

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
NORMAN D. AVILES-GARRIGA	:	
	:	
Appellant	:	No. 284 MDA 2025

Appeal from the Judgment of Sentence Entered October 25, 2024
In the Court of Common Pleas of Lancaster County Criminal Division at
No(s): CP-36-CR-0001640-2023

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

DISSENTING MEMORANDUM BY BENDER, P.J.E.:

FILED SEPTEMBER 10, 2026

While I concur with many of the learned majority's conclusions in this appeal, I conclude that pursuant to our duty to independently review the record when counsel seeks to withdraw, there is a non-frivolous issue as to whether the felony grading was warranted for two of Aviles-Garriga's three convictions under 18 Pa.C.S. § 6301(a)(1)(ii). As I do not believe that the Commonwealth has sufficiently proven a course of conduct to support the felony grading as to two of the three charges, I respectfully dissent from that aspect of the Majority's decision. Because this issue pertains to legality of sentencing, I would simply directly proceed to a remand for resentencing on those two counts under Section 6301(a)(1)(i), which grades the offenses as misdemeanors of the first degree.

As noted by the majority, Aviles-Garriga was convicted of three counts of corruption of minors, one count with respect to each of his victims, J.C., J.B., and J.R., each under 18 Pa.C.S. § 6301 (a)(1)(ii). Offenses under this subsection are graded as felonies and require that the defendant act according to a “course of conduct.” This Court discussed this element in **Commonwealth v. Kelly**, 102 A.3d 1025 (Pa. Super. 2014) (*en banc*). There, Kelly was convicted of corrupting the morals of a minor and indecent assault based upon an incident involving the molestation in the shower of his 10-year-old, learning-disabled stepson. He was charged and convicted, *inter alia*, with the felony grading of the corruption of minors offense, *i.e.*, 18 Pa.C.S. § 6301(a)(1)(ii). On appeal, Kelly challenged the sufficiency of the evidence to support his conviction, arguing that there was no evidence that he acted by a “course of conduct” because there was only one act established. **Kelly**, 102 A.3d at 1028. Kelly contended that proving a “course of conduct” required the Commonwealth to prove two or more related events that occurred over a period of time, and that “a single episode does not constitute a course of conduct.” **Id.** at 1029.

On appeal, our Court first noted that the corruption of minors statute had been amended in 2010 to include subsection “ii” and the “course of conduct” language. **Id.** at 1030.¹ We concluded that the legislature, in

¹ Prior to amendment, the Commonwealth only had to prove that a defendant, being more than 18 years old, “by any act” corrupted or tended to corrupt the morals of any minor. 18 Pa.C.S. § 6301(a)(1) (1996, amended 2010).

passing the amendment to the statute, clearly intended to provide additional penalties when the act or acts constituting the offense involve sexual acts.

Id. Moreover, the **Kelly** Court held that the inclusion of the term “course of conduct,” which is also used in other Pennsylvania statutes, requires proof of multiple acts. **Id.** The Court acknowledged that, although Kelly’s act “violated three separate provisions of the indecent assault statute,” it did “not constitute a ‘course of conduct’ within the plain and universally accepted meaning of that phrase.” **Id.** at 1032. Accordingly, the evidence was deemed insufficient to support the felony grading of the corruption of minors conviction. **Id.**

This finding, however, did not end the **Kelly** Court’s analysis. It continued:

Nevertheless, the evidence was sufficient to support the misdemeanor grading of the corruption of minors offense, subsection (a)(1)(i), and [Kelly] does not allege otherwise. It is “the settled law in Pennsylvania ... that a defendant may be convicted of an offense that is a lesser-included offense of the crime actually charged.” **Commonwealth v. Sims**, [] 919 A.2d 931, 938 (Pa. 2007).

Id. In other words, subsection (a)(1)(i) of the corruption of minors statute only requires proof that the defendant committed a single act, while subsection (a)(1)(ii) requires proof of a course of conduct, or multiple acts. **Id.** at 1033. Thus, subsection (a)(1)(i), the misdemeanor offense, is a lesser included offense of the felony offense under (a)(1)(ii), the “course of conduct” grading of the offense. **Id.**

Herein, J.C. testified to one incident that occurred when she was five years old where Aviles-Garriga put his hands into her pants and under her

undergarments and penetrated the lips of her vagina. N.T. Vol I, 6/3/24, at 65-66. Twin sister J.B. testified to a separate incident occurring when she was about six, where Aviles-Garriga put his hands into her underwear and caressed her clitoris. **Id.** at 112-13. Cousin J.R. testified to “instances” where Aviles-Garriga put his hands under her shirt and touched her breasts. **Id.** at 154. Thus, the testimony established one sexual act occurring against J.B. and J.C., while J.R.’s testimony indicated that the touching happened more than one time. With respect to the incidents involving J.B. and J.C., I would conclude that Appellant’s single acts are insufficient to support his convictions for corruption of minors graded as a felony. The prosecution established only one incident involving each of these two victims.

The Majority holds otherwise, concluding that, for purposes of legality of sentence review, we may combine the several acts to establish a “course of conduct for purposes of the corruption of minors statute[.]” Maj. Mem. at 13. I could agree if there was only one charge of corruption of minors. Here, the Commonwealth charged three separate counts of Section 6301, with one count pertaining to each victim. **See, e.g.,** N.T., 6/5/24 Trial (Vol. III), at 398-400. Thus, the Commonwealth, per **Kelly**, had to prove a “course of conduct” as to **each** victim. I would therefore conclude that the Commonwealth failed to do so as to the two charges which involved only one incident. **See Kelly**, 102 A.3d at 1032. Thus, Appellant’s single acts against J.B. and J.C. only supported the lesser-included, misdemeanor corruption of minors offenses under subsection 6301(a)(1)(i).

Accordingly, for purposes of the **Anders** brief and Attorney Lyden's request to withdraw, I would deny the motion to withdraw because of this non-frivolous issue. I would not require further briefing, as the issue involves legality of sentence and no purpose would be served by delaying our disposition. **See Commonwealth v. Hankerson**, 118 A.3d 415, 421–22 (Pa. Super. 2015) (concluding, during independent review, that the sentence was illegal and remanding for resentencing). I would therefore vacate Appellant's judgment of sentence and remand for the trial court to resentence Aviles-Garriga for those offenses graded as misdemeanors.² For these reasons, I respectfully dissent.

² Because the court imposed a consecutive sentence for one of Appellant's corruption of minors convictions, this disposition would upset the court's overall sentencing scheme, requiring that the Court vacate Appellant's judgment of sentence in its entirety. **See Commonwealth v. Thur**, 906 A.2d 552, 569–70 (Pa. Super. 2006) ("If our disposition upsets the overall sentencing scheme of the trial court, we must remand so that the court can restructure its sentence plan.") (citation omitted).