NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
BRYAN SCHNUTH	:	
Appellant	:	No. 1546 WDA 2025

Appeal from the Judgment of Sentence Entered November 3, 2025
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0005777-2020

BEFORE: KING, J., NEUMAN, J., and BENDER, P.J.E.

MEMORANDUM BY KING, J.: **FILED: NOVEMBER 17, 2026**

Appellant, Bryan Schnuth, appeals from the judgment of sentence entered in the Allegheny County Court of Common Pleas, following revocation of his probation. We vacate the judgment of sentence and remand with instructions.

The trial court opinion set forth the relevant facts and procedural history of this case as follows:

> This matter arises out of [Appellant's] negotiated plea at CC202005777 to Aggravated Assault by Vehicle, DUI—Controlled Substance, and Driving While Operating Privilege Suspended or Revoked on May 19, 2021[. Appellant was involved in] a motor vehicle collision on May 10, 2020. In that case, police responded to an accident with a rollover of the vehicle with the ejection of the passenger. [Appellant] acknowledged to the police that he was driving after drinking and using four bags of heroin while he was driving. The passenger sustained significant injuries as a result of the incident.

> As a result of the plea agreement, several charges were withdrawn by the Commonwealth, and [Appellant] was sentenced for Aggravated Assault by Vehicle to three years' probation in the Drug Court Program, as well as a concurrent 72 hours' probation for DUI—Controlled Substance and a $1000 fine and a concurrent 90 days' probation and a $1000 fine for Driving While Operating Privilege is Suspended or Revoked….
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> On November 24, 2024, [Appellant] pled guilty at CC202404636 to Recklessly Endangering Another Person and, as a convicted violator, he was resentenced to three years' probation in Drug Court. On July 21, 2025, [Appellant] pled guilty at CC202502000 to DUI—Drug of Combination of Drugs and Driving While Operating Privilege Suspended or Revoked. On August 4, 2025, [Appellant] appeared again for a Drug Court review hearing and he was found to be a convicted violator[. H]e was revoked from Drug Court and sentencing was deferred and a presentence report was ordered.[1]

(Trial Court Opinion, filed 4/2/26, at 2-3).

With the benefit of a presentence investigation report ("PSI"), the court resentenced Appellant on November 3, 2025. At that time, the court received statements from Appellant and Cara Cowan, the victim from Appellant's original aggravated assault by vehicle conviction. At the conclusion of the hearing, the court sentenced Appellant to two (2) to four (4) years' imprisonment for aggravated assault by vehicle, plus a consecutive term of

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[1] "The court may impose a sentence of total confinement upon revocation only if … the defendant has been convicted of another crime[.]" 42 Pa.C.S.A. § 9771(c)(1)(i). As discussed ***infra***, Appellant does not aver that the court erred in failing to sentence him in accordance with the provisions of Section 9771(c). Instead, Appellant argues that in exercising its discretion, the court should have imposed a less restrictive term of imprisonment.

two years of probation.

Appellant timely filed a post-sentence motion on November 13, 2025. In it, Appellant argued that Ms. Cowan, his girlfriend, "stated she holds no ill will towards [Appellant] for the car accident, as they were both using and in the throes of addiction at the time." (Post-Sentence Motion, filed 11/13/25, at ¶12(a)). Appellant insisted that the court erred by failing to consider Ms. Cowan's testimony and Appellant's "personal history, character, and treatment and rehabilitative needs…." (***Id.*** at ¶13). The trial court denied the post-sentence motion on November 17, 2025.

Appellant timely filed a notice of appeal on December 3, 2025. On December 16, 2025, the trial court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant timely filed his Rule 1925(b) statement on January 6, 2026.

Appellant now raises the following issue for our review:

> Whether the revocation court abused its discretion and imposed a manifestly excessive revocation sentence by failing to consider all the factors required under 42 Pa.C.S.A. § 9721(b), particularly the impact on the life of the victim and [Appellant's] need for treatment and rehabilitation?

(Appellant's Brief at 6).

On appeal, Appellant continues to argue that the court "did not consider the impact on the life of the victim, nor did it adequately address [Appellant's] rehabilitative needs, in violation of 42 Pa.C.S.A. § 9721(b)." (***Id.*** at 17). Appellant emphasizes Ms. Cowan's statements "that there was no malicious

intent on [Appellant's] behalf as part of this incident, and that he cared for her extensively as she recovered." (***Id.*** at 18-19). Appellant complains, however, that the court "made no reference to Ms. Cowan's testimony on the record," thereby giving "no consideration to a required sentencing factor under Section 9721(b)…." (***Id.*** at 19). Appellant also observes that Ms. Cowan relies on him for financial support, and she would provide housing to Appellant upon his release.

