

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
BARRY STEWART	:	
	:	
Appellant	:	No. 1143 EDA 2025

Appeal from the Judgment of Sentence Entered April 8, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0008643-2023

BEFORE: PANELLA, P.J.E., NICHOLS, J., and KING, J.

MEMORANDUM BY NICHOLS, J.:

FILED AUGUST 24, 2026

Appellant Barry Stewart appeals from the judgment of sentence imposed after being convicted of criminal mischief, terroristic threats, and possession of instruments of crime (PIC).¹ We affirm Appellant's convictions, but vacate his judgment of sentence and remand for resentencing.

The trial court provided a thorough review of the facts in this matter:

On December 20, 2024, Appellant properly waived his right to jury trial before this Court, entered a plea of not guilty, and proceeded to a bench trial on the charges of Criminal Mischief 18 Pa.C.S. §3304(a)(5), Terroristic Threats 18 Pa.C.S. §2706(a)(1), Simple Assault 18 Pa.C.S. §2701(a), Conspiracy 18 Pa.C.S. §903(c), and [PIC] 18 Pa.C.S. §907(a).

The Commonwealth called Jaqueline Owens (herein "[the Victim]") to the stand. [The Victim] is Appellant's ex-girlfriend; they dated for approximately six months and broke up during July of 2023. On November 7, 2023, [the Victim] and her aunt, Crystal

¹ 18 Pa.C.S. §§ 3304(a)(5), 2706(a)(1), and 907(a), respectively.

Owens ("Ms. C. Owens"), went to Henry's Bar located at the intersection of North 29 St and Chalmers St in Philadelphia for a friend's birthday party. [The Victim] drove her red 2020 Alfa Romeo Giulia Ti Sport to the bar and parked it on Chalmers St, across the street from the bar. [The Victim] and Ms. C. Owens entered Henry's Bar and sat down at the only two available seats in the crowded bar. Appellant's friend, Calvin Hartnett ("Mr. Hartnett"), testified when [the Victim] sat down, he told her someone was sitting in that spot but did not tell her it was Appellant.

After [the Victim] received her drink, she was approached by Appellant who looked angry and upset. Appellant loudly yelled "I hate you" "I can't stand you" "I should beat you're a**" and "I'm going to f**k you up" to [the Victim] at the bar. [The Victim] testified that she felt fearful, scared, and threatened by Appellant and responded by saying "get away from me" and "get out of my face". Ms. C. Owens stood up and told Appellant to "back away" from [the Victim]. The bar's security officer noticed the loud altercation and separated Appellant and [the Victim]. Appellant yelled he was "going to make a phone call and get [the Victim] beat up" as he stood an arms-length from [the Victim]. Appellant subsequently walked to the other side of the bar and made a phone call.

[The Victim] remained seated at the bar, fifteen minutes later a woman walked into the bar and over to Appellant. Appellant and the woman approached [the Victim]. Appellant pointed at [the Victim] and said "yeah that's her. I want you to f**k her up," he then attempted to spit on [the Victim] from two arms-lengths away. The bar's security officer and bar manager intervened and took both Appellant and the woman out of the bar through the side-door. As Appellant left the bar he said "come outside, we're going to be waiting for you" to [the Victim].

[The Victim] went to leave through the door she entered the bar through, but security would not allow her to leave through that exit as it was the same door Appellant was escorted out of. [The Victim] walked to the front door of the bar, looked out the window, opened the door and saw Appellant walking towards her car. Henry's Bar employees would not let her leave the bar while Appellant was still outside. Both [the Victim] and Ms. C. Owens watched Appellant walk to [the Victim]'s car, when Appellant got to her car, he made drawing and scraping motions around the front and sides of her car. Appellant then walked away from her

car laughing and threw an object in his hand to the ground. Appellant walked to his truck and left the area.

Once Appellant left, [the Victim] and Ms. C. Owens ran out to her car and saw it had multiple large indent[ed] scrapes on the sides, hood, and bumper of the car, as well as four flat tires. Her car did not have any damage or flat tires when she arrived at Henry's Bar. [The Victim] and Ms. C. Owens subsequently went to the police station around 9 a.m. that morning, as the altercation with Appellant lasted until approximately 1 a.m. At the police station, Appellant filed a police report, documented the damage to her car, and sought [a protection from abuse order (PFA)]. The total cost to repair the damage to [the Victim]'s car by a mechanic amounted to \$8,094.00.

