

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

ALEJANDRO MUNIZ

Appellant

: No. 2226 EDA 2025

Appeal from the Judgment of Sentence Entered July 24, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0003619-2019

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
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v.

ALEJANDRO MUNIZ

Appellant

: No. 2227 EDA 2025

Appeal from the Judgment of Sentence Entered July 24, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0005083-2019

BEFORE: LAZARUS, P.J., MURRAY, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED OCTOBER 27, 2026**

Appellant, Alejandro Muniz, appeals from the judgments of sentence imposed after the revocation of his probation for separate counts of possessing a controlled substance with intent to distribute ("PWID") in each of his

* Retired Senior Judge assigned to the Superior Court.

underlying criminal matters, and a single count of criminal conspiracy.¹ He challenges the discretionary aspects of his new sentences. We affirm.

The revocation court accurately summarized the procedural history of these two cases:

On January 13, 2021, Appellant [...] entered into a negotiated guilty plea before this Court to one count of [PWID] on CP-5 I-CR-0003619-2019 and one count each of PWID and conspiracy on CP-51-CR-0005083-2019. Pursuant to the negotiations, this Court sentenced Appellant to 11.5 to 23 months of confinement followed by 2 years of probation on each docket.

On January 18, 2024, while on this Court's probation, Appellant was arrested and charged with PWID, conspiracy, and violations of the Uniform Firearms Act [("the New Case")]. Appellant entered a guilty plea before [another trial court] on May 19, 2025. On July 21, 2025, [that court] sentenced Appellant to 3 to 6 years of confinement, followed by 2 years of probation.

Following a [violation of probation (VOP)] hearing on [] July 24, 2025, this Court found Appellant in direct violation of its probation and parole and imposed a VOP sentence of 2 to 4 years of confinement on each docket, to run consecutive to one another and the sentence imposed [in the New Case].

Opinion, 10/20/2025 ("Revocation Court Opinion"), 1-2.²

On August 1, 2025, Appellant filed a motion for reconsideration of his sentence in which he argued that "the sentence imposed by [the revocation] court was excessive in that it surpassed what was required to protect the public, the complainant, or the community, and does not address the

¹ 35 Pa.C.S. § 780-113(a)(30) (PWID) and 18 Pa.C.S. § 903 (conspiracy).

² The court's opinion is dated October 20, 2025, but was filed on October 21, 2025. The revocation court imposed the new terms of imprisonment on the PWID convictions under each docket number and no further punishment on the conspiracy conviction under docket number CP-51-CR-5083-2019.

rehabilitative needs of [Appellant].” Post-Sentence Motion, 8/1/25, ¶ 6. Appellant then filed a timely notice of appeal on August 20, 2025. **See** Pa.R.Crim.P. 708(E) (filing of a motion to modify sentence imposed after revocation of probation “will not toll the 30-day appeal period”). In his notice of appeal, Appellant incorrectly asserted that “[n]o post-sentence motion was filed in this matter.” Notice of Appeal, 8/20/25.

The revocation court ordered, and Appellant filed, a concise statement of errors complained of on appeal. **See** Order, 9/4/25; Order, 9/23/25; Statement of Errors Complained of on Appeal, 10/14/25; **see also** Pa.R.A.P. 1925(b). In his Rule 1925(b) Statement, Appellant raised two issues, that the revocation court: (1) abused its discretion “by imposing an excessive and unreasonable aggregated sentence ... without adequately considering mitigating factors”; and (2) imposed an illegal term of incarceration “by considering an illegal sentencing factor.” Statement of Errors Complained of on Appeal, 10/14/25, 1. We subsequently consolidated the appeals of both matters for consideration and decision. **See** Superior Court Order, 11/25/25; **see also** Pa.R.A.P. 513.

Appellant presents one question for our review in this appeal:

Did the lower court err by imposing a manifestly excessive and clearly unreasonable aggregated sentence without adequately considering mitigating factors, such as Appellant’s background, trauma, and rehabilitative needs, as required under 42 Pa.C.S.A. § 9721(b)?

Appellant’s Brief, 1.

Appellant claims the revocation court abused its discretion in imposing a sentence after revocation of his probation. “[I]n an appeal from a sentence imposed after the court has revoked probation, we can 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.” **Commonwealth v. Wright**, 116 A.3d 133, 136 (Pa. Super. 2015) (citation omitted).

