**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| CORY DEAN POTTER | : | |
| Appellant | : | No. 1701 MDA 2025 |

Appeal from the Judgment of Sentence Entered October 31, 2024
In the Court of Common Pleas of Bradford County Criminal Division at No(s): CP-08-CR-0000618-2023

BEFORE: STABILE, J., MURRAY, J., and KING, J.

MEMORANDUM BY MURRAY, J.: **FILED NOVEMBER 06, 2026**

Cory Dean Potter (Appellant) appeals, *nunc pro tunc*, from the judgment of sentence imposed following his guilty plea to arson – failure to control or report dangerous fire (arson – failure to report).[1] Appellant's counsel, Tyler Scott Calkins, Esquire (Counsel), has filed an application to withdraw from his representation of Appellant and an accompanying 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 application to withdraw and affirm Appellant's judgment of sentence.

In a criminal information filed on November 3, 2023, at docket number CP-08-CR-0000618-2023 (No. 618), the Commonwealth charged Appellant

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[1] 18 Pa.C.S.A. §§ 3301(e)(2), 5104.

with risking a catastrophe, evading arrest or detention on foot, recklessly endangering another person, arson – risk of death or bodily injury, and terroristic threats.[2] On August 13, 2024, Appellant entered a negotiated plea whereby he pled guilty to arson – failure to report, and the Commonwealth dismissed the remaining charges.[3] N.T., 8/13/24, at 9. On October 31, 2024, after the preparation of a pre-sentence investigation report (PSI) and a sentencing hearing, the trial court sentenced Appellant to a standard-range sentence of 12-36 months in prison, consecutive to any sentence he was then serving.

On January 23, 2025, Appellant timely filed a Post Conviction Relief Act ("PCRA")[4] petition, alleging plea counsel's ineffectiveness for failing to file a requested post-sentence motion. The PCRA court appointed Counsel, who filed an amended PCRA petition on March 27, 2025. On August 18, 2025, upon the agreement of Counsel and the Commonwealth, the PCRA court granted Appellant's PCRA petition and reinstated his right to file a *nunc pro tunc* post-sentence motion, followed by a *nunc pro tunc* direct appeal.

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[2] 18 Pa.C.S.A. §§ 3302(b), 5104.2(a), 2705, 3301(a)(1)(i), 2706(a)(3).

[3] The parties did not agree to a negotiated sentence. At the same hearing, but at docket number CP-08-CR-0000471-2023, Appellant pled guilty to resisting arrest, for which he was sentenced to a consecutive 9-24 months' incarceration. In the instant appeal, Appellant challenges only his judgment of sentence for arson – failure to report, docketed at No. 618.

[4] 42 Pa.C.S.A. §§ 9541-9546.

On August 27, 2025, Appellant filed a *nunc pro tunc* post-sentence motion claiming that the trial court abused its discretion by imposing an excessive sentence. Specifically, Appellant challenged the trial court's imposition of his sentence consecutive to any other sentence he was then serving. Upon the agreement of the parties, the trial court cancelled Appellant's post-sentence motion hearing, and considered the arguments of the parties, as stated in their briefs. Trial Court Order, 10/25/25. On November 19, 2025, the trial court denied Appellant's *nunc pro tunc* post-sentence motion, after which Appellant timely filed the instant *nunc pro tunc* appeal.

On December 17, 2025, the trial court directed Appellant to file a Pa.R.A.P. 1925(b) concise statement of matters complained of on appeal. In response, Counsel filed a statement of his intention to seek permission to withdraw from representation and file an ***Anders*** brief, in accordance with Pa.R.A.P. 1925(c)(4). The trial court has filed an opinion addressing Appellant's sentencing issue.

Before considering the issue raised by Appellant, we first address Counsel's application to withdraw. ***See Commonwealth v. Rojas***, 874 A.2d 638, 639 (Pa. Super. 2005) ("When faced with a purported ***Anders*** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw." (citation omitted)).

To withdraw pursuant to ***Anders***, counsel must:

> 1) petition the court for leave to withdraw stating that, after making a conscientious examination of the record, counsel has determined that the appeal would be frivolous; 2) furnish a copy of the [***Anders***] brief to the [appellant]; and 3) advise the [appellant] that he or she has the right to retain private counsel or raise additional arguments that the [appellant] deems worthy of the court's attention.

***Commonwealth v. Cartrette***, 83 A.3d 1030, 1032 (Pa. Super. 2013) (*en banc*). As to counsel's duty to inform an appellant of his rights in light of counsel's proposed withdrawal, this Court has held that counsel must "attach to their petition to withdraw a copy of the letter sent to their client advising him or her of their rights." ***Commonwealth v. Millisock***, 873 A.2d 748, 752 (Pa. Super. 2005).

Additionally, the ***Anders*** brief 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 states that he conducted a thorough and conscientious examination of the record, and concludes that Appellant's appeal is frivolous. Counsel also mailed Appellant a copy of his ***Anders*** brief, and a letter explaining Appellant's rights. By his letter, Counsel informed Appellant he may retain new counsel or proceed *pro se* and raise any additional claims he

deems worthy of attention. On August 6, 2026, Counsel filed a copy of the letter in this Court.

In addition, our review discloses that Counsel's ***Anders*** brief summarizes the facts and procedural history, includes the sentencing issue that could arguably support Appellant's appeal, and Counsel's assessment of why the issue is frivolous, with citations to the record and relevant legal authority.[5] As Counsel has complied with the procedural requirements of ***Anders***, we review the issues presented 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." (citation omitted)).

In the sole issue raised in the ***Anders*** brief, Appellant challenges the discretionary aspects of his sentence. Before this Court may review the issue on the merits, we must first determine whether Appellant has properly invoked this Court's jurisdiction over this issue.

