NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
KEDRIN LAMIR HENSON	:	
Appellant	:	No. 3078 EDA 2023

Appeal from the Judgment of Sentence Entered October 20, 2023
In the Court of Common Pleas of Delaware County Criminal Division at
No(s): CP-23-CR-0004984-2022

BEFORE: STABILE, J., McLAUGHLIN, J., and LANE, J.

MEMORANDUM BY LANE, J.: **FILED APRIL 29, 2025**

Kedrin Lamir Henson ("Henson") appeals from the judgment of sentence imposed following his conviction for firearms not to be carried without a license.[1] We affirm.

In 2022, Henson was illegally parked in a high crime area late at night with the vehicle lights off, although the vehicle was running. When Officer Jay Rattmann passed by in his vehicle, Henson and his passenger attempted to lean back in their seats, ostensibly to avoid detection. Officer Rattmann continued on to a nearby location to assist a fellow officer, Officer Fridley,[2] with an unrelated traffic stop. A few minutes later, Officer Rattmann returned to the area and observed Henson's vehicle still illegally parked in the same

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[1] ***See*** 18 Pa.C.S.A. 6106(a)(1).

[2] Officer Fridley's first name does not appear in the record.

location. Officer Rattmann and Officer Fridley, who accompanied Officer Rattmann, parked their police vehicles behind Henson's vehicle. Officer Fridley approached the driver's side of the vehicle, where Henson was seated, and Officer Rattmann approached the passenger side of the vehicle. Officer Rattmann explained to Henson and his passenger that the vehicle was parked illegally. Officer Fridley requested identification from the occupants of the vehicle. Henson refused to make eye contact with the officers and, while staring directly ahead, refused the officer's request for identification. Officer Fridley then asked Henson to step out of the vehicle. At that point, Henson leaned forward and began reaching toward his right waistband. As he did so, Officer Rattmann observed the handle of a gun protruding from the back right side of Henson's waistband. Upon seeing the firearm, Officer Rattmann withdrew his service weapon and ordered Henson to place his hands over his head. Officer Fridley then removed Henson from the vehicle and detained him while he recovered the firearm.

The Commonwealth charged Henson with, *inter alia*, firearms not to be carried without a license, and driving while operating privileges suspended or revoked. The trial court scheduled an initial trial date in January 2023; however, Henson filed numerous requests to continue the trial date, resulting in several more rescheduled trial dates. Henson then filed a motion to suppress the firearm. The trial court conducted a hearing on the motion before entering an order denying the motion on June 20, 2023. Henson opted to

waive his right to a jury trial, and the court scheduled the matter for a stipulated non-jury trial on June 28, 2023. Two days before the scheduled trial date, Henson filed a *pro se* document entitled "Certification of Trust,"[3] despite the fact that he was represented by counsel. The trial court dismissed the *pro se* filing as violative of the rule against hybrid representation.

At the start of the non-jury trial on June 28, 2023, the trial court confirmed with Henson that he had signed, executed, and understood his written jury trial waiver colloquy. ***See*** N.T., 6/28/23, at 3. The trial court then began conducting an oral jury trial waiver colloquy. ***See id***. at 3-7. During the oral waiver colloquy, Henson requested new counsel. The trial court then conducted an extensive inquiry as to the nature of the conflict with counsel; however, in response to the trial court's repeated inquiries, the only conflict that Henson could identify was defense counsel's refusal to file the Certification of Trust on Henson's behalf due to counsel's belief that it was "nonsense." ***See id***. at 7-15, 26-27. Given that Henson could point to no

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[3] The trial court explained that the "Certification of Trust" "is a largely unpaginated combination of apparently copied Delaware County Record of Deed filings, along with various copied documents seemingly from the Minnesota Secretary of State's Office, including but not limited to a Certification of Assume Name, as well as a purported Durable Power of Attorney for management of property and personal affairs and a supposed Hold Harmless Indemnity Agreement in which [Henson] purports to be both a 'Bailor' and 'Bailee[.]'" Trial Court Opinion, 3/28/24, at 29. The trial court concluded that "[t]his . . . collection of documents . . . neither together nor separately bore any connection or relevance to the at[-]bar matter[,] and generally were just nonsensical." ***Id***. at 52.

