

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

RICHARD PAUL SHOVER, II

Appellant

: No. 994 MDA 2025

Appeal from the Judgment of Sentence Entered July 9, 2025
In the Court of Common Pleas of Lebanon County Criminal Division at
No(s): CP-38-CR-0001420-2021

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

MEMORANDUM BY MURRAY, J.:

FILED: OCTOBER 28, 2026

Richard Paul Shover, II (Appellant), appeals from the judgment of sentence entered following his conviction of driving while operating privilege is suspended or revoked (driving under the influence (DUI)-related), and the summary offense of unlawful activities.¹ Appellant's counsel, Shannon S. Pascal, Esquire (Counsel), has filed a petition to withdraw from his representation of Appellant, and a brief pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). After careful review, we grant Counsel's petition to withdraw and affirm Appellant's judgment of sentence.

* Retired Senior Judge assigned to the Superior Court.

¹ 75 Pa.C.S.A. §§ 1543(b)(1)(iii), 4107(b)(2).

The trial court described the procedural history underlying this appeal as follows:

[Appellant's] charges relate to an incident that occurred on September 20, 2021, in the Borough of Palmyra, Lebanon County, [during which a police officer determined that Appellant was driving with a suspended/revoked driver's license (DUI-related)]. A jury trial was conducted on September 25, 2024. The jury convicted [Appellant] of the misdemeanor charge and the [trial court] found him guilty of the summary offense. On July 9, 2025, [the trial court] imposed a sentence of 6 to 12 months [of] incarceration and a fine of \$2,500.00 for the misdemeanor[,] and a fine of \$25.00 and a \$20.00 assessment fee for the summary [offense]. [Appellant] was given 172 days as time credit....

Trial Court Opinion, 9/19/25, at 1-2 (punctuation modified).

Appellant timely appealed. After several procedural matters, which required multiple remands from this Court, the matter is now properly before us for review. Appellant and the trial court have complied with Pa.R.A.P. 1925.

Counsel has filed in this Court both an **Anders** brief and a petition to withdraw as counsel. "When faced with a purported **Anders** brief, this Court may not review the merits of the underlying issue without first passing on the request to withdraw." **Commonwealth v. Rojas**, 874 A.2d 638, 639 (Pa. Super. 2005) (citation omitted).

Direct appeal counsel seeking to withdraw under **Anders** must file a petition averring that, after a conscientious examination of the record, counsel finds the appeal to be wholly frivolous. Counsel must also file an **Anders** brief setting forth issues that might arguably support the appeal[,] along with any other issues necessary for the effective appellate presentation thereof

Anders counsel must also provide a copy of the **Anders** petition and brief to the appellant, advising the appellant of the right to

retain new counsel, proceed *pro se* or raise any additional points worthy of this Court's attention.

If counsel does not fulfill the aforesaid technical requirements of **Anders**, this Court will deny the petition to withdraw and remand the case with appropriate instructions (*e.g.*, directing counsel either to comply with **Anders** or file an advocate's brief on [the a]ppellant's behalf). By contrast, if counsel's petition and brief satisfy **Anders**, we will then undertake our own review of the appeal to determine if it is wholly frivolous.

Commonwealth v. Falcey, 310 A.3d 313, 314-15 (Pa. Super. 2024) (citation omitted).

Our Supreme Court has further detailed counsel's duties as follows:

[I]n the **Anders** brief that accompanies court-appointed counsel's petition to withdraw, counsel must: (1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel believes arguably supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Santiago, 978 A.2d at 361.

Here, Counsel filed both a petition for leave to withdraw and an **Anders** brief. The **Anders** brief substantially comports with the requirements set forth by our Supreme Court in **Santiago**. The record includes a copy of Counsel's letters informing Appellant of Counsel's intention to seek permission to withdraw and advising Appellant of his right to proceed *pro se* or retain new counsel and file additional claims. To date, Appellant has not filed a response.

Thus, our review confirms that Counsel has complied with the procedural requirements for withdrawing from representation. We next address the issue

raised in the **Anders** brief. We also “conduct an independent review of the record to discern if there are any additional, non-frivolous issues overlooked by counsel.” **Commonwealth v. Flowers**, 113 A.3d 1246, 1250 (Pa. Super. 2015); **see also Commonwealth v. Dempster**, 187 A.3d 266, 272 (Pa. Super. 2018) (*en banc*) (describing our duty as a “simple review of the record to ascertain if there appears ... to be arguably meritorious issues that counsel, intentionally or not, missed or misstated”).

