2026 PA Super 232

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
PERCY BUTLER	:	
Appellant	:	No. 3321 EDA 2025

Appeal from the Judgment of Sentence Entered October 23, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0002557-2024

BEFORE: SULLIVAN, J., BECK, J., and BENDER, P.J.E.

OPINION BY SULLIVAN, J.: **FILED OCTOBER 19, 2026**

Percy Butler ("Butler") appeals from the judgment of sentence imposed following his guilty plea to seven counts of possession with intent to deliver a controlled substance ("PWID"), eight counts of possession of a firearm by a prohibited person, eight counts of illegal sale or transfer of firearms, one count of criminal conspiracy, and one count of receiving stolen property.[1] Because Butler waived his discretionary sentencing claim by failing to present a substantial question that his sentence was inappropriate under the Sentencing Code, we affirm.[2]

A detailed recitation of the facts is unnecessary for this appeal. We take the following facts from the trial court's summary of the evidence elicited at Butler's plea colloquy:

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[1] ***See*** 35 Pa.C.S.A. § 780-113; 18 Pa.C.S.A. §§ 6105, 6111(a)(1), 903, 3925.

[2] We separately address below our concerns about Butler's counsel's ("Counsel") discharge of his ethical responsibilities in the trial court and this Court.

> Between March 29, 2023, and October 19, 2023, law enforcement utilized a confidential informant and an undercover officer to purchase firearms and controlled substances from [Butler] and his co-conspirators in the City and County of Philadelphia. Over the course of the investigation, police conducted eight . . . controlled purchases of firearms and/or drugs from [Butler]. These transactions involved a total of thirteen firearms, approximately 46.22 grams of fentanyl, sixty-four fentanyl pills, cocaine, and marijuana.
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> On October 19, 2023, police executed a buy-bust operation and arrested [Butler]. A subsequent search of [Butler's] residence resulted in the seizure of additional contraband, including marijuana, fentanyl, and one firearm.

Trial Court Opinion, 2/11/26, at 2 (record citations omitted).

The trial court imposed an aggregate sentence of ten to twenty years of imprisonment: five to ten years concurrent incarceration for each PWID conviction, a concurrent term of two to four years of incarceration for one of the eight convictions of illegal sale or transfer of firearms, and a mandatory term of five to ten years for Butler's seven other convictions of illegal sale or transfer of firearms, concurrent to each other but consecutive to Butler's other sentences.[3]

Butler timely filed a motion for reconsideration of sentence. Although his argument is difficult to discern, he appears to assert the trial court failed to consider whether his multiple criminal acts were part of a common scheme, supporting concurrent or mitigated sentencing. ***See*** Motion to Reconsider, 11/3/25, at 4-6.

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[3] The trial court imposed no further penalty on his remaining convictions.

Notably, Counsel's motion for reconsideration represented, inaccurately, that it was directly quoting ***six*** cases of the Pennsylvania Supreme Court and this Court in direct support of the argument the trial court erred by failing to consider as mitigating evidence the fact that his acts formed part of a common scheme, pattern, or practice. ***See id***. at 2-7.[4] Additionally, Counsel cited, and purported to quote, a seventh case, "***Commonwealth v. Kelley***, 569 A.2d 385 (Pa. Super. Ct. 1990)"; that case does not exist.[5]

The trial court denied the motion for reconsideration. ***See*** Order, 11/17/25. Butler filed a notice of appeal. On March 23, 2026, Counsel filed a brief for Appellant with this Court. In his brief, Counsel again misattributed the same direct quotes to the same seven cases cited in his reconsideration motion, including the non-existent one. ***See*** Butler's Brief, 3/23/26, at 10-17.

One month later, Counsel filed an application for leave to file an amended brief in this Court. In his application, Counsel requested permission to file an amended brief asserting that he wanted to correct "a few mistakes"

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[4] The reconsideration motion purports to provide direct quotes from the following cases: ***Commonwealth v. Walls***, 926 A.2d 957 (Pa. 2007); ***Commonwealth v. Mouzon***, 812 A.2d 617 (Pa. 2002); ***Commonwealth v. Dodge***, 77 A.3d 1263 (Pa. Super. 2013); ***Commonwealth v. Edwards***, 71 A.3d 323 (Pa. Super. 2012); ***Commonwealth v. McNabb***, 819 A.2d 54 (Pa. Super. 2003); and ***Commonwealth v. Houtz***, 982 A.2d 537 (Pa. Super. 2009)).