other concern with his counsel, despite numerous opportunities to do so, the trial court denied the request for new counsel. ***See id***. at 10. Defense counsel then asked for a continuance so that Henson could either proceed retain private counsel or proceed *pro se*. ***See id***. at 15. After defense counsel indicated that he was ready to proceed with the trial, the court denied the request for a continuance. ***See id***. Henson then asked if he could proceed *pro se*, and the trial court conducted an extensive colloquy with Henson to determine whether his request to proceed *pro se* was knowing and intelligent. ***See id***. at 16-32. Ultimately, the trial court denied Henson's request to proceed *pro se*, finding that his actions were frivolous, manipulative, obstructionist, and abused the dignity of the courtroom. ***See id***. at 32; ***see also*** Trial Court Opinion, 3/28/24, at 54. The trial court additionally noted that the matter had been pending for months, and both defense counsel and the prosecutor indicated they were ready to proceed with trial. ***See*** N.T., 6/28/23, at 32. The stipulated trial then proceeded, and the court found Henson guilty of firearms not to be carried without a license.[4] The trial court ordered a pre-sentence investigation report ("PSI") and scheduled a sentencing hearing for August 21, 2023.

On August 14, 2023, the Delaware County Office of Adult Probation and Parole ("the probation department") sent a letter to the trial court indicating

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[4] During the proceedings, the Commonwealth indicated that it would be dismissing the remaining charges pending against Henson.

that it had made six unsuccessful attempts to have Henson fill out a questionnaire, and complete interviews and a psychological evaluation to facilitate the preparation of a PSI. Having received no response from Henson, the probation department prepared a PSI report without the benefit of Henson's input. At the request of defense counsel, the sentencing hearing was continued to October 20, 2023, to allow for the completion of the PSI with Henson's input. However, Henson failed to respond to the further attempts by the probation department to arrange interviews and a psychological evaluation.

The sentencing hearing proceeded on October 20, 2023, at the conclusion of which the trial court sentenced Henson to a term of two years of probation. Defense counsel filed a timely post-sentence motion, and the trial court scheduled a hearing on the motion. After two continuance requests due to defense counsel's unavailability, the hearing proceeded on November 2, 2023. Henson did not attend the hearing and defense counsel, who could not explain Henson's absence, requested that the court waive his appearance. Later that same day, the trial court entered an order denying the post-sentence motion.

On November 15, 2023, the probation department sent a letter to Henson directing him to appear at its office on December 18, 2023, for an initial probation interview. Henson failed to appear. Accordingly, on December 28, 2023, the probation department sent another letter to Henson

directing him to appear at its office on January 18, 2024. Once again, Henson failed to appear. On January 25, 2024, the probation department sent a third letter to Henson directing him to appear at its office on February 12, 2024, and notifying Henson that his failure to appear would result in the issuance of a bench warrant for his arrest. Once again, Henson failed to appear, and a bench warrant was issued for his arrest.

Meanwhile, Henson's defense counsel filed a timely notice of appeal on December 1, 2023, and a court-ordered Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal on January 17, 2024. The trial court authored a Rule 1925(a) opinion on March 28, 2024, in which it concluded that Henson had forfeited his post-sentence and appellate rights due to his fugitive status. Henson was eventually apprehended and arrested on April 8, 2024.

Henson raises the following issues for our review:

> I. Whether the court below erroneously concluded that . . . Henson forfeited his right to appellate review since it did not issue a warrant before defense counsel filed the notice of appeal, and the record lacks sufficient evidence that he is a fugitive?
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> II. Whether the court below erred in refusing to suppress the firearm because it is the fruit of an unlawful stop and search that police conducted without any legal justification and in violation of . . . Henson's state and federal constitutional rights?
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> III. Whether the court below erroneously deprived . . . Henson of his state and federal constitutional right to self-representation at trial, where he clearly and unequivocally

> exercised a knowing, intelligent, and voluntary waiver of his right to counsel?

Henson's Brief at 5 (italics omitted).

In his first issue, Henson challenges the trial court's determination that he forfeited his appellate rights because he was a fugitive from justice during the period in which to file an appeal from the judgment of sentence. As this determination affects our jurisdiction over this matter, we must preliminarily address this issue before we may consider the merits of Henson's remaining issues.

Pursuant to our appellate rules, an appellant seeking to invoke this Court's jurisdiction must file a notice of appeal within thirty days after the entry of the order from which the appeal is taken. ***See*** Pa.R.A.P. 903(a). Absent extraordinary circumstances, this Court has no jurisdiction to entertain an untimely appeal. ***See Commonwealth v. Burks***, 102 A.3d 497, 500 (Pa. Super. 2014). Time limitations for taking appeals are strictly construed and cannot be extended as a matter of grace. ***See id***.

