

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

JOSEPH MILLER

Appellant

: No. 1875 EDA 2024

Appeal from the Judgment of Sentence Entered June 17, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0007476-2017

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

JOSEPH MILLER

Appellant

: No. 1876 EDA 2024

Appeal from the Judgment of Sentence Entered June 17, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0002761-2018

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

JOSEPH MILLER

Appellant

: No. 1877 EDA 2024

Appeal from the Judgment of Sentence Entered June 17, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0006864-2019

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v. :
:
:
JOSEPH MILLER :
:
:
Appellant : No. 1878 EDA 2024

Appeal from the Judgment of Sentence Entered June 17, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0006865-2019

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
:
:
PENNSYLVANIA

v. :
:
:
JOSEPH MILLER :
:
:
Appellant : No. 1879 EDA 2024

Appeal from the Judgment of Sentence Entered June 17, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0007359-2021

BEFORE: OLSON, J., DUBOW, J., and FORD ELLIOTT, P.J.E.*

OPINION BY DUBOW, J.: **FILED SEPTEMBER 30, 2026**

Appellant Joseph Miller appeals from the June 17, 2024 judgments of sentence entered by the Philadelphia County Court of Common Pleas following revocation of his probation in the above-captioned five cases. The court revoked Appellant's probation after finding him in direct violation of his probation based upon his conviction for indirect criminal contempt ("ICC"), as well as in technical violation due to a positive drug test. Without addressing the merits of Appellant's claims, we are constrained to vacate Appellant's

* Retired Senior Judge assigned to the Superior Court.

judgments of sentence and the probation revocations in the instant cases pursuant to this Court's reversal of Appellant's underlying ICC conviction in his companion case at Docket Number 2915 EDA 2024. We remand for further proceedings consistent with this decision.

While the facts of these cases date to 2017, we focus only on the factual and procedural history relevant to the 2024 violation of probation ("VOP") proceedings. The 2024 VOP proceedings relate to the probation imposed as part of Appellant's August 23, 2022 sentence of three years of probation at each of the five dockets.¹

The court held VOP hearings on April 12, 2024, and June 17, 2024, to address, *inter alia*, allegations of Appellant's domestic violence against his former paramour ("Victim") in May 2022 and May 2023. At the April 12, 2024

¹ The following are the underlying convictions related to these dockets:

(1) Burglary, graded as a first-degree felony, on November 26, 2018, at CP-51-CR-7476-2017;

(2) Criminal Trespass, graded as a third-degree felony, on December 10, 2018, at CP-51-CR-0002761-2018;

(3) Burglary, graded as a second-degree felony, on January 31, 2020, at CP-51-CR-0006864-2019;

(4) Burglary, graded as a second-degree felony, on January 31, 2020, at CP-51-CR-0006865-2019;

(5) Criminal Trespass, graded as a second-degree felony, on August 23, 2022, at CP-51-CR-0007359-2021.

The August 2022 proceeding, itself, involved resentencing for probation violations at the first four dockets. The court previously revoked probation and resentenced Appellant on January 31, 2020 at the first two dockets.

hearing, the court questioned whether the proceeding constituted a “**Daisey Kates**” hearing.² Defense counsel asserted that it was not a **Daisey Kates** hearing because two previously “open bills” had been “resolved through trial.” N.T., 4/12/24, at 4-5. The two referenced trials addressed the May 2022 and May 2023 domestic violence incidents, concluding in convictions in December 2023 and April 2024.

Specifically, in December 2023, a court convicted Appellant of ICC for a May 2023 violation of a Protection From Abuse (“PFA”) order at Docket Number CP-51-CR-0004188-2023.³ Notably, that court adjudicated Appellant not guilty of Strangulation, Terroristic Threats, Unlawful Restraint, Simple Assault, Recklessly Endangering Another Person, and False Imprisonment, after finding Victim not credible.

In April 2024, another court convicted Appellant of Simple Assault and Recklessly Endangering Another Person relating to the May 2022 incident, at Docket Number MC-51-CR-0001881-2024. Relevantly, the parties agreed that this conviction did not constitute a direct violation of the August 2022

² A “**Daisey Kates** hearing” is the term commonly used to describe a probation revocation hearing addressing new criminal charges, which is held prior to the probationer’s trial on the new charges. **See Commonwealth v. Moriarty**, 180 A.3d 1279, 1282 n.3 (Pa. Super. 2018) (citing **Commonwealth v. Kates**, 305 A.2d 701 (Pa. 1973)). While permissible, the Supreme Court has discouraged **Daisey Kates** hearings to avoid the “unjust result of revoking probation, only to find later that the probationer has been acquitted of the charges that prompted the revocation hearing.” **Commonwealth v. Giliam**, 233 A.3d 863, 869 (Pa. Super. 2020) (citation omitted).

³ As stated, this Court reversed this ICC conviction at 2915 EDA 2024.

probationary sentence as the May 2022 incident occurred prior to the imposition of the relevant probationary sentence.

Despite the prior adjudications, the VOP court entertained testimony from Victim related to the May 2022 and May 2023 incidents “to understand the impact Appellant’s conduct had on [Victim] and the fear she felt as a result of his actions.” Trial Ct. Op. at 13 The testimony included allegations that the prior court found not credible in the December 2023 trial.

Victim also testified that Appellant repeatedly called her and sent her “a stack of letters” while in prison, despite the existence of the PFA order. N.T., 4/12/24, at 26. In exercising his right of allocution at the April 2024 hearing, Appellant initially denied writing the letters to Victim, prompting the court to order a handwriting analysis. *Id.* at 44, 48. At a second hearing on June 17, 2024, Appellant admitted to authoring the letters.⁴

During the hearing, the court also noted a positive drug test on March 9, 2023, for amphetamines, benzodiazepines, and cocaine, which defense counsel acknowledged as a technical violation. *Id.* at 9, 11.

