NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JEFFREY ALAN GRACE	:	
Appellant	:	No. 165 WDA 2025

Appeal from the Judgment of Sentence Entered January 13, 2025
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0006159-2022

BEFORE: BOWES, J., NICHOLS, J., and KING, J.

MEMORANDUM BY KING, J.: **FILED: February 13, 2026**

Appellant, Jeffrey Alan Grace, appeals from the judgment of sentence entered in the Allegheny County Court of Common Pleas, following the revocation of his probation. We affirm.

The relevant facts and procedural history of this matter are as follows. On November 29, 2022, Appellant entered a negotiated guilty plea to one count of possession of child pornography. That same day, the court sentenced Appellant to four years of probation, with six months of electronic monitoring.

On December 20, 2022, Appellant was arrested on a probation violation warrant due to leaving his approved residence in the middle of the night without permission. On January 9, 2023, Appellant appeared for a ***Gagnon I***

hearing.[1] The parties agreed that Appellant would be evaluated at a behavioral health clinic. On January 24, 2023, Appellant was released to a faith-based halfway house for continued supervision.

On August 7, 2023, Appellant was arrested for another probation violation: specifically, after leaving the halfway house, he failed to obtain suitable housing; maintain contact with the probation office; lost his job; and was not complying with his sex offender treatment plan. On November 6, 2023, Appellant appeared for a ***Gagnon I*** hearing and was ultimately released back to the halfway house.

On February 20, 2024, Appellant was again arrested on a probation violation warrant. At this time, Appellant had failed to obtain suitable housing or make progress on his treatment plan. On March 11, 2024, Appellant appeared for a ***Gagnon I*** hearing. The court ordered Appellant to undergo a psych evaluation and released him to the halfway house, but the court warned Appellant that there would be consequences for further violations.

On July 13, 2024, Appellant was arrested for another probation violation after failing to inform the probation office that he had been evicted from his recovery center. On August 12, 2024, the court held a ***Gagnon II*** hearing,

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[1] ***Gagnon v. Scarpelli***, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). ***See also Commonwealth v. Ferguson***, 761 A.2d 613 (Pa.Super. 2000) (explaining that when parolee or probationer is detained pending revocation hearing, due process requires determination at pre-revocation hearing (***Gagnon I*** hearing) of probable cause to believe violation was committed; upon finding of probable cause, second, more comprehensive hearing (***Gagnon II*** hearing) follows before court makes final revocation decision).

and ordered a pre-sentence investigation ("PSI") report, and an additional psych evaluation.

On January 13, 2025, the court revoked Appellant's probation and resentenced Appellant to 16 to 32 months' imprisonment, followed by one year of probation. The court gave Appellant credit for 356 days of time served. On January 23, 2025, Appellant timely filed a post-sentence motion. On January 29, 2025, the court denied Appellant's motion.

On February 12, 2025, Appellant timely filed a notice of appeal and, that same day, the court ordered him to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. On March 26, 2025, following an extension, Appellant timely filed his Rule 1925(b) statement.

Appellant raises a single issue for review:

> Whether the trial court abused its sentencing discretion in failing to apply all relevant sentencing criteria, including the protection of the public, the gravity of the offense, and [Appellant's] personal history, characteristics, and rehabilitative needs in violation of 42 Pa.C.S.A. § 9721(b)?

(Appellant's Brief at 5).

In his sole issue on appeal, Appellant argues that the court abused its discretion when it revoked his probation and imposed a state prison sentence. Appellant contends that the court considered only the nature of his technical violations, while ignoring his personal history, character, and rehabilitative needs. Appellant complains that imposition of a state sentence is excessive, and that the court did not appropriately consider mitigating factors such as his mental illness. Appellant concludes that the trial court abused its

sentencing discretion, and this Court must vacate and remand for resentencing. We disagree.

As presented, Appellant's issue implicates the discretionary aspects of sentencing. ***See generally Commonwealth v. Johnson-Daniels***, 167 A.3d 17, 27 (Pa.Super. 2017) (explaining claim that sentence is excessive and does not comport with protection of public, gravity of offense, and defendant's rehabilitative needs implicates discretionary aspects of sentence). A challenge to the discretionary aspects of sentencing is not automatically reviewable as a matter of right. ***Commonwealth v. Hunter***, 768 A.2d 1136 (Pa.Super. 2001), *appeal denied*, 568 Pa. 695, 796 A.2d 979 (2001). Prior to reaching the merits of a discretionary sentencing issue, we conduct a four-part test 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. 708(E)]; (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. Evans, 901 A.2d 528, 533 (Pa.Super. 2006), *appeal denied*, 589 Pa. 727, 909 A.2d 303 (2006) (internal citations omitted).