[5] The citation Counsel provided for "***Kelley***" corresponds to a page in the Commonwealth Court of Pennsylvania's opinion in ***C & K Coal Co. v. W.C.A.B. (Crissman)***, 569 A.2d 384 (Pa. Cmwlth. 1990).

involving "incorrect factual summaries[,]" the argument was unchanged, and that Counsel "attributed [the inaccuracies] to human error." Application for Leave to File Amended Brief, 4/14/26, at ¶¶ 3-9. On April 22, 2026, Appellee filed an answer challenging the accuracy of Counsel's assertions. ***See*** Answer to Application to Amend, 4/22/26, at 6.

On May 11, 2026, this Court entered an order granting Counsel's application to amend and striking the brief Counsel filed on March 23, 2026. This Court granted Counsel seven days to file an amended brief, and additionally stated, "[C]ounsel is cautioned that presenting fabricated and/or false cases to the [C]ourt may result in sanctions." Order, 5/11/26.

Counsel filed an amended brief that day.

Butler raises the following issue for our review:

> Whether a failure to consider a defendant's acts as part of a common scheme, pattern or practice of law enforcement as mitigating circumstances warranting concurrent sentencing is an abuse of discretion?

Butler's Amended Brief at 4. Butler's issue implicates the discretionary aspects of sentencing.

There is no absolute right to challenge the discretionary aspects of a sentence. ***See Commonwealth v. Moury***, 992 A.2d 162, 170 (Pa. Super. 2010). Rather, an appellant challenging the sentencing court's discretion must invoke this Court's jurisdiction by:

> (1) filing a timely notice of appeal; (2) properly preserving the issue at sentencing or in a motion to reconsider and modify the sentence; (3) complying with Pa.R.A.P. 2119(f), which requires a

> separate section of the brief setting forth "a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence[;]" and (4) presenting a substantial question that the sentence appealed from is not appropriate under the Sentencing Code.

Commonwealth v. Padilla-Vargas, 204 A.3d 971, 975 (Pa. Super. 2019) (citation omitted) (brackets in original); ***see also*** 42 Pa.C.S.A. § 9781(b).

If the appellant raises a substantial question, our standard of review is well settled: "Sentencing is vested in the discretion of the trial court, and will not be disturbed absent a manifest abuse of that discretion." ***Commonwealth v. Brown***, 249 A.3d 1206, 1211 (Pa. Super. 2021). An abuse of discretion is more than an error in judgment. ***See Commonwealth v. Lucky***, 229 A.3d 657, 663 (Pa. Super. 2020). To demonstrate an abuse of discretion, an 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." ***Id***. (internal citation omitted).

Butler timely appealed but the issue he preserved is whether a common scheme is a mitigating factor warranting concurrent sentences, as set forth in his motion for reconsideration and Rule 1925(b) Statement. Butler's brief includes a Rule 2119(f) Statement. However, his Rule 2119(f) Statement adds a claim not presented to the trial court, namely that his consecutive sentences resulted in a manifestly excessive sentence disproportionate to his criminal behavior. ***See*** Butler's Amended Brief at 11-12. Thus, only his first theory of relief is preserved for appeal. ***See*** Pa.R.A.P. 302(a);

Commonwealth v. Verma, 334 A.3d 941, 946 (Pa. Super. 2025) (explaining issues must be raised at sentencing or in a post-sentence motion; they cannot be raised for the first time on appeal). Therefore, we will determine only whether the asserted existence of a common scheme or practice is a mitigating circumstance raises a substantial question.

This Court has previously stated, "a claim that the sentencing court failed to consider or accord proper weight to a specific sentencing factor does not raise a substantial question." ***Commonwealth v. Swope***, 123 A.3d 333, 339 (Pa. Super. 2015) (internal citations omitted). Similarly, "[a] claim of inadequate consideration of mitigating factors does not raise a substantial question for our review." ***Id***. Moreover, to the extent Butler argues this mitigating factor could warrant concurrent sentences, this Court has held that a mere challenge to the imposition of consecutive rather than concurrent sentences does not raise a substantial question. ***See Commonwealth v. Raven***, 97 A.3d 1244, 1253 (Pa. Super. 2014) (explaining "a sentencing court generally has discretion to impose multiple sentences concurrently or consecutively, and a challenge to the exercise of that discretion does not ordinarily raise a substantial question"); ***accord Commonwealth v. Reyes-Rodriguez***, 111 A.3d 775, 784-85 (Pa. Super. 2015). Butler has failed to present a substantial question and has, therefore, failed to invoke our

jurisdiction over his discretionary aspects of sentencing claim. Accordingly, Butler's sentencing claim is waived.[6]

