

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

PETER ANDREW ZEHR

Appellant

: No. 1187 WDA 2025

Appeal from the Order Entered June 24, 2025
In the Court of Common Pleas of Potter County Criminal Division at
No(s): CP-53-CR-0000089-2011

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PETER ANDREW ZEHR

Appellant

: No. 1188 WDA 2025

Appeal from the Order Entered June 24, 2025
In the Court of Common Pleas of Potter County Criminal Division at
No(s): CP-53-CR-0000235-2005

BEFORE: PANELLA, P.J.E., KING, J., and LANE, J.

OPINION BY LANE, J.:

FILED: September 29, 2026

Peter Andrew Zehr ("Zehr") appeals from the orders, at two trial dockets, finding him in civil contempt for failure to pay restitution, and imposing a sentence of six months' imprisonment with a purge condition of paying \$3,000. While we do not disturb the finding of civil contempt, we reverse the imposition of the sentence, where the trial court set the amount of the purge condition without first making a determination, beyond a

reasonable doubt, that Zehr had the ability at that time to pay. We thus affirm in part and reverse in part.

The trial court summarized docket CP-53-CR-0000235-2005 as follows:

[In 2005, Zehr] was operating a vehicle under the influence of alcohol and was involved in a crash[. H]is vehicle struck a utility pole causing serious injury to his passenger. [Zehr] was sentenced on March 8, 2006, [for] driving under the influence [to] one to six months['] imprisonment. Subsequently, in May 2006, Zehr] was ordered to pay restitution in the form of his passenger's medical expenses in the amount of \$209,813.31. [In 2025] (19 years after sentencing) the approximate amount of restitution unpaid is \$196,358.69.

Trial Court Opinion, 10/17/25, at 1 (unnecessary capitalization omitted).

The trial court summarized the following for trial docket CP-53-CR-0000089-2011:

[T]he Commonwealth alleged that [in June 2006, Zehr] and an accomplice set fire to a residence and shed[. Zehr] pled guilty to . . . criminal mischief[. He] was sentenced on December 19, 2012, to 11½ to 23½ months of incarceration and ordered to pay restitution of \$186,746.00 to the owners of the structures; as well as the insurance company that insured the property. [In 2025] (13 years after sentencing) restitution in the matter remains unpaid in the approximate amount of \$161,511.24.

Id. (unnecessary capitalization omitted).

Zehr has been the subject of at least six contempt proceedings for failure to make timely payments toward restitution. ***See id.*** at 2-3 (citing indirect civil contempt findings in August 2015, March 2017, July 2021, July and August 2024, and additional contempt proceedings in July 2019 and June 2020).

Most recently, on August 21, 2024, the trial court found Zehr in contempt and ordered him: to pay \$1,000 within thirty days or be incarcerated for thirty days; to make timely payments of \$200 per month; “and to provide six applications for employment to the Probation Department.” ***Id.*** at 2-3. In October 2024, Zehr “returned for a review hearing[,] having failed to complete his six applications for employment and the Court granted [Zehr] an additional 30 days to complete the applications or to be incarcerated for 30 days with furloughs to look for employment.” Trial Court Opinion, 10/17/25, at 3.

In April 2025, the Commonwealth filed the underlying motion for contempt, averring that Zehr had made no payments toward restitution since October 2024. The trial court conducted a hearing on June 18, 2025, at which Zehr, then forty years old, appeared *pro se*. Zehr agreed that he had not made restitution payments, but averred the following.

[H]e was self-employed[,] obtaining most of his work from a local auto repair shop as he had been for the entirety of his contempt hearings. [T]here had been a flood in August of 2024 that [“wiped out” the auto repair shop and brought his work “to a halt very quickly.” Zehr did] construction work for his father [in exchange for “room and board.” Zehr] also claim[ed] that he work[ed] for a local farmer [five to twenty hours per week.]

[Zehr] live[d] with his girlfriend with whom he has a child and her two children. He has made numerous excuses over the years concerning his girlfriend’s inability to care for the children and the reason why he could not be gainfully employed[,] and now aver[red] that she [was diagnosed with a brain tumor three months earlier and was unable “to do a whole lot around the house.”] . . .