When appealing the discretionary aspects of a sentence, an appellant must invoke this Court's jurisdiction by including in his brief a separate concise statement demonstrating a substantial question as to the appropriateness of the sentence under the Sentencing Code. ***Commonwealth v. Mouzon***, 571

Pa. 419, 812 A.2d 617 (2002); Pa.R.A.P. 2119(f). "The requirement that an appellant separately set forth the reasons relied upon for allowance of appeal furthers the purpose evident in the Sentencing Code as a whole of limiting any challenges to the trial court's evaluation of the multitude of factors impinging on the sentencing decision to **exceptional** cases." ***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) (quoting ***Commonwealth v. Williams***, 562 A.2d 1385, 1387 (Pa.Super. 1989) (*en banc*)) (emphasis in original) (internal quotation marks omitted).

"The determination of what constitutes a substantial question must be evaluated on a case-by-case basis." ***Commonwealth v. Anderson***, 830 A.2d 1013, 1018 (Pa.Super. 2003). A substantial question exists "only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Evans, supra*** at 533.

> Pennsylvania law affords the sentencing court discretion to impose [a] sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. Any challenge to the exercise of this discretion does not raise a substantial question. In fact, this Court has recognized the imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment.

Commonwealth v. Austin, 66 A.3d 798, 808 (Pa.Super. 2013) (internal

citations and quotation marks omitted). Nevertheless, a claim of excessiveness can raise a substantial question as to the appropriateness of a sentence under the Sentencing Code, even if the sentence is within the statutory limits. ***Mouzon, supra*** at 430, 812 A.2d at 624. Bald allegations of excessiveness, however, do not raise a substantial question to warrant appellate review. ***Id.*** at 435, 812 A.2d at 627.

Further, "this Court has held on numerous occasions that a claim of inadequate consideration of mitigating factors does not raise a substantial question for our review." ***Commonwealth v. Disalvo***, 70 A.3d 900, 903 (Pa.Super. 2013) (internal citation omitted). Nevertheless, an excessive sentence claim **in conjunction** with a claim that the sentencing court failed to consider certain mitigating factors raises a substantial question. ***Commonwealth v. Caldwell***, 117 A.3d 763, 769-70 (Pa.Super. 2015). As well, a claim that an aggregate sentence does not comport with the protection of the public, gravity of the offense, and rehabilitative needs of a defendant raises a substantial question. ***See Johnson-Daniels, supra***.

Instantly, Appellant timely filed a notice of appeal and preserved his sentencing challenge in a motion to modify sentence and a Rule 2119(f) statement. Further, Appellant's excessiveness claim coupled with his assertion that the court ignored mitigating factors raises a substantial question. ***See Caldwell, supra***. As well, Appellant's complaint that the sentence does not comport with the protection of the public, gravity of the offense, and his rehabilitative needs also presents a substantial question for

our review. ***See Johnson-Daniels, supra***. Accordingly, we consider the merits of his sentencing issue.

This Court reviews discretionary sentencing challenges based on the following standard:

> 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. An abuse of discretion is more than just an error in judgment and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, bias or ill-will.

Commonwealth v. McNabb, 819 A.2d 54, 55 (Pa.Super. 2003) (quoting ***Commonwealth v. Hess***, 745 A.2d 29, 30-31 (Pa.Super. 2000)).

Pursuant to Section 9721(b), "the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant." 42 Pa.C.S.A. § 9721(b). Additionally, "a court is required to consider the particular circumstances of the offense and the character of the defendant." ***Commonwealth v. Griffin***, 804 A.2d 1, 10 (Pa.Super. 2002), *appeal denied*, 582 Pa. 671, 868 A.2d 1198 (2005), *cert. denied*, 545 U.S. 1148, 125 S.Ct. 2984, 162 L.Ed.2d 902 (2005). "In particular, the court should refer to the defendant's prior criminal record, his age, personal characteristics and his potential for rehabilitation." ***Id.***

> ... Where the sentencing court had the benefit of a PSI

> report, we can assume the sentencing court "was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors." ***Commonwealth v. Devers***, 519 Pa. 88, 101-02, 546 A.2d 12, 18 (1988). ***See also Commonwealth v. Tirado***, 870 A.2d 362, 368 (Pa.Super. 2005) (stating if sentencing court has benefit of PSI, law expects court was aware of relevant information regarding defendant's character and weighed those considerations along with any mitigating factors).

Commonwealth v. Moury, 992 A.2d 162, 171 (Pa.Super. 2010).