All parties rested for the purposes of trial, arguments were made, and this Court found Appellant guilty of criminal mischief as a third-degree felony, terroristic threats as a first-degree misdemeanor, and [PIC] as a first-degree misdemeanor. Appellant was found not guilty of simple assault and conspiracy. Sentencing was deferred to April 4, 2025, pending a pre-sentence investigation.

Trial Ct. Op., 7/18/25, at 1-5 (unpaginated) (citations omitted).

On April 4, 2025, the trial court issued a sentencing order imposing sentences of one to two years' incarceration for criminal mischief, four years of consecutive probation on the charge of simple assault, no further penalty on the charge of terroristic threats, and restitution in the amount of \$8,094.00. **See** Sentencing Order, 4/4/25. On April 8, 2025, the trial court amended the sentence again to one to two years' incarceration for criminal mischief, four years of consecutive probation for PIC, no further penalty for terroristic threats, and restitution in the amount of \$8,094.00. **See** Sentencing Order, 4/8/25. On July 1, 2025, the trial court corrected the sentencing order to one to two years' incarceration for criminal mischief, four

years of concurrent probation for PIC, no further penalty for terroristic threats, and restitution in the amount of \$8,094.00. **See** Sentencing Order, 7/1/25.²

Appellant timely appealed. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

On appeal, Appellant presents the following issue:

Was the restitution order illegal because (1) the trial court lacked authority to impose conditions of state parole and (2) the trial court failed to consider [Appellant]'s ability to pay as required under 42 Pa.C.S. § 9763?

Appellant's Brief at 2.

Appellant claims that the restitution order whether imposed as a condition of parole or probation was illegal because the trial court lacked the authority to impose conditions of state parole and failed to consider Appellant's ability to pay as required under 42 Pa.C.S. § 9763. **Id.** at 8-15. Specifically, Appellant highlights that the trial court did not verbally specify at the sentencing hearing whether restitution was imposed as a sentence under 18 Pa.C.S. § 1106 or under 42 Pa.C.S. § 9763. **Id.** Appellant argues that the location of the restitution on the written sentencing order suggests that the trial court imposed the restitution as a condition of probation under Section 9763 and that the trial court should have held a hearing to consider Appellant's ability to pay. **Id.**

² We note that the trial court dated the sentencing order April 4, 2025, but filed the order on July 1, 2025. **See** Sentencing Order, 7/1/25 (bearing a date of April 4, 2025, but a file date of July 1, 2025); Trial Ct. Docket at 12 (unpaginated)(showing the amended sentencing order was filed on July 1, 2025).

We have previously held that “[a] challenge to the authority of the trial court to impose an order of restitution is a challenge to the legality of sentence.” **See Commonwealth v. Royal**, 312 A.3d 317, 325 (Pa. Super. 2024). Furthermore, “a challenge to the legality of sentence is presented when the defendant claims that the trial court lacked statutory authority to impose restitution because the Commonwealth failed to establish one or more of the requirements of section 1106(a).” **Commonwealth v. Weir**, 201 A.3d 163, 172 (Pa. Super. 2018) (citations omitted). Our standard of review is *de novo* and our scope of review is plenary when considering a challenge to the legality of a sentence. **Commonwealth v. Stanley**, 259 A.3d 989, 992 (Pa. Super. 2021) (citation omitted).

Trial courts may impose restitution as a direct sentence according to 18 Pa.C.S. § 1106, or as a condition of probation according to 42 Pa.C.S. § 9754. **See** 18 Pa.C.S. § 1106; **see also** 42 Pa.C.S. § 9754. We have previously held that:

In the context of a criminal case, restitution may be imposed either as a direct sentence, § 1106, or as a condition of probation, § 9754. When imposed as a sentence, the injury to property or person for which restitution is ordered must directly result from the crime. However, when restitution is ordered as a condition of probation, the sentencing court is accorded the latitude to fashion probationary conditions designed to rehabilitate the defendant and provide some measure of redress to the victim. Thus, the requirement of a nexus between the damage and the offense is relaxed where restitution is ordered as a condition of probation The trial court is also obligated to state in the sentencing order . . . whether the restitution has been imposed as a part of the sentence and/or as a condition of probation.