There is no absolute right to appeal when challenging the discretionary aspect of a sentence. Rather, an appeal is permitted only after this Court determines that there is a substantial question that the sentence was not appropriate under the sentencing code. In determining whether a substantial question exists, this Court does not examine the merits of the sentencing claim.

In addition, issues challenging the discretionary aspects of a sentence must be raised in a post-sentence motion or by presenting the claim to the trial court during the sentencing proceedings. Absent such efforts, an objection to a discretionary aspect of a sentence is waived. Furthermore, a defendant is required to preserve the issue in a court-ordered Pa.R.A.P. 1925(b) concise statement and a Pa.R.A.P. 2119(f) statement.

Commonwealth v. Cartrette, 83 A.3d 1030, 1042 (Pa. Super. 2013) (*en banc*) (internal citations, brackets, and quotation marks omitted).

“[W]hen a court revokes probation and imposes a new sentence, a criminal defendant needs to preserve challenges to the discretionary aspects of that new sentence either by objecting during the revocation sentencing or by filing a post-sentence motion.” **Commonwealth v. Kalichak**, 943 A.2d 285, 289 (Pa. Super. 2008). “Absent such efforts,

an objection to a discretionary aspect of a sentence is waived.” ***Commonwealth v. Mann***, 820 A.2d 788, 794 (Pa. Super. 2003); **see also *Commonwealth v. Thompson***, 333 A.3d 461, 467 (Pa. Super. 2025) (same). More specifically, an appellate discretionary sentencing claim must be raised in a manner that would “give the sentencing judge an opportunity to reconsider or modify his sentence on [that] basis.” ***Mann***, 820 A.2d at 794.

Here, Appellant filed a motion for reconsideration that included a challenge to the discretionary aspects of his revocation of probation sentence. However, he also filed a notice of appeal prior to the revocation court ruling on the motion, and, significantly, five days prior to the end of the appeal period.³ **See** Pa.R.Crim.P. 708(E). A filed appeal generally divests the court of jurisdiction to rule on a pending motion. **See *Commonwealth v. McAllister***, -- A.3d --, 2026 WL 222126, *6 (Pa. Super., filed Aug. 3, 2026). A timely grant of reconsideration, that is, one within thirty days of imposing sentence, has the effect of rendering the notice of appeal inoperative as an exception to the general rule of divestment. **See** Pa.R.A.P. 1701(b)(3). Under these circumstances, we find that the revocation court had sufficient

³ We take judicial notice that August 20, 2025, fell on a Wednesday. Appellant’s notice of appeal would have been timely filed the following Monday, August 25, 2025.

opportunity, nearly three full weeks, to consider Appellant's reconsideration motion, and therefore find no waiver from Appellant's early filing of his notice of appeal.

Appellant filed a timely appeal and preserved a discretionary sentencing claim before the revocation court. ***See Commonwealth v. Miller***, 275 A.3d 530, 534 (Pa. Super. 2022) (setting forth requirements for appellate review of a discretionary sentencing claim). He also has included in his brief a statement of reasons for allowance of appeal in accordance with Rule 2119(f). ***See*** Appellant's Brief, 5-7. Therefore, we turn to whether Appellant established a substantial question for review, which determination is made "on a case-by-case basis." ***Commonwealth v. Crawford***, 257 A.3d 75, 78 (Pa. Super. 2021). "We cannot look beyond the statement of questions presented and the prefatory Rule 2119(f) statement to determine whether a substantial question exists." ***Id.*** at 78-79 (quoting ***Commonwealth v. Radecki***, 180 A.3d 441, 468 (Pa. Super. 2018) (brackets omitted)). "A substantial question exists when the appellant makes a colorable argument that the sentencing judge's actions were either inconsistent with a specific provision of the Sentencing Code or contrary to the fundamental norms underlying the sentencing process." ***Commonwealth v. Snyder***, 289 A.3d 1121, 1126 (Pa. Super. 2023) (citing ***Commonwealth v. Moury***, 992 A.2d 162, 170 (Pa. Super. 2010)).

Appellant argues that the revocation court “imposed a manifestly excessive sentence, inflicting too severe a punishment,” by adding “eight years’ incarceration to a six-year prison term” in the New Case. Appellant’s Brief, 6. He alleges that the court “failed to adequately consider the substantial mitigation [evidence] presented at the sentencing hearing or [Appellant’s] rehabilitative needs,” in violation of Section 9721(b) of the Sentencing Code. **Id.** He concludes that this “failure to adequately consider mitigation or rehabilitation resulted in a clearly unreasonable, manifestly excessive sentence.” **Id.**, 7.

