

**[J-34A-2022 and J-34B-2022] [MO: Baer, C.J.]  
IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 81 MAP 2021
	:	
Appellee	:	Appeal from the Order of the
	:	Superior Court dated April 26, 2021
v.	:	at No. 582 MDA 2020 Reversing the
	:	Order of the Centre County Court of
	:	Common Pleas, Criminal Division,
JQUAN HUMPHREY,	:	dated February 19, 2020 at No. CP-
	:	14-CR-0002008-2017.
	:	
Appellant	:	ARGUED: May 18, 2022
COMMONWEALTH OF PENNSYLVANIA,	:	No. 82 MAP 2021
	:	
Appellee	:	Appeal from the Order of the
	:	Superior Court dated April 26, 2021
v.	:	at No. 583 MDA 2020 Reversing the
	:	Order of the Centre County Court of
	:	Common Pleas, Criminal Division,
JQUAN HUMPHREY,	:	dated February 19, 2020 at No. CP-
	:	14-CR-0000260-2018.
	:	
Appellant	:	ARGUED: May 18, 2022

**CONCURRING OPINION**

**JUSTICE BROBSON**

**DECIDED: September 29, 2022**

I join in the majority’s disposition of this matter, particularly its construction of Section 403(e) of the Mental Health Procedures Act (Act).<sup>1</sup> Dismissal of charges under this provision is warranted “[i]f the court is of the opinion *that by reason of the passage of*

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<sup>1</sup> Act of July 9, 1976, P.L. 817, as amended, 50 P.S. § 7403(e).

*time and its effect upon the criminal proceedings* it would be unjust to resume the prosecution.” 53 P.S. § 7403(e) (emphasis added).

As I read the plain language, before a court may invoke this provision, time must have passed between the original declaration of incompetency and the court’s consideration of the dismissal of charges. The court then can only dismiss the charges if this passage of time would make resumption of criminal proceedings, previously stayed due to the incompetency declaration, unjust.

Here, the trial court declared Appellant incompetent on October 25, 2019. Appellant filed his motion to dismiss charges on December 5, 2019. On February 19, 2020, the trial court dismissed the criminal charges against Appellant, purportedly pursuant to Section 403(e) of the Act. In so doing, the trial court did not make any findings or conclusions that “the passage of time”—whether (a) the 42 days that passed between the declaration of incompetency and the filing of the motion to dismiss or (b) the 118 days that passed between the declaration of incompetency and the trial court’s dismissal of the charges—so adversely affected the criminal proceedings that resumption of the prosecution of Appellant would be unjust. Instead, relying on *Commonwealth v. McGargle*, 549 A.2d 198 (Pa. Super. 1988), which the majority now observes misapplied statutory construction principles when interpreting Section 403(e) of the Act,<sup>2</sup> the trial court dismissed the charges solely upon its conclusion that there was a “substantial probability competency will not be restored for the foreseeable future.” Trial Court Op., 2/19/2020, at 4. Nothing in the plain text of Section 403(e) authorizes a trial court to dismiss charges based on foreshadowing.

Accordingly, while I agree with the Majority’s conclusion that a declaration of competency is not a prerequisite to a Section 403(e) dismissal and support the Majority’s

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<sup>2</sup> Majority Opinion at 30.

decision to vacate the Superior Court's judgments on this basis, I remain skeptical of the trial court's application of Section 403(e) in this case for the reason set forth above. On remand, I urge the parties and the courts to "listen attentively to what the statute says, but also to what it does not say." *Johnson v. Lansdale Borough*, 146 A.3d 696, 711 (Pa. 2016).