NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DEAN SCOTT ARTILLIO	:	
Appellant	:	No. 1125 EDA 2025

Appeal from the Judgment of Sentence Entered April 4, 2025
In the Court of Common Pleas of Delaware County Criminal Division at No(s): CP-23-CR-0004831-2021

BEFORE: PANELLA, P.J.E., KUNSELMAN, J., and NICHOLS, J.

MEMORANDUM BY NICHOLS, J.: **FILED NOVEMBER 19, 2026**

Appellant Dean Scott Artillio appeals from the judgment of sentence imposed following his bench trial convictions for stalking, harassment, terroristic threats, and disorderly conduct.[1] On appeal, Appellant argues that the Commonwealth committed a discovery violation and challenges the timing of the trial court's sentence. We affirm.

By way of background, Appellant was charged with multiple offenses based on allegations that he engaged in a course of conduct involving harassment and threatening behavior towards his ex-girlfriend, Carol Holbrook (the Victim). At trial, the Victim testified that she had been dating Appellant "on and off" since December of 2020. ***See*** N.T. Trial, 12/3/25, at 9. She explained that at the end of June in 2021, she and Appellant had a

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[1] 18 Pa.C.S. §§ 2709.1(a)(1), 2709(a)(4), 2706(a)(1), and 5503(a)(1), respectively.

"falling out" after which Appellant "became a little bit . . . unhinged" as they tried to resolve issues concerning the return of their respective personal items. ***Id.*** at 10.

After the Victim testified that she had communicated with Appellant via text messages, defense counsel raised an objection under the best evidence rule and also claimed that the Commonwealth committed a discovery violation by failing to provide the defense with a copy of the text messages prior to trial. ***Id.*** at 10. The Commonwealth responded that the case file contained a notation from a prosecutor who had previously handled the case, indicating that discovery had been passed to the Public Defender's office. ***Id.*** at 13.[2]

Ultimately, the trial court overruled Appellant's objection, but indicated that it would not "allow the text messages *per se* to come in"; however, the court also stated that it would allow the Victim to "testify as to the tenor and character of the text messages" and that testimony would be subject to cross-examination. ***Id.*** at 13-14. The trial court also granted Appellant's request for a brief recess to review the seven-page document containing the messages. ***Id.*** at 13-18.

When trial proceeded, the Victim testified that she eventually blocked Appellant after she received constant phone calls and text messages from him. ***Id.*** at 23-24. The Victim also stated that Appellant sent her a threatening

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[2] The Commonwealth noted that, from 2021 through to trial, Appellant had been represented by four different attorneys from the Office of the Public Defender. ***See*** N.T. Trial at 13.

handwritten letter and later approached her in person, at which point he screamed at her, blocked her car into a parking spot, slammed his fist into her windshield, and made additional threats of physical violence. ***Id.*** at 20-40.

At the conclusion of the bench trial on December 3, 2024, Appellant was convicted of all charges. ***Id.*** at 124. After a sidebar with counsel, the trial court indicated that it would schedule sentencing for January 6, 2025, to allow time for Appellant to update the letters of support that he wished to present to the trial court. ***Id.*** at 125.

On March 31, 2025, the trial court conducted a sentencing hearing. At the outset of the hearing, Appellant objected to proceeding with the hearing, as it was being held twenty-nine days after the 90-day deadline set forth in Pa.R.Crim.P. 704 had passed. N.T. Sentencing, 3/31/25, at 3. In support, Appellant argued that his case had been "hanging over his head since July of 2021," which affected his mental health, ability to travel, and the ongoing PFA with the Victim. ***Id.*** at 3-4. Appellant argued that "[w]hile this has been pending, [he] would be about a third of the way done with first year of any sort of probationary sentence" that would be imposed. ***Id.*** at 4.

The trial court noted that Appellant's trial was held on December 3, 2024, at which time the trial court had been prepared to proceed directly to sentencing. ***Id.*** at 5. However, the trial court explained that, because Appellant had requested additional time for the preparation of a mitigation report, the trial court scheduled sentencing for a later date, which ultimately

benefited Appellant. ***Id.*** The Commonwealth explained that between the trial and sentencing that Appellant had requested a continuance and, further, the case had been administratively moved to another judge and then eventually reassigned to the same judge who had tried Appellant. ***Id.*** at 4-5. After hearing arguments, the trial court concluded that Appellant did not suffer any prejudice from the additional twenty-nine-day delay and proceeded to sentencing. ***Id.***

Ultimately, the trial court sentenced Appellant to an aggregate term of restrictive probation, including electronic monitoring for ninety days, probationary supervision, and various special conditions including no contact with the Victim and compliance with all electronic monitoring and probation program requirements. ***Id.*** at 15-16.