The **Anders** brief presents the following issue for our review:

Did the Commonwealth provide sufficient evidence to prove Appellant guilty beyond a reasonable doubt? Specifically, did the Commonwealth prove that Appellant’s operating privilege was suspended “DUI-related” as required under 75 Pa.C.S.[A.] § 1543(b), even though the predicate DUI offense fell outside the ten-year look-back period established by 75 Pa.C.S.A. § 3806?

Anders Brief at 6.

In the **Anders** brief, Appellant challenges the sufficiency of the evidence underlying his conviction of driving while operating privilege is suspended (DUI-related). Appellant argues that the Commonwealth failed to establish that his prior driver’s license suspensions were DUI-related. **Id.** at 15. According to Appellant, his suspensions were not DUI-related, because the suspensions did not take place within the “ten-year look-back period established by 75 Pa.C.S.A. § 3806.” **Anders** Brief at 17.

Counsel points out that Appellant was charged under 75 Pa.C.S.A. § 1543(b), which “provides no look-back period for which prior offenses drop off.” **Id.** at 17-18. Counsel further maintains that Appellant’s certified driving

history, presented at his trial, indicated that Appellant had eight prior convictions of violating Section 1543(b),

which occurred on May 12, 1999; September 20, 2000; April 25, 2005; January 8, 2009; June 29, 2009; April 6, 2010; October 25, 2011; and October 5, 2020.

Id. at 18. Counsel further points out that Appellant “never restored his driving privilege following the original suspension in 1986, and has not possessed a valid license since June 30, 1990.” ***Id.*** at 16. Counsel asserts that under these circumstances, the grading of the Appellant’s latest offense, as a third-degree misdemeanor, was appropriate. ***Id.***

Our review of a challenge to the sufficiency of the evidence is guided by the following standard:

Our applicable standard of review is whether the evidence admitted at trial, and all reasonable inferences drawn from that evidence, when viewed in the light most favorable to the Commonwealth as verdict-winner, was sufficient to enable the fact-finder to conclude that the Commonwealth established all of the elements of the offense beyond a reasonable doubt. Additionally, when examining sufficiency issues, we bear in mind that: the Commonwealth’s burden may be sustained by means of wholly circumstantial evidence; the entire trial record is evaluated and all evidence received against the defendant considered; and the trier of fact is free to believe all, part, or none of the evidence when evaluating witness credibility.

This standard is equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the evidence links the accused to the crime beyond a reasonable doubt. Although a conviction must be based on more than mere suspicion or conjecture, the Commonwealth need not establish guilt to a mathematical certainty.

Commonwealth v. Rodriguez, 340 A.3d 334, 347 (Pa. Super. 2025) (citation omitted).

Appellant's claim requires us to interpret several provisions of Pennsylvania's Motor Vehicle Code. Our standard of review for an issue of statutory interpretation is *de novo*, and our scope of review is plenary.

Commonwealth v. Crosby, 329 A.3d 1141, 1148-49 (Pa. 2025).

In construing a statute, the primary directive is for courts "to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S.A. § 1921(a). In so doing, the plain language of the statute, *i.e.*, its "common and approved meaning[,]" controls: "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." ***Id.*** §§ 1903(a), 1921(b).

Appellant was convicted of violating Section 1543 of the Motor Vehicle Code, which provides, in relevant part, as follows:

(b) *Certain offenses.*

(1) The following shall apply:

(i) A person who drives a motor vehicle on a highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended ... for a violation of section 3802 (relating to [DUI]) ... shall, upon a first conviction, be guilty of a summary offense and shall be sentenced to pay a fine of \$500 and to undergo imprisonment for a period of not less than 60 days nor more than 90 days.

* * *

(iii) A third or subsequent violation of this paragraph shall constitute a misdemeanor of the third degree and, upon conviction of this paragraph, a person shall be sentenced to pay a fine of \$2,500 and to undergo imprisonment for not less than six months.

