

**[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

DISSENTING OPINION

JUSTICE DOUGHERTY

DECIDED: September 29, 2022

I am sympathetic to the difficult plight of appellant and other similarly situated defendants, but I nevertheless view Section 7403(e) of the Mental Health Procedures Act, 50 P.S. §§7101-7503, as clear and unambiguous. Titled “Resumption of Proceedings or Dismissal[.]” the subsection states as follows:

When the court, on its own motion or upon the application of the attorney for the Commonwealth or counsel for the defendant, determines that such person has regained his competence to proceed, the proceedings shall be resumed. If the court is of the opinion that by reason of the passage of time

and its effect upon the criminal proceedings it would be unjust to resume the prosecution, the court may dismiss the charge and order the person discharged.

50 P.S. §7403(e). The learned majority determines this language is ambiguous but, respectfully, I cannot agree. In their effort to find appellant's interpretation of Section 7403(e) reasonable, my colleagues choose to look at the provision's second sentence "unencumbered by the verbiage employed in the first sentence[.]" Majority Opinion at 28. But this is not how we are to interpret statutes.

As this Court has long recognized, "statutory language must be read in context, that is, in ascertaining legislative intent, every portion of statutory language is to be read 'together and in conjunction' with the remaining statutory language, 'and construed with reference to the entire statute' as a whole." *Commonwealth v. Office of Open Records*, 103 A.3d 1276, 1285 (Pa. 2014), quoting *Bd. of Revision of Taxes, City of Philadelphia v. City of Philadelphia*, 4 A.3d 610, 622 (Pa. 2010). When reading all of Section 7403, it is crystal clear the General Assembly did not intend for criminal proceedings to be dismissed while a defendant remains incompetent, but only stayed until competency is regained. See 50 P.S. §7403(b) (incompetency effects stay of criminal proceedings). Indeed, both sentences of subsection (e) contemplate resumption of criminal proceedings. The first sentence explains the process for resuming the prosecution after a defendant regains competency, and the second sentence provides the court with discretion to determine whether "resum[ing] the prosecution" — when and if competency is regained — would be unjust due to the passage of time. Accordingly, I read Section 7403(e) as providing the trial court with two options when a defendant has regained competency, just as the title of the subsection states: 1) resume the criminal proceedings; or 2) dismiss the charges and discharge the defendant if resumption would be unjust due to the passage of time.

Even if I agreed that Section 7403(e) is ambiguous (and I do not), I would find this interpretation best reflects the General Assembly's intent. In its analysis, the majority

finds my position is “simply unreasonable” because the General Assembly could have “employ[ed] express statutory language” if it “intended to condition the dismissal of criminal charges on the criminal defendant’s regaining of competency.” Majority Opinion at 28-29. In my view, however, the General Assembly did employ express statutory language to effectuate its intent; dismissal under Section 7403(e) is expressly authorized only when “by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to **resume** the prosecution[.]” 50 P.S. §7403(e) (emphasis added). The majority also finds my interpretation leads to an unreasonable consequence because it apparently believes the statutory language unfairly prevents the court from dismissing charges, “regardless of the duration of the stay of the criminal proceedings, the likelihood of the defendant regaining competence, the lack of treatment options available to restore competency, and the prejudice suffered by the defendant due to the passage of time and its effect on the criminal proceedings.” Majority Opinion at 28. These are not meaningless concerns, but the fact remains that dismissal under Section 7403(e) is authorized only when resuming the prosecution would be unjust “by reason of the passage of time and its effect upon the criminal proceedings[.]” 50 P.S. §7403(e). And, requiring the court to wait for a defendant to regain competency before making the determination of whether to proceed is a perfectly reasonable legislative choice. Only at that point would the court know whether the defendant is able to recall the events for which he is charged and aid in his defense, and whether evidence and witnesses remain available. Allowing for dismissal of the charges pursuant to Section 7403(e) based on any other factors would thus contravene the plain legislative language and purpose.

The majority also suggests my reading of Section 7403 does not give effect to subsection (f), which pertains to certain incompetent defendants who have not regained competency “for a period in excess of the maximum sentence of confinement that may

be imposed for the crime or crimes charged or ten years, whichever is less.” 50 P.S. §7403(f). The majority correctly observes Section 7403(f) “implicitly acknowledg[es] that a trial court must dismiss charges when th[e] maximum period has expired.” Majority Opinion at 29. This authority to dismiss charges stands alone as a separate and independent mechanism for dismissal and is in no way “render[ed] . . . inoperable” by my interpretation of Section 7403(e). *Id.*

Lastly, the majority applies the rule of lenity to support its result. *See id.* at 29-30, *citing* 1 Pa.C.S. §1928(b)(1) (penal statutes shall be strictly construed). Respectfully, this is clearly erroneous. Penal statutes define criminal offenses and specify corresponding fines and punishment. *See Commonwealth v. Garzone*, 34 A.3d 67, 75 (Pa. 2012); *see also Harmon v. UCBR*, 163 A.3d 1057, 1066 n.13 (Pa. Cmwlth. 2017) (“Although the rule of lenity is not strictly confined to criminal statutes, the statute at issue must still be penal in nature in that it (a) defines an offense and (b) imposes a corresponding fine or punishment.”) (internal citation omitted), *rev’d on other grounds*, 207 A.3d 292 (Pa. 2019). As Section 7403(e) neither defines an offense nor imposes a fine or punishment, it is not penal in nature and thus, the rule of lenity does not apply.

I would affirm the Superior Court and hold trial courts lack the authority to dismiss charges pursuant to Section 7403(e) while a defendant remains incompetent to stand trial, and I therefore respectfully dissent.

Justice Mundy joins this dissenting opinion.