We discern two proposed questions, one based on the alleged failure to consider his rehabilitative needs, and one based on the aggregate length of his incarceration. Appellant’s combined argument that the court imposed an excessive sentence and failed to consider his rehabilitative needs raises a substantial question. **See, e.g., Commonwealth v. Swope**, 123 A.3d 333, 339 (Pa. Super. 2015) (“an excessive sentence claim – in conjunction with an assertion that the court failed to consider mitigating factors – raises a substantial question”) (quoting **Commonwealth v. Raven**, 97 A.3d 1244, 1253 (Pa. Super. 2014)).

To the extent that Appellant alleges his aggregate sentence is manifestly excessive because the court ordered the revocation sentences to be served consecutively to the New Case sentence, we find

that he failed to raise a substantial question.⁴ An excessiveness claim based on the imposition of consecutive sentences generally does not raise a substantial question for review. **See, e.g., Commonwealth v. Ahmad**, 961 A.2d 884, 887 n.7 (Pa. Super. 2008); **Commonwealth v. Johnson**, 961 A.2d 877, 880 (Pa. Super. 2008). The “key to resolving the preliminary substantial question inquiry is whether the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face to be, an excessive level in light of the criminal conduct at issue in the case.” **Commonwealth v. Mastromarino**, 2 A.3d 581, 587 (Pa. Super. 2010); **see also Moury**, 992 A.2d at 171-172 (only “unduly harsh” aggregate term, “considering the nature of the crimes,” raises a substantial question). Even assuming we could consider the three-to-six-year term imposed in the New Case – as this is not an appeal from the New Case, we likely should not do so – we conclude that an aggregate term of nine to eighteen years’ incarceration for three separate drug trafficking convictions is neither “grossly disparate” to Appellant’s conduct nor does it “viscerally appear as patently unreasonable.” **See Mastromarino**, 2 A.3d at 589 (citation and internal

⁴ We believe that the proposition that we may consider the New Case sentence in determining whether the aggregate term imposed in these cases is manifestly excessive implausible, as this matter is not an appeal from the New Case. We find it unnecessary to decide that question now because Appellant did not raise a substantial question with respect to his aggregate sentence term in either event.

quotation marks omitted). This is especially so where, as here, Appellant committed one of the drug trafficking offenses while on probation for the other two drug trafficking convictions.

We now evaluate the revocation court's exercise of its sentencing discretion, in light of the single substantial question for which we granted review, under the following precepts:

When imposing a sentence, the sentencing court must consider the factors set out in 42 Pa.C.S. § 9721(b), including the protection of the public, the gravity of the offense in relation to the impact on the victim and the community, and the rehabilitative needs of the defendant. A sentencing court need not undertake a lengthy discourse for its reasons for imposing a sentence or specifically reference the statute in question, but the record as a whole must reflect the sentencing court's consideration of the facts of the crime and character of the offender.

...

The balancing of the sentencing factors is the sole province of the sentencing court, which has the opportunity to observe the defendant and all witnesses firsthand. In conducting appellate review, this Court cannot reweigh sentencing factors and impose judgment in place of [the] sentencing court where [the revocation] court was fully aware of all mitigating factors.

Commonwealth v. Verma, 334 A.3d 941, 947 (Pa. Super. 2025) (internal quotation marks, citations, and brackets omitted). In sum, "[s]entencing 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." ***Commonwealth v. Barnes***, 167 A.3d 110, 122 n.9 (Pa. Super. 2017) (*en banc*) (citation omitted).

