NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL TYREE LEWIS	:	
Appellant	:	No. 2914 EDA 2025

Appeal from the Judgment of Sentence Entered October 16, 2025
In the Court of Common Pleas of Chester County
Criminal Division at No: CP-15-CR-0003007-2021

BEFORE: PANELLA, P.J.E., STABILE, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY STABILE, J.: **FILED NOVEMBER 6, 2026**

Appellant, Michael Tyree Lewis, appeals from the judgment of sentence imposed on October 16, 2025, by the Court of Common Pleas of Chester County following revocation of his probation. Upon review, we vacate Appellant's judgment of sentence and remand for resentencing.

On February 9, 2022, Appellant pleaded guilty to retail theft, graded as a first-degree misdemeanor. He was sentenced to three years of probation and ordered to pay restitution in the amount of $2,524.02. Chester County Adult Probation and Parole Office ("APO") filed a petition for revocation on August 26, 2022, and asserted that Appellant violated his probation when he was charged with a new offense in Upper Moreland Township (small amount of marijuana) and that he failed to make a restitution payment. A second

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* Retired Senior Judge assigned to the Superior Court.

petition for revocation was filed on September 7, 2022, and asserted that Appellant again violated his probation when he was charged with additional offenses in Montgomery Township (three counts of retail theft and receiving stolen property).

A ***Gagnon I***[1] hearing was held on September 14, 2022. A ***Gagnon II*** hearing was scheduled for September 16, 2022, but was continued until disposition of the new charges.

On May 7, 2024, APO filed a third petition for revocation asserting (1) Appellant's Upper Moreland Township charge was dismissed; (2) Appellant was sentenced to two years of probation for retail theft (Montgomery Township); and (3) Appellant received new charges that were pending in Delaware County (retail theft) and Philadelphia County (murder, firearms and related offenses).

Following a ***Gagnon II*** hearing on October 16, 2025, the court revoked Appellant's probation and sentenced him to six to 36 months of incarceration, consecutive to his 10-to-20-year Philadelphia County sentence (CP-51-CR-5054-2024). Appellant filed a timely post-sentence motion claiming that this sentence "was unduly harsh given the lengthy incarceration he is already serving" in Philadelphia County. Motion to Reduce Violation of Probation Sentence, 10/24/25. The court denied the motion and Appellant filed a timely appeal.

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[1] ***Gagnon v. Scarpelli***, 411 U.S. 778 (1973).

On appeal, counsel filed an ***Anders***[2] brief asserting that the appeal was frivolous. After review, we determined that counsel's ***Anders*** brief was defective; therefore, we directed counsel to file a proper ***Anders*** brief or new advocate's brief within 45 days. ***See Commonwealth v. Lewis***, 2026 WL 1879379 (Pa. Super. filed June 30, 2026) (unpublished memorandum). Counsel filed a new advocates brief on August 14, 2026, and raises the following issue for our review:

> Did Appellant raise a substantial question that the Sentencing Code was violated when the court sentenced Appellant above the aggravated resentencing guideline range? If Appellant raised a substantial question, did the sentencing court abuse its discretion when it imposed a six (6) to thirty-six (36) month sentence?

Appellant's Brief, at 4.

Appellant claims that the trial court abused its discretion by imposing a consecutive sentence above the aggravated guideline range in violation of 42 Pa.C.S.A. § 9781(c)(3). ***See*** Appellant's Brief, at 9. Challenges to the discretionary aspects of sentencing are not entitled to appellate review as a matter of right. ***Commonwealth v. Clemat***, 218 A.3d 944, 959 (Pa. Super. 2019). Rather, such challenges are considered petitions for allowance of appeal. ***Id.*** Thus, an appellant must invoke our jurisdiction by satisfying a four-part test: (1) whether appellant has filed a timely notice of appeal; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence; (3) whether appellant's brief has a fatal

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[2] ***Anders v. California***, 386 U.S. 738 (1967).

defect pursuant to 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. ***Id.***

Here, Appellant filed a timely notice of appeal, preserved the issue in a motion to reconsider and modify sentence and his brief does not have a fatal defect. Now we must determine whether Appellant raised a substantial question:

> A substantial question will be found where an appellant advances a colorable argument that the sentence imposed is either inconsistent with a specific provision of the Sentencing Code or is contrary to the fundamental norms which underlie the sentencing process. At a minimum, the Rule 2119(f) statement must articulate what particular provision of the code is violated, what fundamental norms the sentence violates, and the manner in which it violates that norm.

Commonwealth v. Zirkle, 107 A.3d 127, 132 (Pa. Super. 2014). "A claim that the sentencing court imposed an unreasonable sentence by sentencing outside the guideline ranges raises a 'substantial question' which is reviewable on appeal." ***Commonwealth v. Davis***, 737 A.2d 792, 798 (Pa. Super. 1999). Thus, Appellant has invoked our jurisdiction, and we will address the merits.