Regarding resentencing following a probation revocation, we observe that the version of 42 Pa.C.S.A. § 9771 in effect at the time of Appellant's resentencing provided, in relevant part:

> **§ 9771. Modification or revocation of order of probation**
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> * * *
>
> **(c) Limitation on sentence of total confinement.--** There is a presumption against total confinement for technical violations of probation. The following shall apply:
>
> (1) The court may impose a sentence of total confinement upon revocation only if:
>
> (i) the defendant has been convicted of another crime;
>
> (ii) the court finds by clear and convincing evidence that the defendant committed a technical violation that involves an identifiable threat to public safety and the defendant cannot be safely diverted from total confinement through less restrictive means; or
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> **(iii) the court finds by a preponderance of the evidence that the defendant committed a technical violation and any of the following apply**:
>
> (A) The technical violation was sexual in nature.

(B) The technical violation involved assaultive behavior or included a credible threat to cause bodily injury to another, including acts committed against a family or household member.

(C) The technical violation involved possession or control of a firearm or dangerous weapon.

(D) The technical violation involved the manufacture, sale, delivery or possession with the intent to manufacture, sell or deliver, a controlled substance or other drug regulated under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(E) The defendant absconded and cannot be safely diverted from total confinement through less restrictive means.

(F) The technical violation involved an intentional and unexcused failure to adhere to recommended programming or conditions on three or more separate occasions and the defendant cannot be safely diverted from total confinement through less restrictive means. For purposes of this clause, multiple technical violations stemming from the same episode of events shall not constitute separate technical violations.

(2) If a court imposes a sentence of total confinement following a revocation, the basis of which is for one or more technical violations under paragraph (1)(ii) or (iii), the court shall consider the employment status of the defendant. The defendant shall be sentenced as follows:

(i) For a first technical violation, a maximum period of 14 days.

(ii) For a second technical violation, a maximum period of 30 days.

> **(iii) For a third or subsequent technical violation, the court may impose any sentencing alternatives available at the time of initial sentencing**.

42 Pa.C.S.A. § 9771 (effective June 11, 2024 to October 19, 2025)[2] (emphasis added) (footnote omitted).

Here, at the revocation hearing, the trial court stated:

> You have been given two years to do what you're supposed to do, okay? And you're at the end of the rope. [Y]ou're not getting any treatment in the Allegheny County Jail, so I want to get you out of the Allegheny County Jail, sir, but I believe that we have failed in our efforts to supervise you on probation, and I think that you would actually do very well in the state correctional institution because you'll have to cooperate. I don't trust that you will cooperate on your own. So I'm going to revoke your sentence at CC 6159-2022.

(N.T. Revocation Hearing, 1/13/25, at 18-20). When Appellant promised that

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[2] Section 9771(c) previously provided, in relevant part:

> **(c) Limitation of sentence of total confinement.**—The court shall not impose a sentence of total confinement upon revocation unless it finds that:
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> (1) the defendant has been convicted of another crime; or
>
> (2) the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned; or
>
> (3) such a sentence is essential to vindicate the authority of the court.

42 Pa.C.S.A. § 9771 (effective December 18, 2019 to June 10, 2024).

The legislature amended Section 9771 again, effective October 20, 2025. The current version of Section 9771 is substantially similar to the version in effect at Appellant's resentencing.

he would take his medications and cooperate in exchange for avoiding prison, the court went on to state:

> I understand that, but I already gave you all those chances, okay? And you know, your back is against the wall now and [of] course you will agree to do anything to stay out of jail, but we have been going around and around for two years, you have not done what you needed to do, so there's no more chances, sir.

(***See id.***)

In its Pa.R.A.P. 1925(a) opinion, the trial court further noted the preponderance of the evidence standard and that the Commonwealth had proved by overwhelming evidence that Appellant had violated the conditions of his probation. (***See*** Trial Court Opinion, 4/1/25, at 3-4). It went on to note:

> Again, as stated on the record, the [c]ourt thoroughly considered all mandatory sentencing factors. The [c]ourt's decision to impose a period of incarceration in the state system was done only after trying for more than two years to obtain [Appellant's] compliance with the conditions of his probation. The [c]ourt acknowledged that [Appellant's] parents have been supportive throughout his legal troubles, as they have been present at each hearing enumerated above and they have visited him regularly during his periods of incarceration or placement. The [c]ourt is well aware of [Appellant's] rehabilitative needs, which the [c]ourt has attempted to meet by permitting [Appellant] to receive mental health treatment while residing at Remnant House under the supervision of Pastor Sutton and in a recovery home. The [c]ourt's efforts to provide [Appellant] with rehabilitative options have been repeatedly rebuffed by [Appellant], deciding that he will handle his treatment without professional help. In summary, [Appellant] needs correctional treatment that can be provided for most effectively by total confinement in the state system, as efforts to rehabilitate him have been unsuccessful and his

> refusal to participate in necessary mental health treatment will, undoubtedly, lead to serious problems in the future.