Appellant filed a timely notice of appeal and a court-ordered Pa.R.A.P. 1925(b) statement. The trial court issued a Rule 1925(a) opinion addressing Appellant's claims.

On appeal, Appellant raises the following issues for review:

1. Whether the trial court committed reversible error by allowing the prosecution to offer text messages that it first supplied to the defense after trial commenced since that evidence constituted mandatory discovery under Pa.R.Crim.P. 573(B)(1), and its introduction violated [Appellant's] state and federal constitutional rights to due process and a fair trial?

2. Whether the [trial court] erroneously denied the defense's motion for dismissal, where it failed to timely impose its sentence within ninety days of the verdict's entry, and the delay without good cause prejudiced [Appellant] and violated his state and federal due process rights?

Appellant's Brief at 5.[3]

Evidentiary Claim

Appellant argues that the Commonwealth "withheld crucial evidence that it knew about since July [of] 2021 until after the December 2024 trial was already in progress, notwithstanding its file note about forwarding unspecified discovery to a prior lawyer." ***Id.*** at 16. Specifically, Appellant refers to text messages he exchanged with the Victim and contends that "[t]he prosecution's ambush highly prejudiced [him] since his counsel did not have these text messages and never had a chance to review any of [them], and they were not provided to [his] office after an inquiry." ***Id.*** (internal quotation marks omitted). Appellant claims that, although the trial court concluded that Appellant had equal access to the text messages sent from his phone, there was "insufficient evidence that [Appellant] maintained the texts more than four years after police filed charges." ***Id.*** at 17. Finally, Appellant asserts that "the momentary break in the middle of trial was unreasonable and did not afford defense counsel adequate time to review or investigate the evidence." ***Id.*** at 19. Therefore, Appellant claims that he is entitled to discharge or a new trial. ***Id.***

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[3] We note that Appellant raised additional claims in his Rule 1925(b) statement that he does not include in his brief. ***See*** Rule 1925(b) Statement, 7/8/25. Therefore, those claims are abandoned for purposes of appeal. ***See*** Pa.R.A.P. 2116(a) (stating that "[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby").

"Decisions involving discovery matters are within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion." ***Commonwealth v. Santos***, 176 A.3d 877, 882 (Pa. Super. 2017) (citation and quotation marks omitted). "An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record." ***Id.*** (citation and quotation marks omitted).

The rights and duties concerning pretrial discovery in criminal cases are governed by Rule 573 of the Pennsylvania Rules of Criminal Procedure, which provides:

> **(B) Disclosure by the Commonwealth.**
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> **(1) Mandatory**. In all court cases, on request by the defendant, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the defendant's attorney all of the following requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items.
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> (b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;
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> (f) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence.

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> **(D) Continuing Duty to Disclose.** If, prior to or during trial, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party shall promptly notify the opposing party or the court of the additional evidence, material, or witness.

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> **(E) Remedy.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the defendant, or it may enter such other order as it deems just under the circumstances.

Pa.R.Crim.P. 573(B)(1), (D), and (E).

The purpose of the discovery rules is to prevent a 'trial by ambush' that would violate a defendant's right to due process. ***Commonwealth v. Ulen***, 650 A.2d 416, 418-19 (Pa. 1994) (discussing the prior version of Pa.R.Crim.P. 573). However, this Court has explained that even if the Commonwealth violates the disclosure requirements of Rule 573,

> [t]he trial court has broad discretion in choosing the appropriate remedy for a discovery violation. . . . A defendant seeking relief from a discovery violation must demonstrate prejudice. A violation of discovery does not automatically entitle [an] appellant to a new trial. Rather, [the defendant] must demonstrate how a more timely disclosure would have affected his trial strategy or how he was otherwise prejudiced by the alleged late disclosure.

Commonwealth v. Brown, 200 A.3d 986, 993 (Pa. Super. 2018) (citations omitted and some formatting altered).