In the context of a criminal proceeding where, as here, the case has proceeded through the sentencing phase, the appeal lies from the entry of the judgment of sentence. ***See Commonwealth v. Borrero***, 692 A.2d 158, 159 (Pa. Super. 1997). However, with respect to an original sentence, the filing of a post-sentence motion within ten days of the entry of judgment extends the start of the thirty-day period in which a notice of appeal must be filed until an order has been entered deciding the post-sentence motion. ***See***

Pa.R.Crim.P. 720(A)(1) (providing that a written post-sentence motion shall be filed no later than ten days after the imposition of sentence); ***see also*** Pa.R.Crim.P. 720(A)(2)(a) (providing that, if the defendant files a timely post-sentence motion, the notice of appeal shall be filed within thirty days of the entry of the order deciding the post-sentence motion).

Notwithstanding the above principles, a defendant who deliberately chooses to become a fugitive from justice may forfeit the right to appellate review. ***See Commonwealth v. Passaro***, 476 A.2d 346, 348-49 (Pa. 1984) (holding that the right to appeal is conditioned upon compliance with the procedures established by the Pennsylvania Supreme Court, and a defendant who deliberately chooses to bypass the orderly procedures afforded to one convicted of a crime for challenging his conviction is bound by the consequences of his decision). Relevant to this case, a defendant's fugitive status during the thirty-day period in which to file a notice of appeal controls whether an appellate court will hear his appeal:

> [If] a fugitive . . . returns in time for post-[sentence] motions, he should be allowed to file them. If he returns after the time for post-[sentence] motions has expired, his request to file post-[sentence] motions or to reinstate post-[sentence] motions should be denied. If he . . . returns before the time for appeal has expired and files an appeal, he should be allowed to appeal. . . . In short, a fugitive who returns to court should be allowed to take the system of criminal justice as he finds it upon his return . . ..

Commonwealth v. Deemer, 705 A.2d 827, 829 (Pa. 1997).

Our Supreme Court has explained:

> [T]he terms "fugitive" and "fugitive from justice" are synonymous for our present purposes and include someone who evades the law or prosecution, and/or an individual in a criminal case who simply eludes law enforcement. In addition, our Rules of Civil Procedure provide a bench warrant may be issued by a court when a party ***fails to appear at a required hearing or court-mandated appointment, i.e. when the individual fails to comply with a court order to appear***.

Commonwealth v. Smith, 234 A.3d 576, 585 (Pa. 2020) (emphasis added).

We conclude that there is no evidence that Henson was a "fugitive" simply because he did not attend the hearing on his post-sentence motion. Henson appeared at his sentencing hearing on October 20, 2023, and his defense counsel filed a timely post-sentence motion on his behalf. The record does not reflect an order directing Henson to appear at the November 2, 2023 hearing on the post-sentence motion, and the trial court did not issue a warrant for Henson's arrest when he did not attend that hearing. Bearing in mind the above definitions, we do not conclude that Henson, although absent from the hearing on November 2, 2023, was a fugitive as of the date of that hearing.

Even assuming that Henson later became a fugitive by failing to report to the probation department, his first missed probation reporting date was December 18, 2023, which was after he had filed a timely notice of appeal and the appeal period had closed. Thus, as the record does not support a determination that Henson became a fugitive during the thirty-day period in which to file a notice of appeal, we conclude that he did not forfeit his appellate rights and this Court has jurisdiction over the instant appeal.

In his second issue, Henson challenges the trial court's suppression ruling. Our standard of review of an order denying suppression is well-settled:

> When we review the ruling of a suppression court[,] we must determine whether the factual findings are supported by the record. When it is a defendant who has appealed, we must consider only the evidence of the prosecution and so much of the evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted. Assuming that there is support in the record, we are bound by the facts as are found and we may reverse the suppression court only if the legal conclusions drawn from those facts are in error.

Commonwealth v. Hicks, 208 A.3d 916, 925 (Pa. 2019) (citation omitted). Our scope of review of the suppression court's factual findings is limited to the suppression hearing record. ***See Commonwealth v. Barr***, 266 A.3d 25, 39 (Pa. 2021) (citations omitted). However, as an appellate court, we are not bound by the suppression court's conclusions of law. ***Hicks***, 208 A.3d at 925. Rather, when reviewing questions of law, our standard of review is *de novo* and our scope of review is plenary. ***Id***.