Appellant argues that the revocation sentence “was clearly unreasonable” as he “presented significant mitigating circumstances,” including “substantial family support and was a model probationer prior to his” arrest in the New Case. Appellant’s Brief, 9. He contends that the revocation court was required to give due consideration to time spent on probation before imposing a new sentence, and notes that he was compliant with the terms of his probation for three years “after his release on parole and probation in [these cases].” *Id.* He also notes that he had “serious mental health and addiction challenges.” *Id.*, 10. Yet, “rather than take these mitigating circumstances into account, the lower court ignored them” and “focused exclusively on the seriousness of his offense and the need to vindicate the authority of the [c]ourt” when announcing sentence. *Id.* (internal quotation marks and footnote omitted). He claims that by “dismissing [] mitigating circumstances and rehabilitative needs, the lower court violated 42 Pa.C.S. § 9721(b),” which requires consideration of mitigating circumstances and rehabilitative needs. *Id.*, 11. Acknowledging that the court did not have to recite the [Section] 9721(b) factors “verbatim,” he argues that “it was required to show that it meaningfully considered those factors” but, instead, “[paid] mere lip service to [his] mitigating circumstances. *Id.*, 11-12. He thus asserts that the revocation court “erred in focusing exclusively on [aggravating] factors without giving weight to either [Appellant’s] significant mitigating circumstances or his rehabilitative needs.” *Id.*, 12.

Appellant's claim focuses entirely on the revocation court's statement at the time it announced sentence. In the conclusion of his allocution, Appellant asked the court to "[j]ust give [him] a chance." N.T. Sentencing, 7/24/25, 14. The court responded, as follows:

Well, sometimes chances run out. I reviewed the [pre-sentence investigation report (PSI)] and [have] taken into consideration the arguments of counsel, his criminal record[,] and the continued inability to remain compliant. I do need to vindicate the authority of the [c]ourt. It's very serious violations. You should not be around firearms, let alone have a firearm and sell drugs which is exactly why you are on my supervision for two cases. So, for that, the guidelines as I stated earlier were 36 to 54. I'm going to give you a fully mitigated sentence on each of 2 to 4 years. And that's going to run consecutive to each other and any other sentence you are serving.

Id., 15.

We find that the court's explanation of its sentence refutes Appellant's arguments on appeal. The revocation court's imposition, of what it considered, mitigated range sentence terms undermines Appellant's assertion that it disregarded his mitigating circumstances.⁵ The court's explanation that Appellant did not remain compliant with his probation and instead committed the same drug-trafficking crime for which he was on probation, and escalated criminal conduct by using an illegal firearm, refuted his argument that his

⁵ Contrary to the court's comments about applicable guideline ranges, the Resentencing Guidelines did not apply at the revocation sentencing hearing. **See** 204 Pa. Code § 307a.2(b) ("The resentencing Guidelines shall apply to revocation of probation for all offenses committed on or after January 1, 2020"). Appellant was charged with the underlying revocation offenses in 2019.

initial period of compliance with probation somehow warranted additional mitigation. Moreover, we presume from the fact that the revocation court had a PSI to review, which it explicitly referred to in rendering its sentence, that it “was aware of the relevant information concerning [Appellant’s] character and history” and thereby also his rehabilitative needs. ***Commonwealth v. Morrobel***, 311 A.3d 1153, 1158 (Pa. 2024); ***see also Commonwealth v. Devers***, 546 A.2d 12, 18 (Pa. 1988); ***Commonwealth v. Conklin***, 275 A.3d 1087, 1098 (Pa. Super. 2022). Where it has been so informed, “its discretion should not be disturbed.” ***Commonwealth v. Ventura***, 975 A.2d 1128, 1135 (Pa. Super. 2009).

Indeed, the revocation court explained that it:

properly considered Appellant’s background, rehabilitative needs, criminal history, and the need to protect the public when fashioning its sentence. ... This Court also heard and considered arguments from [revocation] counsel regarding Appellant’s family support and struggles with addiction and mental health issues. [...] This Court is sympathetic to Appellant’s struggles; however, it is troubled by the fact that Appellant continued to sell drugs while on its probation for multiple PWID offenses and that his criminal conduct has escalated to involve firearms.

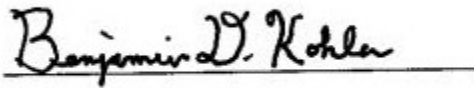
Revocation Court Opinion, 3.

We find, therefore, that the revocation court considered the required factors. ***See Devers***, 546 A.2d at 18. Appellant is asking this court to give more weight to his mitigating factors than the revocation court did, which we decline to do. ***See Commonwealth v. Macias***, 968 A.2d 773, 778 (Pa. Super. 2009) (“We cannot re-weigh the sentencing factors and impose our judgment

in the place of the sentencing court"). Accordingly, we affirm the judgment of sentence.

Judgments of sentence affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/27/2026