Further, Appellant avers that the sentencing court failed to consider his rehabilitative needs. Appellant acknowledges having multiple relapses while on probation, but he insists that he experienced success at drug treatment centers.

> [D]espite [Appellant's] success at the Renewal Center, and his clear need for a structured drug rehabilitation program, the revocation court sentenced him to state prison where he is ineligible to receive treatment due to the nature of his conviction. Thus, the revocation court, knowing that [Appellant] needed drug treatment, imposed a sentence that ensured he would receive no drug treatment during his term of incarceration.

(***Id.*** at 19-20) (internal citation omitted). Appellant concludes that the trial court abused its discretion by imposing an excessive sentence, and this Court must vacate and remand for resentencing. As presented, Appellant's claim challenges the discretionary aspects of sentencing. ***See Commonwealth v. Lutes***, 793 A.2d 949 (Pa.Super. 2002) (stating claim that sentence is manifestly excessive challenges discretionary aspects of sentencing).

"Challenges to the discretionary aspects of sentencing do not entitle an

appellant to an appeal as of right." ***Commonwealth v. Phillips***, 946 A.2d 103, 112 (Pa.Super. 2008), *cert. denied*, 556 U.S. 1264, 129 S.Ct. 2450, 174 L.Ed.2d 240 (2009). Prior to reaching the merits of a discretionary aspect of sentencing issue:

> We 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. Griffin, 65 A.3d 932, 935 (Pa.Super. 2013), *appeal denied*, 621 Pa. 682, 76 A.3d 538 (2013) (quoting ***Commonwealth v. Evans***, 901 A.2d 528, 533 (Pa.Super. 2006), *appeal denied*, 589 Pa. 727, 909 A.2d 303 (2006)).

Here, Appellant timely filed his notice of appeal, and his post-sentence motion properly preserved the claim he seeks to raise on appeal. Appellant's brief includes a Rule 2119(f) statement, which provides an adequate statement of reasons relied upon for the challenge to the discretionary aspects of sentencing. Finally, Appellant's issue arguably raises a substantial question. ***See Commonwealth v. Riggs***, 63 A.3d 780, 786 (Pa.Super. 2012) (holding substantial question existed where appellant argued that court failed to consider relevant sentencing criteria, including protection of public, gravity of underlying offense, and appellant's rehabilitative needs, as 42 Pa.C.S.A. §

9721(b) requires; instead, court focused on injuries suffered by complaining victims). Accordingly, we proceed to address the merits of Appellant's claim.

"Revocation of a probation sentence is a matter committed to the sound discretion of the trial court and that court's decision will not be disturbed on appeal in the absence of an error of law or an abuse of discretion." ***Commonwealth v. Colon***, 102 A.3d 1033, 1041 (Pa.Super. 2014), *appeal denied*, 631 Pa. 710, 109 A.3d 678 (2015). "Further, a sentence should not be disturbed where it is evident that the sentencing court was aware of sentencing considerations and weighed the considerations in a meaningful fashion." ***Commonwealth v. Fish***, 752 A.2d 921, 923 (Pa.Super. 2000).

"[A] court may find a defendant in violation of probation only if the defendant has violated one of the 'specific conditions' of probation included in the probation order or has committed a new crime." ***Commonwealth v. Foster***, 654 Pa. 266, 282, 214 A.3d 1240, 1250 (2019). "A court faced with a violation of probation may impose a new sentence so long as it is within the sentencing alternatives available at the time of the original sentence." ***Commonwealth v. Diaz***, 314 A.3d 852, 854 (Pa.Super. 2024), *appeal denied*, ___ Pa. ___, 332 A.3d 1182 (2025).

If the sentencing court has the benefit of a PSI report, the law presumes the court "was aware of the relevant information regarding defendant's character and weighed those considerations along with mitigating statutory factors." ***Commonwealth v. Tirado***, 870 A.2d 362, 368 (Pa.Super. 2005).

> Having been fully informed by the [PSI] report, the sentencing court's discretion should not be disturbed. This is particularly true, we repeat, in those circumstances where it can be demonstrated that the judge had any degree of awareness of the sentencing considerations, and there we will presume also that the weighing process took place in a meaningful fashion. It would be foolish, indeed, to take the position that if a court is in possession of the facts, it will fail to apply them to the case at hand.

Commonwealth v. Devers, 519 Pa. 88, 102, 546 A.2d 12, 18 (1988).

Instantly, Ms. Cowan addressed the court at Appellant's resentencing hearing. Despite being the victim of Appellant's aggravated assault by vehicle, Ms. Cowan argued for leniency. Ms. Cowan explained that she and Appellant are in a romantic relationship, and they were both using drugs at the time of the accident. In committing the crime at issue, Ms. Cowan asserted that Appellant had "no malicious intent whatsoever." (N.T. Resentencing Hearing, 11/3/25, at 10). Ms. Cowan stated "it is just really hard without him there, because he can contribute" to household finances. (***Id.*** at 11). Additionally, Ms. Cowan recounted the ways in which Appellant has progressed towards sobriety during his time in drug court.