The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect private citizens from unreasonable searches and seizures by government officials. ***See Commonwealth v. Strickler***, 757 A.2d 884, 888 (Pa. 2000) (citing ***United States v. Mendenhall***, 446 U.S. 544, 551, (1980)). However, not every encounter between a law enforcement officer and a citizen constitutes a seizure warranting constitutional protections. ***See Commonwealth v.***

Adams, 205 A.3d 1195, 1199 (Pa. 2019). As our Supreme Court has explained:

> We have long recognized three types of interactions that occur between law enforcement and private citizens. The first is a mere encounter, sometimes referred to as a consensual encounter, which does not require the officer to have any suspicion that the citizen is or has been engaged in criminal activity. This interaction also does not compel the citizen to stop or respond to the officer. A mere encounter does not constitute a seizure, as the citizen is free to choose whether to engage with the officer and comply with any requests made or, conversely, to ignore the officer and continue on his or her way. The second type of interaction, an investigative detention, is a temporary detention of a citizen. This interaction constitutes a seizure of a person, and to be constitutionally valid police must have a reasonable suspicion that criminal activity is afoot. The third, a custodial detention, is the functional equivalent of an arrest and must be supported by probable cause. A custodial detention also constitutes a seizure.
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> No bright lines separate these types of encounters, but the United States Supreme Court has established an objective test by which courts may ascertain whether a seizure has occurred to elevate the interaction beyond a mere encounter. The test, often referred to as the "free to leave test," requires the court to determine whether, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business. Whenever a police officer accosts an individual and restrains his freedom to walk away, he has seized that person.

Id. 1199-1200 (internal citations, some quotations, and brackets omitted).

Pennsylvania law makes clear that a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense. ***See Commonwealth v. Bush***, 166 A.3d 1278, 1283 (Pa. Super. 2017). Additionally, as a matter of precaution, a police officer has an

absolute right to ask occupants of a vehicle to step from the vehicle during the traffic stop in order to ensure the officer's own safety. ***See In the Interest of M.W.***, 194 A.3d 1094, 1098 (Pa. Super. 2018); ***see also Pennsylvania v. Mimms***, 434 U.S. 106, 111, (1977) (holding that once a motor vehicle has been lawfully stopped for a traffic violation, police officers do not violate the Fourth Amendment by ordering the driver to get out of the vehicle). Further, when a police officer observes a firearm in plain view while effectuating a lawful traffic stop, the officer is not required to ascertain whether the driver illegally possesses the firearm before securing it for their protection. ***See Commonwealth v. Hawkins-Davenport***, 319 A.3d 537, 547 (Pa. Super. 2024) (explaining that "this safety justification is applicable to a firearm regardless of the possessor's licensure status" as "[t]here is no doubt a firearm can be used to harm a police officer during a traffic stop whether it is legally possessed or not").

Henson contends that the trial court should have granted his motion to suppress the firearm because the police stopped him without reasonable suspicion or probable cause that a parking infraction occurred. Henson argues that the Commonwealth presented insufficient evidence that he was unlawfully parked, since the Vehicle Code excepts from the definition of "parking" the act of "momentarily for the purpose of and while actually engaged in loading or unloading property or passengers." Henson's Brief at 18 (*quoting* 75 Pa.C.S.A. § 102). Henson claims that Officer Rattmann observed his vehicle in passing

for only a moment before traveling a block away to effectuate an unrelated traffic stop. According to Henson, the officers could not see his vehicle while they were conducting the unrelated traffic stop and, therefore, could not determine or conclude that Henson was not in the process of lawfully loading or unloading property or passengers. Henson additionally argues that police lacked reasonable suspicion of any other unlawful activity, noting that he did not attempt to leave the area upon seeing the officer. Henson maintains that the officers "did not see a gun handle or any purported fidgeting until well after they initiated the unlawful stop." ***Id***. at 19. Henson contends that the officers "seized" him "at the moment they ambushed him in marked cruisers, likely with overhead lights activated, and initiated a stop." ***Id***. at 23. Henson argues that the officers ordered him from the vehicle at gunpoint, seized the firearm, and arrested him before they determined whether Henson was carrying the firearm unlawfully. Henson concludes that, because the police acted without legal justification, the firearm constitutes fruit of the poisonous tree which should have been suppressed.

The trial court considered Henson's second issue and determined that it lacked merit. The court explained:

> On May 11, 2022, just minutes after midnight, Patrolman Rattmann, alone in a marked police car, patrolled generally the 1200 block of Yarnell Street, Chester Township . . ..
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> Driving on Yarnell Street enroute to provide backup for a fellow policeman conducting an unrelated traffic stop, Officer Rattmann noticed a silver sedan parked directly under a sign clearly reading, "No Parking Here To Corner." N.T.[,] 5/3/23, [at]