Commonwealth v. Thomas, 340 A.3d 1053, 1057 (Pa. Super. 2025) (some formatting altered and some citations omitted). Under 18 Pa.C.S. § 1106, trial courts may impose restitution for “any crime wherein property of a victim has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime.” **See** 18 Pa.C.S. § 1106(a)(1) (some formatting altered). Additionally, if restitution is part of the direct sentence, the trial court may impose mandatory restitution “regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss.” 18 Pa.C.S. § 1106(c)(1)(i). Additionally, “[a] sentence intended to include restitution, which is entered without a definite amount and method of payment, is illegal and must be vacated in its entirety.” ***Commonwealth v. McCabe***, 230 A.3d 1199, 1209 (Pa. Super. 2020). Furthermore, “where a sentencing court fails to consider a defendant’s ability to pay prior to imposing restitution as a probationary condition, the order of restitution constitutes an illegal sentence.” ***Commonwealth v. Whatley***, 221 A.3d 651, 654 (Pa. Super. 2019).

Here, the trial court explained:

[T]his court properly ordered Appellant to pay restitution in accordance with Section 1106. The Commonwealth admitted authenticated receipts of [the Victim]’s damages, including the replacement of her tires and the restoration to the exterior of her car caused by Appellant[’s] criminal act. Appellant did not object to the admission of the receipts, nor the final calculated cost of the repairs totaling \$8,094.00. This court, as mandated by Section 1106, directly sentenced and ordered Appellant to pay restitution in the specified amount of \$8,094.00 to cover the costs of repairing the damage Appellant caused to [the Victim]’s car.

Furthermore, our statutory scheme is clear “the court shall order full restitution regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss.” 18 Pa.C.S. § 1106(c)(1)(1).

Here, this court did just that when it ordered Appellant to pay \$8,094.00 for the damage caused by his criminal acts. Furthermore, Appellant specifically requested restitution as part of his sentence and failed to mention any financial hardship for the Court to consider.

For these reasons, this court lawfully ordered Appellant, pursuant to Section 1106, to pay restitution to the [the Victim] for the damage he caused to her car in the amount of \$8,094.00, as part of his sentence. As such, Appellant[’s] sentence is legal, and he is not entitled to relief.

Trial Ct. Op., 7/18/25, at 9-10 (unpaginated) (some citations omitted).

Following our review of the record, it is unclear whether the trial court ordered restitution as part of his direct sentence or as a condition of Appellant’s probation. **See** 18 Pa.C.S. § 1106; 42 Pa.C.S. § 9754. Although the trial court analyzed restitution as part of the direct sentence under Section 1106(a) in its 1925(a) opinion at the sentencing hearing, the trial court’s written sentencing orders do not specify whether the restitution was imposed as a condition of probation or as part of the direct sentence. **See** Sentencing Order, 4/4/25; Sentencing Order, 4/8/25; Sentencing Order, 7/1/25; **see also** Trial Ct. Op., 7/18/25, at 9; N.T., 4/4/25, at 9.³ Even if we were to accept the trial court’s explanation that it imposed restitution as part of his

³ While we are cognizant that the sentencing order controls, we note at the hearing the trial court simply stated, “I am ordering restitution of \$8,094.00.” N.T. Sentencing, 4/4/25, at 9. The trial court did not indicate whether the restitution was part of Appellant’s direct sentence or as a condition of his probation.

sentence under Section 1106(a), Appellant's sentence is illegal because the trial court failed to specify the method of payment in the sentencing order.

McCabe, 230 A.3d at 1209.⁴

Further, our review of the record indicates that the court imposed an illegal sentence when it modified Appellant's sentence outside of his presence.

See Commonwealth v. Mumford, 353 A.3d 247, 261 (Pa. Super. 2026) (recognizing that an illegal sentencing issue is non-waivable and may be raised by this Court *sua sponte*).

This Court has previously explained the following:

It is well-settled in Pennsylvania that a trial court has the inherent, common-law authority to correct clear clerical errors in its orders.

A trial court maintains this authority even after the expiration of the 30-day time limitation set forth in 42 Pa.C.S.A. § 5505 for the modification of orders. **See** 42 Pa.C.S.A. § 5505.

A trial court's inherent authority to correct clerical errors, while considered a time-honored tradition has been described by our Supreme Court as a limited judicial power in its scope.

