

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
MARVIN GREEN	:	
	:	
Appellant	:	No. 1001 WDA 2025

Appeal from the Judgment of Sentence Entered March 5, 2025
 In the Court of Common Pleas of Allegheny County Criminal Division at
 No(s): CP-02-CR-0009194-2023

BEFORE: STABILE, J., DUBOW, J., and STEVENS, P.J.E.*

OPINION BY STEVENS, P.J.E.:

FILED: September 9, 2026

Appellant, Marvin Green, appeals from the judgment of sentence entered March 5, 2025, in the Court of Common Pleas of Allegheny County following his entry of an open guilty plea to one count aggravated assault¹. After careful review, we affirm.

On October 15, 2024, Appellant pled guilty to one count aggravated assault in exchange for withdrawal of all other then-pending charges arising from his November 19, 2023, assault on his wife, Sherron Green, in the parking lot of the Noblemen Cigar Lounge in Allegheny County, Pennsylvania. The Commonwealth set forth the factual basis for the charges at Appellant's guilty plea hearing as follows:

Surveillance video captured Mr. Green leaving the establishment first and Ms. Green approximately two minutes after him. A few

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 2702(A)(1)

seconds after leaving the bar, as Ms. Green was attempting to zip her coat, the defendant slapped her multiple times in the face, causing her to fall to the ground. The defendant then punched Ms. Green multiple times in the face while she was on the ground and stomped on her head and face approximately three times.

The defendant is then seen walking away a few steps before winding up again with his leg and stomping on Ms. Green's head an additional two times, at which time Ms. Green appears to have lost consciousness. The defendant then grabbed her by her coat, took her cell phone, and punched her twice more in the face before leaving her lying in the parking lot.

Patrons and employees of Nobleman Cigar Lounge came to Ms. Green's aid. At that time when she regained consciousness, she had no memory of what had occurred and asked bystanders to call her husband, who at the time was in their vehicle, still in the parking lot of the establishment. He eventually brought Ms. Green back to the car and drove the parties back to their residence in the North Side of Pittsburgh.

Employees of the bar called 911. EMS and Pittsburgh Police located Ms. Green and Mr. Green at their shared residence in the North Side. Officers and EMTs observed a mark to Ms. Green's face consistent with a boot print. A photo of that injury as well as medical records from Allegheny General Hospital would have been offered as to her injuries at trial.

Notes of Testimony, Guilty Plea Hearing 10/15/2024 at 8-10.

The matter proceeded to sentencing on March 5, 2025. The sentencing court was provided with a presentence investigation report, which advised the court that the sole charge of aggravated assault carried on offense gravity score of ten (hereinafter "OGS"), which was increased to an OGS of eleven by application of the domestic violence enhancement², and that Appellant had a prior record score (hereinafter "PRS") of two. Notes of Testimony, Sentencing

² 204 Pa. Code § 303.10(h)

Hearing 3/5/2025 (hereinafter "N.T. Sentencing hearing") at 3, 28-29. Therefore, the standard guideline range was forty-eight to sixty-six months, plus or minus twelve months for aggravating or mitigating circumstances. ***Id.***

At the conclusion of his hearing, Appellant was sentenced to three and one half to seven years of incarceration in a State Correctional Institution, in addition to two years of probation³. ***Id.*** at 49-50.

Appellant filed a post-sentence motion seeking to modify his sentence on March 17, 2025, and a supplement to his motion on May 19, 2025. This motion was denied by operation of law, and Appellant timely filed his notice of appeal. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant raises the following issue for the court's review:

Did the sentencing court consider an incorrectly calculated sentencing guideline by including the Offense Gravity Score [sic] the domestic violence enhancement promulgated by the Pennsylvania Commission on Sentencing, 304 [sic] Pa. Code § 303.10(h)(*Domestic Violence Enhancement, as required by 42 Pa.C.S. § 303.10(h)(10,)* [sic] instead of the enhancement authorized by 42 Pa.C.S. § 9720.8 (*Sentences for domestic violence offenses committed in the presence of a minor*) when it established the sentence in this case?

Appellant's Brief at 5.

³ The lower Court imposed sentence as though Appellant's PRS had been zero, as opposed to 2, finding the offenses upon which the score was based were "stale" as they had occurred nineteen years prior to the instant offense. ***Id.*** at 45-46. Should Appellant's PRS have been zero, the standard range would have been thirty-six to fifty-four months, and as such the sentence imposed would have fallen within the standard range. ***Id.***

Appellant acknowledges that his appeal seeks to challenge the discretionary aspects of his sentence, and we find that he has properly invoked the jurisdiction of this court.

As we have observed:

Challenges to the discretionary aspects of sentencing do not entitle an appellant to an appeal as of right. Prior to reaching the merits of a discretionary sentencing issue[, w]e conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, see Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, see Pa.R.Crim.P. 720; (3) whether appellant's brief has a fatal defect, 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, 42 Pa.C.S.A. § 9781(b).

Commonwealth v. Manivannan, 2018 PA Super 112, 186 A.3d 472, 489 (Pa.Super. 2018) (quotation marks, some citations, and emphasis omitted).