In most cases, "a continuance will be an adequate remedy [and] . . . appropriate where the undisclosed statement or other evidence is admissible and the defendant's only prejudice is surprise." ***Commonwealth v. Smith***, 955 A.2d 391, 395 (Pa. Super. 2008) (*en banc*) (citation omitted). Further, this Court has held that, "[w]here the evidence is equally accessible or inaccessible to both the Commonwealth and the defense, the defense cannot use the discovery rules against the Commonwealth for its failure to produce evidence." ***Commonwealth v. Miller***, 172 A.3d 632, 647 (Pa. Super. 2017) (citation omitted).

Here, the trial court explained:

> The [Victim] testified that after blocking [Appellant], she continued to receive threatening and degrading text messages, which were persistent in volume and menacing in tone. N.T., 12/3/25, at 24. The Commonwealth provided screenshots of the text messages and authenticated them through the [Victim's] testimony. [***Id.***] at 14. She confirmed that she had preserved the texts on her device and that she had not altered them. [***Id.***] at 37. Th[e trial] court recessed to allow defense counsel time to review the material and subsequently allowed the content into evidence over objection. [***Id.***] at 16.
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> . . . Pa.R.Crim.P. 573(B)(1) requires the Commonwealth to disclose, upon request, any inculpatory statements and tangible evidence in its possession that are material to the case. [Rule] 573(D) imposes a continuing duty to disclose newly discovered material "prior to or during trial. However, the duty only applies to evidence uniquely within the prosecution's possession or knowledge. ***See*** [***Miller***, 172 A. 3d at 647]. Pennsylvania courts

> have made it clear that no discovery violation occurs when the evidence is not uniquely within the Commonwealth's control. ***Id.*** As the Superior Court explained: "Where the evidence is equally accessible to both the Commonwealth and the defense, the defense cannot use the discovery rules against the Commonwealth for its failure to produce that evidence." ***Id.***
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> In the instant case, testimony was limited to a general description of the volume and tone of the communications. [***Id.***] at 13-14. Th[e trial] court initially overruled the defense's objection under the best evidence rule, noting that both parties had equal access to the messages and that the actual texts had not been offered. [***Id.***] at 15. When it later emerged that defense counsel had not previously seen the screenshots, this court precluded their admission, offered a recess for review, and limited further testimony accordingly. [***Id.***] at 16.
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> Moreover, because the messages were exchanged between Appellant and [the Victim], both parties had access to the content. The record does not establish that the prosecution intentionally withheld the evidence. Indeed, the messages appear to have been produced as soon as they became available. That timing satisfies Rule 573(D)'s continuing disclosure requirement. As in ***Miller***, when both parties have equal access to the information, the defense cannot use discovery rules against the Commonwealth for its failure to produce that evidence. [***See***] ***Miller***, 172 A.3d at 647.

Trial Ct. Op. at 3-4, 8 (some formatting altered).

Following our review of the record, we discern no abuse of discretion by the trial court. ***See Santos***, 176 A.3d at 882. As noted, even if the Commonwealth violated Rule 573, Appellant's claims of surprise and prejudice do not merit relief. ***See Brown***, 200 A.3d at 993; ***see also Smith***, 955 A.2d at 395. The fact that Appellant was, or should have been, aware of the text messages he himself sent to the Victim belies Appellant's claim of unfair surprise or ambush. Moreover, Appellant did not request a continuance to review the additional evidence, and instead requested a brief recess, which

the trial court allowed. ***Cf. Smith***, 955 A.2d at 395. Lastly, Appellant does not explain how the timing of the disclosure of the text messages adversely affected his trial strategy or how he was otherwise prejudiced by the allegedly late disclosure. ***See Brown***, 200 A.3d at 993. Under these circumstances, we conclude Appellant has failed to establish that that allegedly late disclosure of the text messages he exchanged with the Victim constituted reversible error under Rule 573. ***See Santos***, 176 A.3d at 882. Therefore, he is not entitled to relief on this issue.

Discretionary Sentencing Claim

Appellant argues that the trial court erred in imposing his sentence 119 days after the verdict, which was twenty-nine days after the deadline for sentencing set forth in Pa.R.Crim.P. 704. Appellant's Brief at 21. Appellant claims that he was prejudiced by the delay, as it "affected his emotional well-being, restricted his freedom to travel, and impacted related domestic proceedings." ***Id.*** (some formatting altered). Therefore, Appellant argues that he was entitled to discharge. ***See id.*** at 19.

This Court reviews the trial court's decision to deny a speedy sentence motion for an abuse of discretion. ***See Commonwealth v. Neysmith***, 192 A.3d 184, 192 (Pa. Super. 2018). Our scope of review is limited to the evidence presented at the hearing on a defendant's motion for discharge. ***See id.*** at 193.