Trial Court Opinion at 3; **see also** N.T., 6/18/25, at 5-6, 8, 16. When asked by the trial court about applying to a particular company that was hiring, Zehr replied that he did not have a driver's license.¹

The Commonwealth argued that, thirteen years after his convictions, Zehr now appeared for a "sixth contempt proceeding for failure to pay restitution," and "in the three years" between 2022 and 2024, he "missed 20 of 36 payments" and "repeatedly . . . delay[ed] any payment until a court proceeding [was] imminent." N.T., 6/18/25, at 11-12. The Commonwealth also explained that the victims at his criminal mischief docket have "asked the court for help in obtaining more timely restitution." **Id.** at 12 (unnecessary capitalization omitted). The Commonwealth asserted that Zehr has "bamboozle[ed]" both the trial court and the victims, and requested a sentence of five to seven months' imprisonment "to get [Zehr's] attention" and demonstrate that "he needs to take the responsibility . . . and they're not going to go away." **Id.** at 13.

The trial court found Zehr in civil contempt and imposed a sentence of six months' imprisonment, with a purge condition that Zehr may avoid the sentence if he paid \$3,000. The court stated that it found "beyond a reasonable doubt that he has [the] ability to purge himself contempt." N.T.,

¹ The trial court noted that previously, in July 2024, it ordered Zehr "to make a good faith attempt to obtain his driver's license." Trial Court Opinion, 10/17/25, at 2.

6/18/25, at 15-16. Zehr averred, “Your Honor, I have no way to purge myself.” ***Id.*** at 16. The trial court responded, “If you had got a job, you would have, right? You made no payments since October” 2024. ***Id.*** The trial court entered an order memorializing this ruling on June 24, 2025. Subsequently, the trial court granted Zehr’s motion for work release, and Zehr’s subsequent filings averred that he was working at a restaurant. Zehr did not pay the purge amount and he served the entire six months’ term of imprisonment.

Zehr filed timely *pro se* notices of appeal at each trial docket.² He and the trial court have complied with Pa.R.A.P. 1925. This Court *sua sponte* consolidated Zehr’s appeals at the two trial dockets. Following a *per curiam* order by this Court for the trial court to determine whether Zehr was eligible for court-appointed counsel or whether he wished to proceed *pro se*, Zehr’s present counsel entered her appearance in this Court.

Zehr presents the following issue for our review:

. . . Did the trial court err by imposing an unlawful civil contempt purge condition of \$3,000 absent record evidence necessary to make a substantiated finding, beyond a reasonable doubt, that . . . Zehr had the present ability to pay that amount of money at the time he was held in contempt and incarcerated?

² Zehr filed identical *pro se* notices of appeal at each trial docket, which listed both docket numbers. ***See Commonwealth v. Walker***, 185 A.3d 969, 977 (Pa. 2018) (holding “that when a single order resolves issues arising on more than one lower court docket, separate notices of appeal must be filed”); ***see also Commonwealth v. Johnson***, 236 A.3d 1141, 1148 (Pa. Super. 2020) (*en banc*) (holding that an appellant may file, at each trial docket, separate notices of appeal which list multiple docket numbers).

Zehr's Brief at 3.

Zehr avers that the trial court erred by imposing a purge condition, of paying \$3,000, without determining whether he had the present ability to pay that amount. We consider the applicable standard of review:

This [C]ourt's review of a civil contempt order is limited to a determination of whether the trial court abused its discretion. If a trial court, in reaching its conclusion, overrides or misapplies the law or exercises judgment which is manifestly unreasonable, or reaches a conclusion that is the result of partiality, prejudice, bias or ill will as shown by the evidence of record, then discretion is abused.

Thompson v. Thompson, 187 A.3d 259, 263 (Pa. Super. 2018) (citation omitted).

This Court has addressed the distinct principles of civil contempt and criminal contempt:

Civil contempt has as its dominant purpose to enforce compliance with an order of court for the benefit of the party in whose favor the order runs, while criminal contempt has as its dominant purpose, the vindication of the dignity and authority of the court and the protection of the interest of the general public. This distinction . . . is important because the type of contempt being punished will determine the manner in which the contempt is to be adjudicated as well as the punishment which may be imposed. It must be noted that the characteristic that distinguishes civil from criminal contempt is ***the ability of the contemnor to purge himself of civil contempt by complying with the court's directive***.

Orfield v. Weindel, PA Super 135, 52 A.3d 275, 281 (Pa. Super. 2012) (emphasis added and citation omitted).