It is uncontested that Appellant's notice of appeal was timely filed. Additionally, we find that Appellant's post-sentence motion properly preserved the issue presented, and his brief is compliant with the Rules of Appellate Procedure. Finally, Appellant's claim that the trial court imposed sentence based in part on improperly calculated sentencing guidelines arising from the erroneous application of the domestic violence enhancement indeed raises a substantial question. ***See Commonwealth v. Sunealitis***, 153 A.3d 414, 421 (Pa. Super. 2016)(*quoting Commonwealth v. Archer*, 722 A.2d 203, 210-11 (Pa. Super. 1998))("[A]ny misapplication of the Sentencing Guidelines constitutes a challenge to the discretionary aspects of sentence. A claim that

the sentencing court misapplied the Guidelines presents a substantial question.”) Thus, we proceed to the merit of Appellant’s question.

Here, Appellant does not challenge that the enhancement as it is set forth in 204 Pa. Code 303.10(h) applies to his sentence as he was convicted of an offense under chapter 27 of the Crimes Code and the victim of said crime was his spouse. Indeed, the relevant language reads:

(h) Domestic Violence Enhancement, as required by 42 Pa.C.S. § 9720.8.

- (1) When the court determines that the offender committed an offense under 18 Pa.C.S. Chapters 25, 27, 29, 30, 31, or 49 against a family or household member as defined in 23 Pa.C.S. § 6102, the court shall consider the sentence recommendation in subsection (h)(2).
- (2) When the Domestic Violence Enhancement is applied, the Offense Gravity Score assignments listed in § 303.15 are increased by one point. If the court further determines that an offender knew the crime was witnessed, either through sight or sound, by a minor who is also a family or household member of the offender or the victim, the court shall consider ordering the offender to pay the costs or fees associated with the assessment and treatment of the minor for exposure to domestic violence.
- (3) The following words and phrases when used in this section shall have the following meanings as defined in 23 Pa.C.S. § 6102:

“Family or household member.” Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

“Minor.” An individual who is less than 18 years of age.

204. Pa. Code 303.10(h)(1)-(3).

Rather, Appellant contends the Sentencing Commission exceeded its statutory grant of authority in promulgating the enhancement as written, because the enhancement applies to circumstances beyond what was contemplated by the General Assembly in 42 Pa.C.S. § 9720.8, which instructs the Sentencing Commission:

shall provide for a sentence enhancement within its guidelines for an offense under 18 Pa.C.S. § 2701 (relating to simple assault) or 2702 (relating to aggravated assault), specifying variations from the range of sentences applicable based on such aggravating circumstances as the assault was committed against a family or household member and the defendant knew the crime was witnessed, either through sight or sound, by a minor who is also a family or household member of the defendant or the victim.

42 Pa.C.S. § 9720.8.

That is to say, because there was no evidence that a minor who was also a member of Appellant’s family or household witnessed his assault of his wife, application of the domestic violence enhancement to Appellant’s conviction was erroneous. We note that Appellant’s brief examines the legislative history and General Assembly’s intent relative to the passage of Act 2018-157 (S.B. 1092), § 1, amending Title 42 to include the above-referenced language. However, the argument which follows in his brief is predicated on the assumption that the authority of the Sentencing Commission to

promulgate the specific enhancement at issue was limited only to those circumstances explicitly described by § 9720.8. He is incorrect.

In ***Commonwealth v. Samuels***, 516 Pa. 300 (1987), our Supreme Court rejected this argument as applied to similar language found in 42 Pa.C.S. § 2154, which states in relevant part:

The Commission shall adopt guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for felonies and misdemeanors committed by a defendant. The guidelines shall:

- (1) Specify the range of sentences applicable to crimes of a given degree of gravity.
- (2) Specify a range of sentences of increased severity for defendants previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon.
- (3) Prescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances.

42 Pa.C.S. § 2154.

There, Samuels contended that because the Sentencing Commission was not explicitly directed to address prior misdemeanor offenses not involving the use of deadly weapons in the guidelines, the Commission lacked authority to include such offenses in the calculation of prior record scores. Our Supreme Court disagreed, holding:

[No matter] whether the statute is "strictly" or "liberally" construed, it in no way follows that the mandatory term "shall" is also an exclusive. **The General Assembly gave the**

Commission a broad grant of authority to analyze the impact that various factors should have on the sentencing decision and to promulgate a set of recommended sentences in accordance with its analysis. Certain factors (prior felonies, prior offenses of any grade involving deadly weapons) were so important to the legislature that it required the Commission to provide for them. **This statement of an affirmative duty of inclusion of certain items carries no prohibition, express or implied, on the authority to include others.**

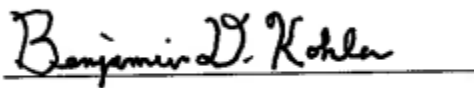
Id. at 303-304. (emphasis added).

Applying the same logic to the language of § 9720.8, we find no reason to hold that the Sentencing Commission acted outside its broad grant of authority by promulgating an enhancement which satisfied the mandate of the General Assembly while also addressing factors not explicitly contemplated thereby. Thus, Appellant's sole issue merits no relief.

For the foregoing reasons, we affirm.

Judgment 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: 09/09/2026