). The conduct represented in these charges is a "gross violation of everything that is acceptable in our society." Id. at 78. Third, there are the nineteen (19) counts of sexual abuse of children for the massive collection of child pornography that was found on Appellant's electronic devices. These images and videos were of nameless children. The court addressed the acts that formed the basis for the charges to which Appellant pleaded guilty. The court considered sentencing for each of these categories of crimes.

The thirteen (13) counts of creation of child pornography to which Appellant pleaded guilty represent thirteen different images that he admitted he took of the victim that represented child pornography that he created with a 12-year-old child. The images represented the child in Appellant's residence in various states of undress, some involving nitrous oxide and some with the child unconscious. The nineteen (19) counts of possessing child pornography each represent five hundred images and/ or videos depicting nameless children that are separate from the images represented in the creation of child pornography counts. Appellant possessed 3,082 individual images of child pornography and 134 videos, which he admitted were for his own sexual gratification. Relating to the crimes of sexual abuse of children for the collection of child pornography, the court recognized that this collection of

images was extensive. The court noted that if these were the only charges before the court, which Mr. Dickson described as a collection of images that Appellant somehow used to try to grapple with his past, Mr. Dickson's testimony perhaps would hold more weight. But, as the court described, "[T]here's so much more here." Id. at 84.

* * *

The court explained the reason for the imposition of consecutive sentences for these crimes is because "they reflect different images and different pornography that [Appellant] created with this child." Id. at 85. Finally, for the nineteen (19) counts of sexual abuse of children for the collection of child pornography, the court explained that these separate crimes were to run concurrent to each other and consecutive to the rest of the crimes.

Trial Court Opinion Filed September 26, 2025 at pp 12-16.

In light of the sound reasoning and ample support of record for the trial court's imposition of sentence, we find none of Appellant's arguments on appeal availing.

To the extent that Appellant contends on appeal that the trial court failed to consider the length of the sentence imposed relative to his age and the deleterious effects of imprisonment, that the trial court failed to consider relevant mitigating factors, or indeed that the trial court considered inadmissible evidence or facts to which Appellant did not plead, we find such is contrary to the record. To the extent Appellant contends the recommendation of the Commonwealth limited in any way the broad discretion invested in the lower court in imposing sentence, he cites to no authority whatsoever in support of that contention. Further, to the extent

that Appellant frivolously contends that the sentence imposed against Ghislaine Maxwell for crimes related to the sex trafficking of minors in the federal court system somehow limits the permissible sentences which may be imposed against Appellant for crimes related to the creation and possession of child pornography by a judge sitting in the Court of Common Pleas for Montgomery County, Appellant presents no availing argument.

Finally, while Appellant predicates much of his argument concerning the foregoing, as well as the entirety of his argument concerning his third and fourth issues on appeal, on the assertion that the sentence imposed constitutes a “*de facto* life sentence,” such is contrary to this court’s precedent. Appellant contends he received a *de facto* life sentence because he will not be eligible for release prior to attaining seventy-seven years of age, and he submits he is statistically unlikely to do so. Appellant’s Brief at 28 (citing ***Commonwealth v. Dodge***, 957 A.2d 1198, 1199 (Pa. Super. 2008))(vacating judgment of sentence where Appellant “would remain in prison under the minimum term until age 100 1/2”); ***Commonwealth v. Austin***, 66 A.3d 798, 801 (Pa. Super. 2013)(ref. ***Commonwealth v. Austin***, No. 1092 EDA 2010 (unpublished opinion))(vacating sentence where Appellant, then twenty-five years of age, was sentenced to an aggregate term of incarceration of seventy-two to one-hundred-ninety-two years of incarceration, and thus would not be eligible for release until approximately ninety-seven years of age)).

While this Court has indeed found the imposition of a sentence of a sufficient length to “essentially guarantee[] life imprisonment,” *may* constitute a *de facto* life sentence, such precedent is not here applicable. **Dodge**, *supra*. In point of fact this Court has found that a sentence which does not allow for the possibility of parole until a defendant’s early eighties does not constitute the equivalent of a life sentence. **See Commonwealth v. Coleman**, 242 A.3d 435 (Pa. Super. 2020)(unpublished⁴)(citing **Commonwealth v. Brooker**, 2014 PA Super 209, 103 A.3d 325, 340 (Pa. Super. 2014)). As such, Appellant, who will be eligible for parole in his mid-to-late-seventies, simply is not currently serving a *de facto* life sentence.

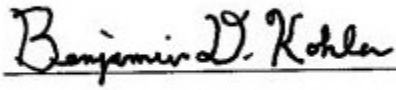
As such, while Appellant’s third and fourth issues challenge the legality of his sentence, each and every argument presented by Appellant attempting to use his age as a shield against his heinous behavior, as documented in the record, by claiming that his sentence constitutes a *de facto* life sentence without the possibility of parole, fails and we find that his third and fourth issues merit no relief.

For the foregoing reasons, we affirm Appellant’s judgment of sentence.

Judgment of sentence affirmed.

⁴ Pursuant to Pa.R.A.P. 126(b), reliance on non-precedential opinions filed after May 1, 2019, for persuasive value is permissible. We find **Coleman** to be persuasive in this matter.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/27/2026