Upon review, we are compelled to address separately Counsel's conduct in the litigation of this case because there are clear ethical concerns relating to: 1) Counsel's motion for reconsideration in the trial court, 2) the initial brief Counsel filed in this Court, 3) the accuracy of Counsel's representations to this Court in his application for leave to file an amended brief, and 4) the accuracy of Counsel's representations in the amended brief he subsequently filed in this Court.

This Court has recently addressed instances in which litigants cited non-existent, "hallucinated" cases. ***See Kaspryak v. Stadarskyy***, --- A.3d ----, 2026 WL 2417124 at *4 n.4 (Pa. Super. Aug. 19, 2026); ***Saber v. Navy Federal Credit Union***, 350 A.3d 965, 970 n.4 (Pa. Super. 2026). ***Saber*** acknowledged that state and federal courts have recognized the growing problem of the use of generative artificial intelligence ("GenAI") by both

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[6] Notably, Butler does not raise a claim of sentencing entrapment, which occurs when a defendant, although predisposed to commit a minor offense, is entrapped into committing a greater offense. ***See Commonwealth v. Kittrell***, 19 A.3d 532, 539 (Pa. Super. 2011). Even had he so asserted, he would have had to demonstrate either "outrageous government conduct" or "extraordinary government misconduct," *i.e.*, conduct "so grossly shocking and so outrageous that it violates the universal sense of justice." ***Id***. (citation omitted). We will not act as Butler's counsel and develop his arguments for him; therefore, this claim is waived. ***See Commonwealth v. Pi Delta Psi, Inc.***, 211 A.3d 875, 884-85 (Pa. Super. 2019).

attorneys and *pro se* litigants. ***See Saber***, 350 A.3d at 970 n.4. We concluded that the use of GenAI may cause misrepresentations and/or misstatements of the law and, if those misrepresentations and/or misstatements are further disseminated, risk undermining the sense of accuracy and reliability of the law:

> Litigants must cite to authority that is "pertinent" to the issues on appeal. ***See*** Pa.R.A.P. 2119(a). The use of [GenAI] to draft legal filings (including by *pro se* litigants), without verification of the accuracy of the content so produced, may lead to misstatements and/or misrepresentations of legal authority. Such [GenAI]-generated misstatements and/or misrepresentations are not 'pertinent' authority. Additionally, such misstatements and or misrepresentations, if further disseminated, would undermine the sense of accuracy and reliability of the law they purport to reference.

See id.

In the matter before us, the procedural facts surpass mere lack of proper attention to detail and/or review. Counsel's serious and repeated misconduct in this case far outstrips the conduct cited above. Initially, Counsel filed a motion for reconsideration in the trial court that contained purported direct quotations from ***seven*** cases decided by the Supreme Court of Pennsylvania or this Court. In six of those seven cases the quoted language does not appear; the seventh case from which Counsel purported to provide a direct quotation does not even exist. Counsel then proceeded to cite the identical non-existent case with its purported direct quotation, and the other six incorrect quotations in the appellate brief he filed in this Court on March 23,

2026. Counsel asserted these citations directly supported his appellate issue, namely that Butler committed one series of connected crimes, and that factual scenario warranted mitigated sentences.[7]

Worse still, the record shows that even when Appellee called Counsel's attention to these concerns after his brief was filed, Counsel minimized the nature of his false citations and misstatements in his application to file an amended brief in this Court. Counsel represented in his application that his initial brief contained "a few" incorrect case citations and factual summaries which he removed in less than three hours. Application for Leave to File Amended Brief, 4/14/26, at ¶¶ 5-7. Counsel then reassured this Court that "the substance of the argument is the same[,]" and asserted he "did discover

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[7] Although we cannot say with certainty that Counsel used GenAI to prepare his brief, no alternative explanation readily suggests itself for how Counsel quoted directly from a non-existent case, or provided direct quotations that do not appear in six other, actual cases.