* * *

In addition to the restraints imposed by the double jeopardy clauses on a trial court's authority to correct clerical errors, an alleged error must qualify as a clear clerical error (or a patent and obvious mistake) in order to be amenable to correction. In discussing a trial court's authority to correct illegal sentences, our Supreme Court has stated that it is the obviousness of the illegality, rather than the illegality itself, that triggers the court's inherent power. The High Court has also cautioned that the inherent power to correct errors does not extend to reconsideration of a court's exercise of sentencing discretion. A

⁴ Additionally, if we analyzed the restitution as a condition of probation, Appellant's sentence would also be illegal because the trial court failed to consider Appellant's ability to pay the restitution. **Whatley**, 221 A.3d at 654.

court may not vacate a sentencing order merely because it later considers a sentence too harsh or too lenient. As a matter of general guidance, our Supreme Court has sanctioned the use of the inherent authority in cases that involve clear errors in the imposition of sentences that were incompatible with the record or black letter law.

This Court's case law has addressed the situations where . . . the terms of a defendant's sentence as stated at the sentencing hearing conflict (or are deemed incompatible) with the terms of the defendant's sentence as stated in the sentencing order.

In these circumstances, for a trial court to exercise its inherent authority and enter an order correcting a defendant's written sentence to conform with the terms of the sentencing hearing, the trial court's intention to impose a certain sentence must be obvious on the face of the sentencing transcript. Stated differently, only when a trial court's intentions are clearly and unambiguously declared during the sentencing hearing can there be a clear clerical error on the face of the record, and the sentencing order subject to later correction. If, on the other hand, a trial court's stated intentions during the sentencing hearing are ambiguous, then the terms of the sentence in the sentencing order control, and the trial court cannot correct its perceived mistake. This is because the alleged error in the sentencing transcript is not a clear clerical error, but rather, is an ambiguity that must be resolved by reference to the written sentencing order.

Commonwealth v. Borrin, 12 A.3d 466, 471–473 (Pa. Super. 2011) (*en banc*) (citations and emphasis omitted); ***see also Mumford***, 353 A.3d at 262 (concluding that the trial court entered an illegal sentence by amending the appellant's sentence outside of his presence).

Here, at sentencing, the trial court stated the following:

On the criminal trespass, which is a felony of the third degree, I'm going to sentence you to one to two years' incarceration. I think he's better off up state than he is in the county. He is not young. On the possession of instruments of crime, I'm imposing a four year concurrent probation. On the remaining charge, I am imposing no further penalty. I guess that would be the criminal mischief, right? . . . I'm sorry, criminal mischief was the F-3. . .

Okay. No further penalty on the terroristic threats. I am ordering restitution of \$8,094.00.

N.T., Sentencing, 4/4/25, at 9 (formatting altered).

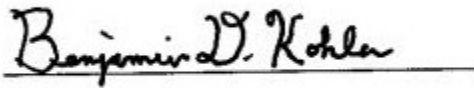
Accordingly, the sentencing transcript clearly reflects that the trial court intended to sentence Appellant to one to two years' incarceration for criminal mischief, four years of concurrent probation on the charge of PIC, no further penalty on the charge of terroristic threats, and Appellant was ordered to pay restitution in the amount of \$8,094.00. **See id.** However, the trial court's statements regarding restitution are ambiguous, thus the trial court was not permitted to resolve any perceived clerical errors. **See Borrin**, 12 A.3d at 471–473. The trial court's ambiguity stems from the trial court's failure to clarify whether the restitution was imposed as a condition of probation or as part of the sentence during the sentencing hearing.⁵ As a result, we remand the case and direct the trial court to enter a corrected sentencing order that accurately reflects Appellant's sentence. **See id.** Additionally, we find that the trial court's sentence is illegal because the trial court did not hold an additional hearing with Appellant present when it modified Appellant's sentencing order. **See Mumford**, 353 A.3d at 262. Therefore, we affirm Appellant's convictions but vacate Appellant's judgment of sentence and

⁵ Even if the court's statements at sentencing were unambiguous, we reiterate that trial courts are "obligated to state in the sentencing order. . . whether the restitution has been imposed as a part of the sentence and/or as a condition of probation." **See Thomas**, 340 A.3d 1053 1057 (emphasis added). None of the sentencing orders in this case reflect whether restitution was imposed as a condition of parole or a direct sentence. **See** Sentencing Order, 4/4/25; Sentencing Order, 4/8/25; Sentencing Order, 7/1/25.

remand for the trial court to conduct resentencing in accordance with this memorandum and with Appellant present.⁶ ***See id.***

Convictions affirmed. Judgment of sentence vacated. Case remanded for resentencing consistent with this memorandum. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/24/2026

⁶ In resentencing Appellant, we caution the trial court to comply with all the mandates of 18 Pa.C.S. § 1106 including “specify[ing] the amount and method of restitution.” ***See*** 18 Pa.C.S. § 1106(c)(2).