Here, the trial court addressed Appellant's claim as follows:

> [T]he delay [in sentencing was due to] a defense-requested continuance and [changes concerning the original judge's] court assignment. Moreover, to the extent the delay is framed as a due process violation, dismissal was still inappropriate under the heightened standard requiring a showing of both prejudice and fundamentally unfair state conduct.
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> Under Pa.R.Crim.P 704(A)(1), "except as provided by 702(B), sentence in a court case shall ordinarily be imposed within 90 days of conviction." [Rule] 704(A)(2) allows sentencing to occur beyond that period for good cause shown, provided the judge includes on the record the specific time period of the extension. Pa.R.Crim.P. 704(A)(2).
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> [Because] Rule 704 itself does not contain a specified remedy, . . . a violation of Rule 704 does not automatically entitle an appellant to discharge. In ***Anders***, [our Supreme] Court explained that discharge is warranted "only if the appellant can demonstrate that the delay in sentencing is prejudicial. ***Commonwealth v. Anders***, [725 A.2d 170, 172 (Pa. 1999)]. The [***Anders***] Court emphasized that prejudice is not presumed, and courts must assess the totality of the circumstances to determine whether a violation occurred. ***Id.*** at [173]. Factors in that analysis include the length of the delay, the reasons for the delay, and whether the appellant suffered actual prejudice as a result. ***See also Commonwealth v. Lee***, [440 A.2d 574, 596 (Pa. Super. 1982)] (delay "condemned," but harmless where no prejudice shown).
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> Furthermore, when a delay is framed as a violation of due process, the burden is even greater. . . . [***See Anders***, 725 A.2d at 171 (reiterating that "[n]ot only must the appellant prove his cause was prejudiced by the delay, but he must also prove that the state's action in causing or allowing the delay was 'fundamentally unfair,' not merely undesirable, in order to establish a due process violation" (citation omitted))].
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> In this case, sentencing occurred 119 days after the December 3, 2024, bench trial, which exceeds the presumptive ninety-day timeline set by Rule 704(A)(1). N.T., 3/31/2025, at 3. Defense counsel objected on the record and cited ***Anders***, arguing that the delay caused prejudice to Appellant's mental health, freedom of movement, and general well-being. [***Id.***] at 4. While the defense did raise the issue of prejudice, their argument did not fully apply the Rule 704 framework because it failed to analyze the reasons for delay and did not meaningfully address the totality of the

> circumstances, an essential component of the ***Anders*** test. ***Anders***, [725 A.2d at 173].
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> Specifically, the record confirms this court was ready to sentence immediately following the bench trial. N.T., 3/31/2025, at 5. However, a significant portion of the delay was due to a defense-requested continuance to allow time for a mitigation report. ***Id.*** This constitutes good cause on the record, expressly contemplated by Rule 704(A)(2). An additional short delay resulted from a neutral judicial reassignment, a factor wholly outside either party's control. Th[e trial] court [judge] experienced a crossover from criminal judicial practice to civil, and the case was reassigned to the Honorable Judge Kr[u]ll. [***Id.***] at 4. However, this [matter] was reassigned back to this [trial] court [judge] to ensure sentencing continuity. This reflects administrative necessity, not prosecutorial misconduct or strategic delay. Th[e trial] court found that Appellant did not suffer actual, case-impairing prejudice as required under ***Anders***. He was not subject to supervision during the delay and suffered no harm to his legal position. In fact, . . . Appellant may have benefited by avoiding early imposition of sentence or monitoring conditions. [***Id.***] at 5.

Trial Ct. Op. at 9-10 (some formatting altered).

Following our review of the record, we discern no abuse of discretion by the trial court in denying Appellant's motion to dismiss. ***See Neysmith***, 192 A.3d at 192. Although Appellant claimed that he was prejudiced by the sentencing delay, he did not address the factors set forth by our Supreme Court's decision in ***Anders***. ***See*** N.T. 3/31/2025 at 4; ***see also Anders***, 725 A.2d at 171 (reiterating that "[n]ot only must the appellant prove his cause was prejudiced by the delay, but he must also prove that the state's action in causing or allowing the delay was 'fundamentally unfair,' **not merely undesirable**, in order to establish a due process violation") (emphasis added). Therefore, we conclude that Appellant is not entitled to relief on this claim.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/19/2026