> 28-29, 33, 47. ***See also*** 75 Pa.C.S. § 3353(a)(2)(vii); and Commonwealth Exhibit CS-1 — Photo of No Parking Sign.
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> The officer drove unconcernedly past the illegally parked vehicle which was occupied by . . . Henson as the driver and a second individual in the front passenger seat. As he did, Officer Rattmann in response to nothing more than his mere, public presence observed the car's two . . . occupants, including [Henson], furtively leaning back in their seats and out of his view. N.T.[,] 5/3/23, [at] 44, 47, 49.
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> The patrolman proceeded across Yarnell Street to back up fellow Officer Fridley with that police official's unrelated traffic stop. Some minutes later after he finished with his law enforcement colleague, Officer Rattmann returned to the 1200 block of Yarnell Street and again observed the same motor vehicle yet illegally parked still right beneath the undisputed no parking sign. N.T.[,] 5/3/23, [at] 28-29, 33-34, 47, 49. ***See also*** Commonwealth Exhibit CS-1 — Photo of No Parking Sign.
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> Absent any use of emergency lights and siren, he parked his car behind the silver sedan and Officer Fridley in his separate vehicle followed stopping behind Officer Rattmann's police car. Officer Rattmann walked to the silver sedan's passenger side and informed . . . Henson and his passenger that the car was illegally parked. Patrolman Fridley engaged the behind-the wheel [Henson,] requesting from him identification. In lieu of complying, . . . Henson while staring straight ahead [and avoiding eye contact,] plainly stated that he would not honor the officer's simple request[. Based on the parking violation and his refusal to provide identification, Officer Fridley asked Henson to exit the vehicle. At that point, Henson leaned forward and began reaching toward the back right side of his waistband, at which time Officer Rattmann observed the handle of a firearm protruding from the back right side of Henson's waistband, in the area where Henson was reaching. Officer Rattmann then ordered Henson to place his hands over his head as Officer Fridley removed Henson from the vehicle and detained him to recover the firearm. ***See*** N.T., 5/3/23, at 35-37.]

Trial Court Opinion, 3/28/24, at 18-19 (unnecessary capitalization omitted).

Based on our review, we conclude that the trial court's denial of suppression is supported by the suppression record. Here, Officer Rattmann testified at the suppression hearing that Henson's vehicle was illegally parked in a no parking zone. ***See*** N.T., 5/3/23, at 28, 31, 32. The Commonwealth additionally presented the suppression court with a photo of Henson's vehicle illegally parked in the no parking zone on the night in question. ***See id***. at 33; ***see also*** Commonwealth Exhibit CS-1. As explained above, a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense such as the offense here in question. ***See Bush***, 166 A.3d at 1283. Thus, having observed Henson's vehicle parked illegally in a no parking zone, the officers had probable cause to conduct a lawful traffic stop of the vehicle. Henson's claims that no traffic violation occurred, and that the officers had neither reasonable suspicion nor probable cause to conduct a stop of the vehicle, are belied by the suppression record.[5]

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[5] While Henson suggests that he might have been loading or unloading property or passengers at the time of the traffic stop, such that he was not unlawfully "parked" in a the parking zone, the suppression record is devoid of any evidence or testimony that he was "momentarily" and "actually engaged in loading or unloading property or passengers" either before or at the time of the traffic stop. ***See*** 75 Pa.C.S.A. § 102. Indeed, defense counsel informed the trial court at the suppression hearing that he would not be offering any testimony or evidence that Henson was loading or unloading anything from his vehicle. ***See*** N.T., 5/3/23, at 17, 18-19. Thus, as the defense offered no evidence whatsoever at the suppression hearing, the only evidence that this Court may consider is the prosecution's evidence, which clearly established a
(Footnote Continued Next Page)

Additionally, as a matter of precaution, a police officer has an absolute right to ask occupants of a vehicle to step from the vehicle during the traffic stop in order to ensure the officer's own safety. ***See In the Interest of M.W.***, 194 A.3d at 1098; ***see also Mimms***, 434 U.S. at 111. Thus, having effectuated a lawful traffic stop, the officers had an absolute right to ask Henson to step out of his vehicle for the safety of the officers. When the officers did so, Henson began reaching towards the back right side of his waistband, at which point Officer Rattmann observed the handle of a firearm protruding from Henson's waistband. ***See*** N.T., 5/3/23, at 36-37. We conclude that the firearm observed by Officer Rattmann was not fruit of the poisonous tree and was, instead, observed in plain view from a lawful vantage point while the officers were effectuating a traffic stop. ***See Hawkins-Davenport***, 319 A.3d 549 (concluding that the officer's removal of the firearm he saw in plain sight, so that it was not accessible to the defendant during the valid traffic stop, was proper in order to protect the officer's and his partner's safety). Moreover, the officers were not required to ascertain whether Henson

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traffic violation. ***See Barr***, 266 A.3d at 39 (explaining that this Court's review of a suppression ruling is limited to the consideration of only the evidence of the prosecution and so much of the evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted).