At the conclusion of the June 17, 2024 hearing, the court found Appellant in direct violation of his probation based upon the ICC conviction. N.T., 6/17/24, at 9; Trial Ct. Op. at 13. In revoking probation, the court also referenced the technical violation of the March 2023 positive drug test and the letters sent in violation of the PFA order, in addition to Appellant’s “bald-faced”

⁴ We observe that the hearing occurred on June 17, 2024, even though the transcript is mistakenly dated June 14, 2024.

lie in court regarding the letters. Trial Ct. Op. at 13, 23-24; N.T., 6/17/24, at 8-9. Concluding incarceration in county prison would be insufficient given Appellant's "repeated violations" related to Victim, the court imposed an aggregate sentence of 8 to 16 years of incarceration, with credit for time served.⁵ N.T., 6/17/24, at 9-10.

On June 26, 2024, Appellant filed a post-sentence motion. With his post-sentence motion pending, Appellant filed a notice of appeal on July 17, 2024. Appellant and the court complied with Pa.R.A.P. 1925. This Court granted Appellant's motion to consolidate the five cases.

Appellant raises the following questions on appeal:

A. Where Appellant had been tried and acquitted of offenses charged in a separate case than those for which he was on probation, did the probation supervising court err and abuse its discretion in conducting a ***Dais[e]y Kates*** hearing based upon that acquitted conduct, permitting testimony as to that acquitted conduct, and then finding Appellant in violation of probation due to that acquitted conduct?

B. Did the probation supervising court err and abuse its discretion when, during a probation violation hearing, in the course of determining whether Appellant had violated probation, the court permitted the presentation of, and considered evidence of, conduct leading to convictions for other offenses, where that conduct predated the court's probation?

C. Did the lower court impose an illegal probation revocation sentence for criminal trespass, graded as a felony of the third

⁵ Specifically, the court imposed the following sentences of incarceration: (1) 5 to 10 years at CP-51-CR-0007476-2017; (2) 3 to 6 years at CP-51-CR-0002716-2018, imposed consecutively to CP-51-CR-0007476-2017; (3) 5 to 10 years at CP-51-CR-0006864-2019, imposed concurrently; (4) 3 to 6 years at CP-51-CR-0006865-2019, imposed concurrently; and 3 to 6 years at CP-51-CR-0007359-2021, imposed concurrently. ***Id.***

degree (at CP-51-CR0002761-2018), where the sentence of 3 to 6 years imposed by the court, combined with the amount of time that Appellant has already served for that conviction while incarcerated, aggregates to more than 7 years, and thus exceeds the maximum sentence for a felony of the third degree?

D. Did the lower court err and abuse its discretion by considering an improper factor—to wit, acquitted conduct—when imposing Appellant’s revocation sentence?

Appellant’s Br. at 4-5 (suggested answers omitted).

“Revocation of a probation sentence is a matter committed to the sound discretion of the trial court[.]” **Commonwealth v. Morton**, 358 A.3d 745, 749 (Pa. Super. 2026) (citation omitted). Accordingly, we will not disturb the court’s decision “in the absence of an error of law or an abuse of discretion.” **Id.** (citation omitted). On appeal, we “review the validity of the revocation proceedings, the legality of the sentence imposed following revocation, and any challenge to the discretionary aspects of the sentence imposed.” **Id.** at 750 (citation omitted).

Issues relating to the legality of a sentence may be raised *sua sponte* by this Court. **See Commonwealth v. Coleman**, 226 A.3d 598, 602 (Pa. Super. 2020). “We review a challenge to the legality of a sentence de novo and with a plenary scope of review.” **Commonwealth v. Seals**, 353 A.3d 747, 766 (Pa. Super. 2026).

Before addressing Appellant’s questions, we first recognize that this Court reversed Appellant’s ICC conviction in the companion case, 2915 EDA 2024, based upon the Commonwealth’s failure to demonstrate that Appellant received requisite notice of the PFA order prior to the May 2023 incident.

Importantly, the reversal of the ICC conviction is fatal to the VOP court's finding of a direct violation of probation based upon the ICC conviction. Accordingly, we are constrained to vacate the court's orders revoking probation and the resultant VOP sentences.

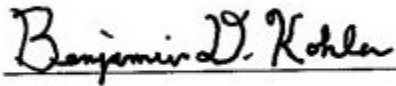
In so doing, we are guided by this Court's decision in ***Commonwealth v. Giliam***, 233 A.3d 863 (Pa. Super. 2020), addressing a similar situation where a court subsequently acquitted the probationer of the crime underlying the revocation of probation. We held that "because Giliam's violation of probation was based solely on allegations of new criminal charges for which he was later acquitted, ultimately, no violation of probation occurred. ***Id.*** at 868. Therefore "we concluded that Giliam's probation revocation sentence was void[,]" in the absence of any other alleged violation. ***Id.*** at 868, 869.

Unlike in ***Giliam***, however, the record in the instant case includes at least one technical violation—Appellant's March 2023 positive drug test. We conclude that a remand is necessary to address any remaining alleged probation violations. ***Commonwealth v. Mullins***, 918 A.2d 82, 85-86 (Pa. 2007) (providing for remand "when probation revocations are vacated"); ***but see Commonwealth v. Foster***, 214 A.3d 1240, 1252-53 (Pa. 2019) (opining that remand for a new VOP hearing is not required in all cases where a court vacates a VOP sentence).

As we vacate the revocation of probation and resulting sentences, we conclude that Appellant's issues challenging aspects of the VOP hearing and sentences are now moot.

Orders revoking probation and judgments of sentence vacated. Cases remanded. Jurisdiction relinquished.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/30/2026