Generally, the sentencing court is required to impose a sentence that is "consistent" with "the protection of the public, 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." 42 Pa.C.S.A. § 9721(b). We review a sentencing court's determination for an abuse of discretion:

> 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. Seiden, 359 A.3d 24, 34 (Pa. Super. 2026) (citation omitted).

Additionally, our review of the discretionary aspects of a sentence is confined by the statutory mandates of 42 Pa.C.S.A. §§ 9781(c), (d), and 9721(b). ***See Commonwealth v. Raven***, 97 A.3d 1244, 1253-54 (Pa. Super. 2014). Subsection 9781(c) provides:

> The appellate court shall vacate the sentence and remand to the sentencing court with instructions if it finds:
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> (1) the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;
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> (2) the sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or
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> (3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.
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> In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.

42 Pa.C.S.A. § 9781(c). In conducting our review, we must consider:

> (1) The nature and circumstances of the offense and the history and characteristics of the defendant.

> (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.
>
> (3) The findings upon which the sentence was based.
>
> (4) The guidelines promulgated by the commission.

42 Pa.C.S.A. § 9781(d).

In the present case, Appellant committed the offense of retail theft on or about July 28, 2021. As such, the Resentencing Guidelines for 7th Edition Sentencing Guidelines, Amendment 1 apply to the instant case. 204 Pa. Code § 307.2(b)(2). Where the revocation is based on a direct violation (new conviction),

> the resentencing guidelines shall begin with the initial sentencing guidelines . . . and include consideration of the following:
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> (1) If the PRS [prior record score] category of the initial sentencing guidelines is PRS 0 through PRS 4, the PRS is increased by one category;
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> (2) If the PRS category of the initial sentencing guidelines is PRS 5, RFEL, or REVOC, there is no change to the PRS category. Consideration shall be given to any service of the original sentence.

204 Pa. Code § 307.3(b).

At the time of Appellant's initial sentencing, his prior record score ("PRS") was zero and the offense gravity score ("OGS") of retail theft was two. ***See*** N.T. 2/9/22, at 3. As such, his initial standard range guidelines were RS, with an aggravated range of RS-3 months. 204 Pa. Code § 303.16(a). Pursuant to the resentencing guidelines, Appellant's PRS increases to one; therefore, the standard range resentencing guidelines were RS-2 months, with

an aggravated range of 3-5 months. ***Id***. Appellant's sentence of six to 36 months is above the aggravated range.

There are two issues with the sentence imposed by the VOP court: (1) the APO officer provided the court with the incorrect guidelines; and (2) the VOP court believed that it was imposing a sentence within the aggravated range. The APO officer informed the VOP court that Appellant's guidelines were "RS to RS with aggravated range of RIP [restrictive intermediate punishment] to 3 months[.]" N.T., 10/16/25, at 4. He noted that the guideline ranges were "according to the document" in his possession; however, that document was not entered as an exhibit. We are unable to determine what that document was because intermediate punishment (county and state) was repealed in 2019 and is now classified as a type of probation. ***See Commonwealth v. Hoover***, 231 A.3d 785, 788 n.1, 790 (Pa. 2020). Moreover, the guideline ranges provided by the APO did not consider the resentencing guidelines set forth in Section 307.3.

The VOP court, relying upon the information provided by the APO officer, then imposed a sentence it erroneously believed was in the aggravated range, but was in fact above the aggravated range: "I will follow APO's recommendation. I will **sentence in the aggravated range** of 6 to 36 months consecutive to [Appellant's 10 to 20-year sentence for third degree murder]." N.T., 10/16/25, at 8 (emphasis added).

"[T]his Court has repeatedly instructed that the sentencing court must correctly apply the sentencing guidelines to reach the correct point of

departure, before exercising its discretion to depart from the guidelines in any particular case." ***Commonwealth v. Diamond***, 945 A.2d 252, 259 (Pa. Super. 2008). "In cases where the trial court erroneously calculated the starting point under the guidelines, this Court will vacate the sentence and remand for reconsideration of sentence." ***Commonwealth v. Scullin***, 607 A.2d 750, 754 (Pa. Super. 1992). Accordingly, we must vacate the sentence because the VOP court erroneously calculated the starting point under the guidelines before exercising its discretion to deviate from the guidelines, and remand for resentencing. ***Diamond***, ***supra***; ***Scullin***, ***supra***. The sentence must additionally be vacated because the VOP court intended to sentence within the guidelines but applied the guidelines erroneously. ***See*** 42 Pa.C.S.A. § 9781(c)(3); ***see also Commonwealth v. Morgan***, 2026 WL 1480861 at *3 (Pa. Super. filed May 27, 2026) (unpublished memorandum).

Judgment of sentence vacated; remanded for resentencing. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/6/2026