illegally possessed the firearm before securing it for their own protection. ***See id***. at 547. Thus, Henson's second issue merits no relief.[6]

In his third issue, Henson challenges the trial court's denial of his request to proceed *pro se* at his non-jury trial. "A criminal defendant's right to counsel under the Sixth Amendment includes the concomitant right to waive counsel's assistance and proceed to represent oneself at criminal proceedings." ***Commonwealth v. El***, 977 A.2d 1158, 1162 (Pa. 2009). Whether that right was violated presents a question of law for which this Court's standard of review is *de novo* and scope of review is plenary. ***See Commonwealth v. Tighe***, 224 A.3d 1268, 1278 (Pa. 2020).

To exercise the right to self-representation, a "defendant must demonstrate that he knowingly, voluntarily and intelligently waives his right to counsel." ***Commonwealth v. Brooks***, 104 A.3d 466, 474 (Pa. 2014) (citation omitted). To ensure that a waiver is knowing, voluntary, and intelligent, the trial court must conduct a "probing colloquy," which is a searching and formal inquiry as to whether the defendant is aware both of the

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[6] We note that the trial court examined the totality of the circumstances presented before determining that the officers had reasonable suspicion that criminality was afoot so as to conduct an investigative detention. ***See*** Trial Court Opinion, 3/28/24, at 23-25. However, as explained above, the officers' observation of the parking violation, without more, provided the officers with probable cause to conduct a stop of the vehicle. ***See Bush***, 166 A.3d at 1283. To the extent our legal reasoning differs from the trial court's, we note that as an appellate court, we may affirm the trial court's ruling on any legal basis supported by the certified record. ***See Commonwealth v. Williams***, 125 A.3d 425, 433 n.8 (Pa. Super. 2015).

right to counsel and of the significance and consequences of waiving that right. ***See Commonwealth v. Starr***, 664 A.2d 1326, 1335-36 (Pa. 1995); ***see also*** Pa.R.Crim.P. 121(A)(2) (setting forth six areas of inquiry for determining whether the defendant is making an informed and independent decision to waive counsel).

As our Supreme Court has explained:

> The right to appear *pro se* is guaranteed as long as the defendant understands the nature of his choice. In Pennsylvania, Rule of Criminal Procedure 121 sets out a framework for inquiry into a defendant's request for self-representation. Where a defendant knowingly, voluntarily, and intelligently seeks to waive his right to counsel, the trial court, in keeping with ***Faretta***[***v. California***, 422 U.S. 806 (1975)], must allow the individual to proceed *pro se*.
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> The right to waive counsel's assistance and continue *pro se* is not automatic however. Rather, only timely and clear requests trigger an inquiry into whether the right is being asserted knowingly and voluntarily. Thus, the law is well established that in order to invoke the right of self-representation, the request to proceed *pro se* must be made timely and not for purposes of delay and must be clear and unequivocal.

El, 977 A.2d at 1162-63 (internal citations, quotation marks, and footnotes omitted).

In justifying the need to timely raise the right of self-representation, courts have recognized, among other things, the need to minimize disruptions, to avoid inconvenience and delay, to maintain continuity, and to avoid confusing the jury. ***See Commonwealth v. Jermyn***, 709 A.2d 849, 863 (Pa. 1998). "In reviewing the timeliness of the request to proceed *pro se*, courts generally consider the point in the proceedings that the request is being

made." ***Commonwealth v. Davido***, 868 A.2d 431, 438 (Pa. 2005). "Where the accused does not request to represent himself before trial, the constitutional right to self-representation recognized in ***Faretta*** is not implicated." ***Id***. Instead, if "during the course of trial, an accused wishes to dismiss counsel and either represent himself or obtain new counsel, his request is addressed to the sound discretion of the trial court." ***Id***.; ***see also Jermyn***, 709 A.2d at 863 (holding that when the request for self-representation is asserted after "meaningful trial proceedings have begun," the granting of the right rests within the trial judge's discretion). Thus, whether the request was made before trial or during trial is a critical factor in determining the timeliness of the request. ***Davido***, 868 A.2d at 438.

In the context of the right to a trial by jury, "meaningful trial proceedings" have commenced "when a court has begun to hear motions which have been reserved for time of trial; when oral arguments have commenced; or when some other such substantive first step in the trial has begun." ***El***, 977 A.2d at 1165 (citation omitted). Additionally, where a defendant has both orally and in written form waived his right to a jury trial, meaningful trial proceedings have commenced in his case and a subsequent request for self-representation is considered untimely. ***See El***, 977 A.2d at 1165.