75 Pa.C.S.A. § 1543(b)(1)(i), (iii).²

For subsection (iii) to apply, the Commonwealth must prove that the driver committed “[a] third or subsequent violation of this paragraph.” **Id.** § 1543(b)(1)(iii). The phrase “this paragraph” refers to paragraph (1). **See Commonwealth v. Farabaugh**, 128 A.3d 1191, 1196 (Pa. 2015) (explaining that the “word ‘paragraph’ is a technical term with a specific meaning,” and when the General Assembly uses Arabic numerals in a statute and the phrase “for purposes of this paragraph,” it intends to refer to the numbered paragraph and not the entire section). By its plain language, to prove the offense under paragraph (1), the Commonwealth needed to prove that Appellant is a person

² A prior conviction constitutes a narrow exception to the general rule that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. **See Apprendi v. New Jersey**, 530 U.S. 466, 490 (2000) (holding that, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt”). Our Supreme Court has recognized that in circumstances where the relevant “judicial finding is the fact of a prior conviction, submission to a jury is unnecessary, since the prior conviction is an objective fact that initially was cloaked in all the constitutional safeguards, and is now a matter of public record.” **Commonwealth v. Aponte**, 855 A.2d 800, 811 (Pa. 2004) (footnote omitted).

who drove when his operating privilege was suspended, in relevant part, because of a violation of Section 3802. 75 Pa.C.S.A. § 1543(b)(1)(i).

Appellant claims that 75 Pa.C.S.A. § 3806 establishes a 10-year cut-off, or look-back period, for DUI-related offenses. Section 3806 provides, in relevant part, as follows:

(a) General rule. Except as set forth in subsection (b), the term “prior offense” **as used in this chapter** shall mean any conviction for which judgment of sentence has been imposed, adjudication of delinquency or other form of preliminary disposition before the sentencing on the present violation for any of the following:

- (1)** an offense under section 3802 (relating to driving under influence of alcohol or controlled substance);
- (2)** an offense under former section 3731;
- (3)** an offense substantially similar to an offense under paragraph (1) or (2) in another jurisdiction; or
- (4)** any combination of the offenses set forth in paragraph (1), (2) or (3).

(b) Timing.

(1) For purposes of sections 1553(d.2) (relating to occupational limited license), 1556 (relating to ignition interlock limited license), 3803 (relating to grading), 3804 (relating to penalties) and 3805 (relating to ignition interlock), the prior offense must have occurred:

(i) within 10 years prior to the date of the offense for which the defendant is being sentenced; or

(ii) on or after the date of the offense for which the defendant is being sentenced.

(2) The court shall calculate the number of prior offenses, if any, at the time of sentencing.

(3) If the defendant is sentenced for two or more offenses in the same day, the offenses shall be considered prior offenses within the meaning of this subsection.

(4) When the completion date of the Accelerated Rehabilitative Disposition program or a pretrial diversion program substantially similar to Accelerated Rehabilitative Disposition in another jurisdiction for an offense under section 3802 or a substantially similar offense in another jurisdiction is more than 10 years prior to the date of the offense for which the defendant is being sentenced, a prior conviction for violating section 3802(h)(1) shall be treated as a prior offense for the underlying violation of section 3802.

75 Pa.C.S.A. § 3806 (emphasis added).

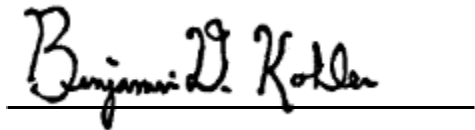
By its plain language, Section 3806's look-back period applies to violations of Motor Vehicle Code Sections 1553(d.2), 1556, 3803, 3804, and 3805. **See id.** § 3806(b)(1)(i). Section 1543(b)(1)(iii) is not one of the enumerated sections. "Under the doctrine of *expressio unius est exclusio alterius*, the inclusion of a specific matter in a statute implies the exclusion of other matters." **Commonwealth v. Wiggs**, 2026 Pa. Super. LEXIS 316, *11, 2026 PA Super 126 (Pa. Super. filed June 17, 2026) (*en banc*) (slip op. at 9) (internal quotation marks and citation omitted). Section 3806 excludes Section 1543(b)(1)(iii) from its 10-year look-back provision. **See id.; see also Commonwealth v. Garner**, 301 A.3d 462, 468 (Pa. Super. 2023) ("We may not add words or phrases in construing a statute unless the added words are necessary for a proper interpretation, do not conflict with the obvious intent of the statute, and do not in any way affect its scope and operation." (citation omitted)). Thus, Section 3806's 10-year look-back period for prior

DUI offenses does not apply to Section 1543(b)(1)(iii). Because Appellant was convicted of a third or subsequent violation of Section 1543, we conclude the evidence is sufficient to sustain Appellant's conviction of Section 1543(b)(1)(iii). We agree with Counsel's assessment that Appellant's issue lacks merit and is frivolous.

After conducting a full examination of all the proceedings, as required pursuant to ***Anders***, we discern no non-frivolous issues that could be raised on appeal. We therefore grant Counsel's petition to withdraw and affirm Appellant's judgment of sentence.

Petition to withdraw granted. 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: 10/28/2026