(***Id.*** at 5-6).

The record reflects that the court had the benefit of a PSI report and considered the mitigating factors and Appellant's rehabilitative needs detailed therein. (***See*** N.T. Revocation Hearing, 1/13/25, at 2). Thus, the record belies Appellant's claim that the court did not adequately consider Appellant's need for rehabilitation amongst other factors in fashioning its sentence. ***See Moury, supra***; ***Tirado, supra***.

Further, we cannot say that the court erred or abused its broad sentencing discretion by imposing a period of incarceration in this case. The court noted that Appellant was not compliant with sex offender treatment, was arrested three separate times for technical violations of the terms of his probation, and the court determined that a period of confinement was the most effective means in which to ensure rehabilitation. ***See*** 42 Pa.C.S.A. § 9771(c)(1)(iii)(F). Further, the court considered Appellant's employment status (noting that Appellant had lost his job), and the court was within its discretion to utilize all sentencing alternatives available to it based on Appellant's multiple technical violations. ***See*** 42 Pa.C.S.A. § 9771(c)(2)(iii).[3]

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[3] We acknowledge that this Court has certified for *en banc* consideration the issue of whether this Court's decision in ***Commonwealth v. Slaughter***, 339 A.3d 456 (Pa.Super. 2025), should be reassessed in light of the recent amendments to Section 9771. ***See Commonwealth v. Seals***, 1350-1352 MDA 2024, (*en banc* review granted August 20, 2025, argued before the Court *en banc* December 4, 2025). In ***Slaughter***, a panel of this Court reasoned that
(Footnote Continued Next Page)

On this record, we see no reason to disrupt the court's sentencing discretion. ***See McNabb, supra***. Accordingly, we affirm.

Judgment of sentence affirmed.

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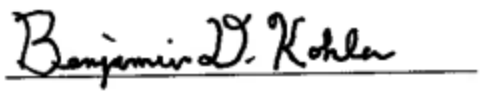
the appellant's challenge to his violation of probation resentencing, imposed two months after the June 11, 2024 effective date of the amendments to Section 9771, implicated a discretionary aspects of sentencing challenge. ***Slaughter, supra*** at 464.

In ***Seals***, the defendant argued that the court erred in committing him to a sentence of total confinement because it exceeded the maximum allowable sentence of 14 days for a first technical violation. ***See*** 42 Pa.C.S.A. § 9771(c)(2)(i). Specifically, the defendant claimed that the court neither considered nor placed findings on the record as to whether his technical violations satisfied any of the requirements for total confinement as delineated in Section 9771(c)(1), prior to imposing a sentence of total confinement. Having waived any challenge to the discretionary aspects of sentencing by failure to preserve such a claim, the defendant presented his argument as one implicating the legality, rather than the discretionary aspects of his sentence. Thus, in ***Seals***, this Court *en banc* will revisit ***Slaughter*** and decide whether the defendant in ***Seals*** raised a proper challenge to the legality of his sentence.

The facts of this case are readily distinguishable from ***Seals***. Here, unlike the defendant in ***Seals***, Appellant does **not** challenge the court's failure to consider and/or make requisite findings under Section 9771(c). Rather, Appellant merely challenges the court's sentencing discretion under 42 Pa.C.S.A. § 9771(c)(2)(iii), which permitted the trial court discretion to utilize all sentencing alternatives available to it at the time of the initial sentencing (subject to the statutory limits for the crimes), so long as the court found by a preponderance of the evidence that Appellant committed a technical violation (***see*** 42 Pa.C.S.A. § 9771(c)(1)(iii)), and one of the enumerated subsections applied (***see*** 42 Pa.C.S.A. § 9771(c)(1)(iii)(A-F)) . Thus, even if this Court *en banc* decides in ***Seals*** that the defendant raised a legality of the sentence challenge, that will not convert all claims implicating Section 9771(c) into a legality of the sentencing issue. In other words, a claim that the court failed to consider the sentencing requirements under Section 9771(c)(1) prior to imposing a sentence of total confinement as described in Section 9771(c)(2) differs from a claim that a court abused the sentencing discretion which it was afforded under the statute.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

DATE: 2/13/2026