However, the right to self-representation is not absolute, and a criminal defendant may forfeit the right to self-representation despite making an

otherwise valid, timely request to proceed *pro se*. ***See Commonwealth v. Green***, 149 A.3d 43, 58-59 (Pa. Super. 2016); ***see also See Brooks***, 104 A.3d at 474. The trial court "may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct," as "self-representation is not a license to abuse the dignity of the courtroom" or to fail to "comply with relevant rules of procedural and substantive law." ***Faretta***, 422 U.S. at 834 n.46. A defendant should not be permitted to unreasonably "clog the machinery of justice" or hamper and delay the effort to administer justice effectively. ***See Commonwealth v. McAleer***, 748 A.2d 670, 674 (Pa. 2000). If a request to proceed *pro se* is "employed as a bargaining device rather than as a clear demand for self[-]representation," its denial is not an abuse of discretion. ***Davido***, 868 A.2d at 440. Misbehavior affecting the right to self-representation is not restricted to the courtroom and the "relevant rules of procedure and substantive law" are not limited to those occurring only in the trial itself. ***Tighe***, 224 A.3d at 1280.

Henson argues that the trial court erroneously deprived him of his constitutionally protected right to proceed *pro se* in this matter. Henson asserts that he was fully aware of his right to counsel and properly waived it in a polite and respectful manner. Henson contends that the trial court's decision to deny his request to proceed *pro se* is not supported by the record, which does not reveal obstructionist conduct warranting a deprivation of his right to self-representation. Henson further maintains that the record does

not suggest that he sought to ignore, disparage, or undermine the trial court or impede the trial process. Henson maintains that his attempt to introduce an irrelevant document (*i.e.*, the Certification of Trust) does not render him an obstructionist.

The trial court considered Henson's third issue and determined that it lacked merit. The court reasoned:

> Just before his stipulated bench trial commenced . . . Henson repeatedly interrupted this court's colloquy concerning the foundations of [his] past counseled intention to waive his jury trial rights. The first intrusion seemed to contain [Henson's] concern . . . [regarding] the jury trial waiver form. N.T.[,] 6/28/23, [at] 9. The resultant . . . discussion between [Henson] and the court. . . was inexplicable and outside the interests of justice. N.T.[,] 6/28/23, [at] 30.
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> . . . Henson's second concern addressed his doubt around his lawyer's advice that a proffer of the . . . "Certification of Trust" (marked, not admitted) would be frivolous. N.T.[,] 6/28/23, [at] 10. Th[e Certification] is a collection of [seven] documents which neither together nor separately bore any connection or relevance to the at bar matter and generally were just nonsensical.
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> The "Certification" was filed *pro se* on June 26, 2023, five . . . days subsequent to this court's order denying suppression of the firearm, the illegal carrying of which is the instant sole charge. . . .
>
> Noteworthy in the record is [Henson's] evidence law-based quarrel with his attorney and his goal of placing his unembellished "status" ("Certificate of Trust") of-record [because he thought that it would be helpful to his case. ***See*** N.T., 6/28/23, at 26-27.]
>
> * * * *
>
> On the trial date[,] . . . Henson told the court generically that his lawyer was "not right for" him. The sole responsive answer that [Henson] gave when the court delved into his concerns was that he was unhappy that his lawyer would not file

> the above reproduced and patently frivolous "Certification of Trust."
>
> . . . Henson did not comport himself as a serious litigant once he learned that his suppression motion was denied . . . seven . . . days before trial. It was June 26, 2023, when the legally empty *pro se* "Certification of Trust" was lodged by [Henson], albeit contravening the "hybrid representation" prohibition. At the June 28, 2023, trial listing[,] . . . Henson's interruptions of the court were baseless and dilatory. His answers to the court's questions about the value of his disjointed, irrelevant "Certification of Trust" were ethereal at best, and unrelated to whether the document had bearing on the Commonwealth's case.
>
> . . . Henson spoke and acted like a manipulator, and his interruptions and stances were patently frivolous. His complaint about his lawyer was on this record unfounded and absent any particularized grounds, beyond the nonsensical "Certification of Trust," despite being repeatedly invited by the court to articulate such concerns, if any. [Henson's] actions were serious and obstructionist, abused the dignity of the courtroom, and was- a wholesale failure to comply with relevant rules of procedural and substantive law. . . .

Trial Court Opinion, 3/28/24, at 52-55 (footnote, some citations to the record, and unnecessary capitalization omitted).