This Court has explained the relevant law as follows:

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[5] Appellant has not retained new counsel, or raised any additional issues.

> [A]n 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).

As stated above, Appellant's *nunc pro tunc* appeal is properly before us. Appellant preserved his discretionary sentencing challenge in his *nunc pro tunc* post-sentence motion, and Counsel has included in the ***Anders*** brief the required Pa.R.A.P. 2119(f) statement. Accordingly, we next consider whether Appellant has raised a substantial question that the sentence appealed from is not appropriate under the Sentencing Code. ***Id.***

A substantial question is presented where

> an appellant advances a colorable argument that the sentence imposed is either inconsistent with a specific provision of the Sentencing Code or is contrary to the fundamental norms which underlie the sentencing process. At a minimum, the Rule 2119(f) statement must articulate what particular provision of the code is violated, what fundamental norms the sentence violates, and the manner in which it violates that norm.

***Commonwealth v. Campbell***, 347 A.3d 707, 717 (Pa. Super. 2025) (citation omitted). "We cannot look beyond the statement of questions presented and the prefatory Rule 2119(f) statement to determine whether a substantial question exists." ***Id.*** (citation omitted). Moreover, "[o]ur inquiry must focus

on the reasons for which the appeal is sought, in contrast to the facts underlying the appeal, which are necessary only to decide the appeal on the merits." ***Commonwealth v. Alameda***, 339 A.3d 504, 512 (Pa. Super. 2025) (citation omitted).

The ***Anders*** brief's Rule 2119(f) statement claims that the trial court abused its discretion in sentencing Appellant to 12-36 months' incarceration for his conviction of arson – failure to report. ***Anders*** Brief at 10. Appellant asserts that in sentencing him to a period of incarceration, the sentencing court failed to consider his rehabilitative needs or the testimony he provided to the sentencing court. ***Id.***

"[A]n excessive sentence claim—in conjunction with an assertion that the court failed to consider mitigating factors—raises a substantial question." ***Commonwealth v. Caldwell***, 117 A.3d 763, 770 (Pa. Super. 2015) (*en banc*) (citation omitted). Accordingly, we will address Appellant's discretionary sentencing challenge.

Our standard of review of a challenge to the discretionary aspects of sentence is well settled:

> Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the 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.

***Commonwealth v. Reid***, 323 A.3d 26, 30-31 (Pa. Super. 2024) (citation omitted).

Where the court has the benefit of a PSI, "we shall … presume that the sentencing judge was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors." ***Commonwealth v. Antidormi***, 84 A.3d 736, 761 (Pa. Super. 2014) (citation omitted). Further, a sentence in the standard range of the sentencing guidelines is presumed to be reasonable. ***See Commonwealth v. Moury***, 992 A.2d 162, 171 (Pa. Super. 2010) ("[W]here a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code.").

After review, we find no evidence that the trial court abused its discretion in imposing the challenged sentence. Instantly, the trial court's opinion sets forth the sound reasoning underlying its sentence:

> At the time of sentencing, [the sentencing] court possessed a [PSI] and sentencing guideline forms which reflected that Arson carries an offense gravity score of 3 and with [Appellant's] prior record score of 5, yields a standard range of 6-16 months [of] imprisonment. N.T.[,] 10/31/24, [at] 2. The sentence falls within the standard range of the sentencing guidelines.
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> The [sentencing court] considered all the sentencing factors. [***Id.*** at] 9. Th[e] court also stated that the offense, (along with another offense [that Appellant] was sentenced for [on] the same date) occurred while he was on probation supervision; his criminal record[] dates back to 1998[;] and any lesser sentence would depreciate the seriousness of the offense. [***Id.***]

Trial Court Opinion, 3/27/26, at 2. We discern no abuse of the sentencing court's discretion, and agree with Counsel's assessment that this issue is frivolous. ***See id***; ***Antidormi***, 84 A.3d at 761; ***Moury***, 992 A.2d at 171.

Finally, upon our independent review, we observe that in his August 27, 2025, post-sentence motion, Appellant challenged the trial court's imposition of his sentence consecutive to any sentence he was then serving. Post Sentence Motion, 8/27/25, ¶ 12. As this Court has stated,

> [a] challenge to the imposition of consecutive rather than concurrent sentences does not present a substantial question regarding the discretionary aspects of sentence. We see no reason why [a defendant] should be afforded a volume discount for his crimes by having all sentences run concurrently.
>
> However, we have recognized that a [consecutive] sentence can be so manifestly excessive in extreme circumstances that it may create a substantial question. When determining whether a substantial question has been raised, we have focused upon whether the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face to be, an excessive level in light of the criminal conduct in th[e] case.

***Commonwealth v. Zirkle***, 107 A.3d 127, 133-34 (Pa. Super. 2014) (citations and quotation marks omitted; formatting modified). "[T]he imposition of consecutive rather than concurrent sentences lies within the sound discretion of the sentencing court." ***Id.*** at 133 (citation omitted).

Even if Appellant raised a substantial question, his issue would merit no relief. The sentencing court's imposition of 12-36 months' incarceration, consecutive to any other sentence Appellant was then serving, is not manifestly excessive for the reasons stated in the trial court's opinion. ***See***

Trial Court Opinion, 3/27/26, at 2. Appellant is owed no "volume discount" for his crimes. ***Zirkle***, 107 A.3d at 133. Thus, we would conclude this issue lacks merit and is frivolous.

Finally, our independent review discloses no other non-frivolous issues that could be raised by Appellant. Because Appellant has raised no non-frivolous grounds for appeal, and our independent review has uncovered no other non-frivolous claims, we grant Counsel's application to withdraw and affirm Appellant's judgment of sentence.

Application to withdraw from representation granted. Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/06/2026