Appellant also addressed the court. Appellant acknowledged that he has "made a lot of mistakes," but he emphasized that he is currently doing well at the Renewal Center. (***Id.*** at 14). Appellant reasoned that he should remain at rehab so that he can maintain his apprenticeship with the Iron Workers Union and assist Ms. Cowan with household finances.

Despite the statements from Ms. Cowan and Appellant, the court

revoked probation and imposed a new sentence of incarceration. The court explained its reasoning as follows:

> Honestly, [Appellant], you have been in the Drug Court Program since before I was here, and you had over 41 reviews. You keep slipping up and slipping up.
>
> I do agree with [the prosecutor], you try but you keep fouling up. 25 license suspensions. You are not eligible to get your driver's license back until 2037. And I know the team has worked with you for a long time. It has been four years—over four years—and you still are having problems.

(***Id.*** at 16).

In its Rule 1925(a) opinion, the court elaborated on its reasons for Appellant's revocation sentence:

> Pursuant to 42 Pa.C.S.A. § 9721(b), consideration must be given to the protection of the public and the gravity of the offense in relation to the impact on the victim and the community, but also the rehabilitative needs of [Appellant]. As noted by the Commonwealth, [Appellant] is clearly a danger to the community. Despite the numerous driving suspension incidents and the long term suspension of his driving license, he continues to drive while under the influence of alcohol and drugs in blatant disregard of the law.
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> The record as a whole reflects that periods of incarceration are necessary to not only address the nature of the offenses, but [Appellant's] rehabilitative needs given his long and repeated history of failure in the Drug Court Program. It was evident that [Appellant's] rehabilitative needs were not being met by periods of probation or supervision outside of total confinement, and the sentences imposed addressed each of the required considerations under § 9721.

(Trial Court Opinion, filed 4/2/26, at 7-8).

Here, the record shows that the court adequately considered the general

principles of sentencing, as well as the PSI report. The presence of a PSI report allows us to presume that the court was aware of Appellant's rehabilitative needs and mitigating factors, and the court's discretion while using a PSI report should not be disturbed. ***See Devers, supra***; ***Tirado, supra***. Although Appellant would have preferred that the court provided more weight to Ms. Cowan's statements, we cannot fault the court for emphasizing Appellant's repeated failures in the drug court program. Under these circumstances, the court did not err by imposing the new sentence of incarceration. ***See Colon, supra***. Therefore, Appellant is not entitled to relief on his challenge to the discretionary aspects of sentencing.

Notwithstanding the propriety of the court's exercise of discretion, our review of the record shows that the judgment of sentence is legally infirm. ***See Commonwealth v. Randal***, 837 A.2d 1211 (Pa.Super. 2003) (*en banc*) (explaining challenges to illegal sentences may be raised by this Court *sua sponte*). Issues related to the legality of a sentence are questions of law. ***Commonwealth v. Diamond***, 945 A.2d 252, 256 (Pa.Super. 2008), *appeal denied*, 598 Pa. 755, 955 A.2d 356 (2008). "Our standard of review over such questions is *de novo* and our scope of review is plenary." ***Id.***

Claims related to a trial court's failure to award credit for time served implicate the legality of the sentence. ***Commonwealth v. Gibbs***, 181 A.3d 1165 (Pa.Super. 2018). "Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result

of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based." 42 Pa.C.S.A. § 9760(1). "Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal." ***Id.*** "[A] probationer resentenced to a period of incarceration following the revocation of probation is entitled to credit for time served, if any, pursuant to section 9760." ***Commonwealth v. Clayborne***, 356 A.3d 187, 218 (Pa.Super. 2026).

Instantly, the sentencing court determined that Appellant did **not** receive credit for all time served in this case:

> A review of the record indicates that an administrative error occurred and that [Appellant] is entitled to … credit for time served from February 14, 2023 to February 16, 2023. Upon remand or return of the record from the Superior Court, a corrected sentencing order will be entered related to the credit for time served.

(Trial Court Opinion at 8).[2]

The record confirms that Appellant's February 2023 incarceration was not included in the "credit for time served" portion of the sentencing order. (Order, filed 11/3/25, at 2) (unnumbered). Thus, Appellant did not receive credit for all incarceration served before sentencing. ***See Clayborne, supra***. Accordingly, we vacate Appellant's judgment of sentence and remand for the limited purpose of amendment of the sentence to provide credit for all periods

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[2] Although Appellant included this challenge in his Rule 1925(b) statement, he did not provide any argument for this claim in his appellate brief.

of time served.

Judgment of sentence vacated. Case remanded with instructions. Jurisdiction is relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/17/2026