A trial court's exercise of its civil contempt power

“to enforce compliance is exercised with the objective of compelling performance and not inflicting punishment.” In accordance with this principle, . . . a court may not convert a coercive sentence into a punitive one by imposing conditions that the contemnor cannot perform and thereby purge himself of the contempt. . . .

[I]n determining whether [a party] was properly imprisoned for civil contempt, the crucial question is not whether he willfully and contemptuously violated the original orders, but whether he had the present ability to comply with the conditions set by the court for purging himself of his contempt.

Barrett v. Barrett, 368 A.2d 616, 620 (Pa. 1977) (paragraph break added and citations omitted).

Pennsylvania courts have long applied these principles:

Before a defendant may be committed for civil contempt, it is essential that it be clear what is required of him in order to purge himself of the contempt, and the commitment order should state the condition which when complied with will release him. In the absence thereof, a commitment for civil contempt is improper.

Indeed, it is axiomatic that a litigant adjudged to be in civil contempt “holds the keys to the jailhouse door.”

Fetzer v. Fetzer, 336 A.3d 1058, 1066 (Pa. Super. 2025) (citations omitted).

In **Hyle v. Hyle**, 868 A.2d 601 (Pa. Super. 2005), the trial court found the defendant in civil contempt for failure to pay spousal and child support. **See id.** at 603. Indeed, the defendant had “refuse[d] to find employment and, in an obvious effort to avoid payment of the support, ha[d] spent the last few years in prison as he has been repeatedly found in contempt of court for his failure to meet his support obligation.” **Id.** The trial court imposed a

sentence of six months' imprisonment and set a \$2,500 purge. **See id.** at 604. The trial court reasoned that if the defendant had work release and found employment, he could pay the purge amount. **See id.** The court subsequently entered an order "making [him] eligible to participate in the . . . prison's work release program." **Id.** at 604.

The defendant appealed to this Court, arguing "that the trial court erred by setting a condition for a purge that he cannot presently meet." **Id.** This Court agreed, first noting the record evidence that the defendant's "only assets were \$21[] in his prison account and a [seventeen year-old] motor vehicle." **Id.** at 605. This Court then found improper the trial court's reasoning that the defendant could comply if he obtained employment while on work release: "[The defendant's] ability to comply with the purge . . . will only occur sometime in the future; [he] must first secure employment and then earn \$ 2,500.00 to pay the purge amount." **Id.**

We note that in March 2026, while the instant appeal was pending, a plurality of the Pennsylvania Supreme Court issued an opinion announcing the judgment of the court ("OAJC") in **Bredbenner v. Hall**, 353 A.3d 683 (Pa. 2026) (OAJC). The three-Justice OAJC, as well as a three-Justice concurring opinion and a one-Justice concurring opinion, all agreed to the continued application of the law above — that before a trial court may impose a purge condition, it must first determine, beyond a reasonable doubt, the contemnor's

present ability to pay the purge amount. **See id.** at 691 (OAJC), 697 (concurring opinion by Todd, C.J.), 704 (concurring opinion by Brobson, J.).³

On appeal, Zehr does not challenge the finding of civil contempt. He avers that the trial court erred by imposing a civil contempt purge condition of \$3,000 without the necessary finding on the record, beyond a reasonable doubt, that he had the present ability to pay that amount. Zehr asserts the Pennsylvania Supreme Court upheld this underlying principle in **Bredbenner**, the Justices' disagreement as to the burden of proof in a child support matter notwithstanding. Zehr maintains there was no record evidence of his "existing accounts, funds, assets, or other resources." Zehr's Brief at 8. Instead, Zehr contends, the trial court improperly relied on its assessment of his earning capacity, and "erroneously considered, without any real analysis, [his] ability to earn money to pay the purge condition through work release [at a restaurant] while incarcerated." **Id.** at 12, 15. Zehr asserts this Court has reversed a purge condition based on the trial court's assessment of a "defendant's 'ability to comply with the purge . . . sometime in the future'

³ We note that a plurality opinion generally does not carry precedential value because it did "not command the joinder of a majority of the justices participating in the case." **Commonwealth v. Brown**, 23 A.3d 544, 556 (Pa. Super. 2011) (*en banc*). However, "in cases where a concurring opinion enumerates the portions of the plurality's opinion in which the author joins or disagrees, those portions of agreement gain precedential value." **Id.** In **Bredbenner**, the point of disagreement between OAJC and two concurring opinions was the evidentiary burdens on the parties in a child support matter. This issue is not before this panel in the present appeal.