Based on our review, we discern no violation of Henson's constitutional right to self-representation. The record in this case demonstrates that at the start of the non-jury trial on June 28, 2023, the trial court confirmed with Henson that he had signed, executed, and understood his written jury trial waiver colloquy. ***See*** N.T., 6/28/23, at 3. The trial court then began conducting an oral jury trial waiver colloquy. ***See id***. at 3-7. During the oral waiver colloquy, Henson requested new counsel. The trial court then conducted an extensive inquiry as to the nature of the conflict with counsel;

however, in response to the trial court's repeated inquiries, the only conflict that Henson could identify was defense counsel's refusal to file the Certification of Trust on Henson's behalf due to counsel's belief that it was "nonsense." ***See id***. at 7-15, 26-27. Given that Henson could point to no other concern with his counsel, the trial court denied the request for new counsel. ***See id***. at 10. Defense counsel then asked for a continuance so that Henson could either retain private counsel or proceed *pro se*. ***See id***. at 15. After defense counsel indicated that he was ready to proceed with the trial, the court denied the request for a continuance. ***See id***.

Henson then asked if he could proceed *pro se*,[7] and the trial court conducted an extensive colloquy with Henson to determine whether his request to proceed *pro se* was knowing and intelligent, as required by ***Faretta***. ***See id***. at 16-32. Notably, Henson seemed to have difficulty in articulating certain of his responses, and made the following statements to the trial court throughout their exchange: "I haven't been able to fully comprehend . . . the matter at hand;" "I'm a little overwhelmed at the moment;" "I can't think correctly at the moment;" "I can't even think straight at the moment . . . I'm

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[7] As the trial court had not yet completed its oral jury trial waiver colloquy when Henson asked to represent himself, meaningful trial proceedings had not yet commenced in the case. ***See El***, 977 A.2d at 1165 (holding that where a defendant has both orally and in written form waived his right to a jury trial, meaningful trial proceedings have commenced in his case). Thus, Henson's request to proceed *pro se*, although made on the day of trial, cannot be regarded as untimely.

a little overwhelmed;" and "can I have a moment to gather myself." ***Id***. at 7, 8, 11, 14. Additionally, Henson was unable to understand either his counsel's or the trial court's explanations as to why the Certification of Trust documents bore no relevance whatsoever to the single firearm charge pending against him. ***See id***. at 27 (where Henson explained his belief that the Certification of Trust would "place my . . . status . . . on my file"). Given these statements, the record does not support a conclusion that Henson demonstrated to the trial court that his request for self-representation was made either knowingly or intelligently. ***See Brooks***, 104 A.3d at 474 (holding that the "defendant must demonstrate that he knowingly, voluntarily and intelligently waives his right to counsel").

Moreover, the record supports the trial court's determination that Henson forfeited his right to self-representation. As of the date of trial, the matter had been pending for nearly eighteen months, and Henson had filed numerous requests for continuances and other motions that resulted in the trial court continuing the trial a total of four times. ***See*** Trial Court Opinion, 3/28/24, at 2-3. On the day of trial, Henson interrupted the trial court during the oral jury trial waiver colloquy to complain that, although he had previously discussed the option of waiving a jury trial with the court, he was not aware that he would be required to sign a written jury trial waiver form. ***See id***. at 7-9. Further, although Henson had been represented by his court-appointed defense counsel for ten months, he waited until the day of trial to request new

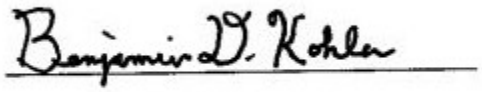
counsel, and the only basis that he could provide for his request was that defense counsel refused to file the Certification of Trust, which bore no relevance to his case. ***See id***. at 10. Finally, we note that on the day of trial, the matter was scheduled to proceed as a stipulated trial on a single firearm charge against Henson (graded as a first-degree misdemeanor), with no Commonwealth or defense witnesses, and both defense counsel and the prosecutor were ready to procced with this straightforward and streamlined non-jury trial. ***See id***. at 5, 15, 20, 32, 35-36. Thus, a verdict was literally moments away at the time Henson requested to proceed *pro se*. Under these circumstances, we conclude that the trial court had reason to suspect that Henson's eleventh-hour request to proceed *pro se*, moments after both his request for new counsel and his continuance request had been denied, was intended to disrupt or avoid the resolution of the proceedings. ***See Davido***, 868 A.2d at 440 (holding that appellant's request to proceed *pro se* was posed as his only alternative if court did not afford new counsel; thus, request to proceed *pro se* amounted to "bargaining device" rather than clear demand for self-representation). Accordingly, we discern no abuse of discretion or error by the trial court in denying Henson control over his defense.

Judgment of sentence affirmed.

Judge Stabile joins the Memorandum Opinion.

Judge McLaughlin concurs in the result.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 4/29/2025