Regardless of the source of the misinformation, we note that pursuant to Pennsylvania Rule of Professional Conduct 3.3, Candor Toward the Tribunal, a lawyer shall not knowingly "make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]" Pa.R.P.C. 3.3.(a)(1). Although not binding upon this Court, we find persuasive the Third Circuit's assertion in a recent case that "[w]e cannot conclude that Attorney did not know that the concept of 'good faith' is inconsistent with presenting legal authority that he did not even verify existed." ***McCarthy v. United States Drug Enforcement Administration***, 171 F.4th 245, 249 (3d. Cir. 2026). We note that the ***McCarthy*** court did not find an ethnical violation because it did not find that the attorney's statement concerned a "material fact." ***Id***. Here, as discussed herein, Counsel's false quotations were offered in direct support of the claim he advanced below and in his initial brief.

that the recitation of the facts of the underlying case law was incorrect, and attributed that to human error." ***Id***. at 8-9. Counsel's application did not acknowledge that he filed a brief in this Court that contained direct, false quotations from six cases, and a seventh case which does not exist. Instead, he attempted to pass off those misstatements as relatively minor.

We are especially troubled by Counsel's assertion that he discovered "the recitation of the facts of the underlying case law was incorrect, and attributed that to human error." ***Id***. at ¶ 9. Counsel is obligated to behave ethically in all matters before this Court and all the courts of Pennsylvania. He did not simply make an incorrect recitation of facts—to support the claim he advanced, he provided false, direct quotations from six cases of this Court and the Supreme Court of Pennsylvania and, even worse, a direct quotation from a seventh case that does not even exist. Counsel's stated attribution of ***his*** inaccuracies to "human error" fails entirely to explain how those errors occurred, *i.e.*, how he made those errors. It appears clear that Counsel himself made, at best, very serious mistakes. We cannot chalk off the wholesale invention of one case and a direct quotation from that hallucinated case, and the false, direct, material quotations from six others as the product of "human error."[8]

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[8] Moreover, we note that even when Counsel was granted permission to file, and filed, his amended brief, his citations continue to raise questions. In his "Summary of the Argument", Counsel cites ***Walls*** for the proposition that
(Footnote Continued Next Page)

"[m]erger of offenses is not available for multiple transactions, however Pennsylvania case law supports reconsideration of the reasonableness of sentencing." Amended Brief at 10. This is, at best, an oversimplification. Counsel provides no pinpoint citation to ***Walls***, which does not address the merger, reconsideration, or reasonableness of sentences for multiple transactions. Moreover, ***Walls*** determined "the proper standard of review an appellate court should employ when considering a challenge to a sentence that falls outside of the sentencing guidelines." ***Walls***, 926 A.2d at 961. Butler does not claim his sentence fell outside of the sentencing guidelines. Thus, there is no proper basis for attributing that proposition to ***Walls***.

Counsel's Amended Brief also cites ***Caldwell*** and ***Walls*** to support the proposition that "this Court has recognized that a substantial question exists where consecutive sentences imposed for closely related conduct produce an unreasonable aggregate punishment or reflect a failure to apply the individualized sentencing mandate." Amended Brief at 12. However, ***Walls*** does not discuss what constitutes a substantial question. Further, although ***Caldwell*** discusses what constitutes a substantial question, it does not reference situations in which consecutive sentences were imposed for closely related conduct. Counsel's statement, which is intended to invoke our jurisdiction, is unsupported by authority. His citations to two unrelated cases, providing no analogy or connection, fail to support his affirmative assertion to the contrary.

Finally, for the purposes of our brief summary of issues contained in Counsel's amended brief, Counsel cites ***Pettersen*** to support the proposition that "[while] merger does not apply in these circumstances . . . the related nature of the series of actions and conduct should properly be considered for concurrent terms as a sentencing norm." Amended Brief at 16. ***Pettersen*** explained that the appellant was "engaged in at least three ***separate***, criminal acts, and that each individual act could independently fulfill the elements of aggravated assault." ***Pettersen***, 49 A.3d at 912 (emphasis added). Thus, Pettersen's sentences for aggravated assault did not merge. ***See id***. The discussion in ***Pettersen*** has no relevance to Butler's claim his actions were part of the same common scheme and should have been a mitigating factor. Merger was at issue in ***Pettersen***; not the imposition of consecutive sentences. ***Pettersen*** did not discuss or support the imposition of concurrent terms for related conduct. Thus, ***Pettersen*** is unconnected to, and does not support, Counsel's proposition.

For the foregoing reasons, we affirm Butler's judgment of sentence, and remind Counsel of his ethical obligations to the courts of Pennsylvania in any subsequent case in which he appears.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/19/2026