after the defendant secured employment and earned the required funds.” **Id.** at 12. Zehr concludes that “by failing to establish [his] present ability to afford the purge condition, the trial court effectively imposed a criminal contempt sanction.” **Id.**

In its opinion, the trial court reviewed the record evidence and set forth its reasoning for finding Zehr in civil contempt. **See** Trial Court Opinion, 10/17/25, at 3-6 (finding, *inter alia*: Zehr was “a healthy 40-year-old male who is fully capable of being employed but has chosen to be sporadically self-employed;” Zehr’s “argument that he cannot be held in contempt because he doesn’t earn much is due to his own making as employment is available for him, should he avail himself of” it; and “despite numerous hearings and warnings from the [c]ourt, [Zehr] refused to make payments of \$200[] per month since October . . . 2024”).

With respect to determining the amount of the purge condition, the trial court framed the issue and addressed it as follows:

Next [Zehr] claims that he was not provided with an **ability to pay hearing**; however, that is not true as [Zehr] has had numerous hearings to justify why he cannot pay his obligation. He was only required to pay \$200[]per month but refused to consistently honor that meager obligation. The Court finds that [Zehr] is healthy with no physical restrictions which would prohibit him from working for an employer who could pay him a living wage. At the hearing on June 18, 2025, [Zehr] acknowledged that a factory within five miles of his residence was hiring. Since [Zehr] insists on being self-employed and having inconsistent income instead of being fully employed, he has created his own circumstances which have affected his ability to consistently pay the restitution claim.

Id. at 4 (emphasis in original). Elsewhere in its opinion, it reasoned: Zehr “has been granted work release and is employed at a local restaurant so that he can purge himself of contempt.” **Id.** at 5.

After careful review of the record, including the transcript of the contempt hearing, we determine the trial court erred in imposing a sentence of imprisonment with a purge condition of paying \$3,000, where there was no record evidence of Zehr’s present ability to pay that amount. While the trial court considered the evidence of Zehr’s inability or refusal to make timely restitution payments supported a finding of civil contempt, that same evidence did not establish , beyond a reasonable doubt, that he had the present ability, at the time of the contempt hearing, to pay \$3,000 to avoid imprisonment. **See id.** at 4 (reasoning there was a proper “ability to pay hearing” where Zehr “had numerous [prior] hearings to justify why he cannot pay his” restitution obligation of \$200 per month).

Similarly, the trial court improperly considered that Zehr was on work release — from the imprisonment imposed for the civil contempt and working at a restaurant. This work release and employment arose **after** the finding of civil contempt and therefore was not determinative of, again, Zehr’s ability **at the time of the contempt hearing** to pay the purge amount. **See Hyle**, 868 A.2d at 604-05 (holding that a contemnor’s “ability to comply with the purge” may not “only occur sometime in the future,” and instead, the party

“must first secure employment and then earn [the money] to pay the purge amount”).

For the foregoing reasons, we affirm the trial court’s finding of civil contempt against Zehr. However, we reverse the portion of the order imposing six months’ imprisonment with a purge condition of paying \$3,000. As it is not disputed that Zehr has served the entire six months’ sentence, we decline to remand for the trial court to impose any amended purge condition. ***See Upper Augusta Twp. v. BMMA, LLC***, 347 A.3d 840, 849 (Pa. Cmwlth. 2025) (holding that the trial court erred in imposing a term of imprisonment, for a finding of civil contempt, without including a purge condition and thus reversing portion of the trial court’s order imposing the sentence);⁴ ***but see Hyle***, 868 A.2d at 606 (vacating purge condition of \$2,500 payment and remanding “for the trial court to determine what conditions will be sufficiently coercive yet enable [the defendant] to comply with the order,” and noting the trial court was “also free to choose to adjudicate [the defendant] for indirect criminal contempt, provided that [he would be] afforded all of the procedural rights and safeguards afforded to criminal defendants”).

Order affirmed in part and reversed in part. Jurisdiction relinquished.

⁴ “Although decisions of the Commonwealth Court are not binding on this Court, they may provide persuasive authority.” ***Barrett v. M&B Med. Billing***, 291 A.3d 371, 376 n.4 (Pa. Super. 2022).

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

9/29/2026