NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL GEORGE WEBER	:	
Appellant	:	No. 1518 WDA 2025

Appeal from the Judgment of Sentence Entered September 24, 2024
In the Court of Common Pleas of Erie County Criminal Division at No(s): CP-25-CR-0002468-2023

BEFORE: STABILE, J., DUBOW, J., and STEVENS, P.J.E.*

MEMORANDUM BY DUBOW, J.: **FILED: August 25, 2026**

Appellant Michael George Weber appeals from the judgment of sentence entered in the Erie County Court of Common Pleas following the entry of his open guilty plea to one count each of Attempted Homicide, Unlawful Restraint, Simple Assault, and False Imprisonment, and two counts each of Aggravated Assault and Possessing an Instrument of Crime.[1] Because we conclude that Appellant is entitled to additional credit for time served, we reverse and remand for further proceedings. In addition, because Unlawful Restraint and False Imprisonment convictions merge for purposes of sentencing, we vacate the sentence imposed for False Imprisonment. In all other respects, we affirm the judgment of sentence.

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* Former Justice specially assigned to the Superior Court.

[1] 18 Pa.C.S. §§ 901(a), 2902(a)(1), 2701(a)(1), 2903(a), 2702(a)(1) and (a)(4), and 907(a).

We glean the following factual and procedural history from the certified record. On April 8, 2023, Appellant entered a residence in Erie without permission, handcuffed the victim, Brian Bachmann, and struck him multiple times with "a hammer and/or bat" in the "head and/or face," causing skull fractures, face fractures, a brain bleed, and brain damage.[2] The magisterial district court ("MDC") issued an arrest warrant on April 26, 2023. Notably, documents from the MDC indicate that the police officer serving the arrest warrant took Appellant into custody on these charges on August 1, 2023, in the Allegheny County Jail. The MDC docket also shows that Appellant was in the Erie County Jail beginning on August 3, 2023, the original date scheduled for his preliminary hearing.

On July 8, 2024, Appellant pled guilty in the court of common pleas to the above offenses. The court deferred sentencing.

On September 24, 2024, the court sentenced Appellant to a standard range term of 216 to 432 months (18 to 36 years) of incarceration for the Attempted Homicide convictions, and concurrent terms of 3 to 23 months for each of the Possession of the Instrument of Crime convictions, 9 to 18 months for Unlawful Restraint, and 6 to 12 months for False Imprisonment. The court acknowledged that Simple Assault merged with Aggravated Assault for purposes of sentencing. In its sentencing order, the court provided 207 days of credit for time served, as follows:

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[2] N.T. Plea, 7/8/24, at 6-7.

Confinement Location	Start Date	End Date	Days Credit
Erie County Prison	08/26/23	10/01/23	37
Erie County Prison	10/11/23	01/02/24	84
Erie County Prison	07/01/24	09/24/24	86
TOTAL			**207**

Sent'g Order, 9/24/2024, at 2.

Following the reinstatement of his post-sentence and appeal rights, Appellant filed a post-sentence motion on March 21, 2025, challenging the discretionary aspects of his sentence. The court denied the motion on May 12, 2025.

Appellant filed a notice of appeal. The court ordered Appellant to file a Pa.R.A.P. 1925(b) statement and his then-counsel, Emily M. Merski, Esq., filed a statement of intent to submit an ***Anders***/***McClendon***[3] brief and a motion to withdraw pursuant to Pa.R.A.P. 1925(c)(4). The trial court responded by acknowledging counsel's intent to file an ***Anders*** brief.[4]

Subsequently, and before filing any brief with this Court, Attorney Merski left the public defender's office and on January 8, 2026, the court appointed Jessica A. Fiscus, Esq., to represent Appellant in this appeal. Following the entry of her appearance, Ms. Fiscus applied for and received

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[3] ***Anders v. California***, 386 U.S. 738 (1967); ***Commonwealth v. McClendon***, 434 A.2d 1185 (Pa. 1981) (*abrogated by* ***Commonwealth v. Santiago***, 978 A.2d 349, 360 (Pa. 2009)).

[4] ***See Commonwealth v. McBride***, 957 A.2d 752, 758 (Pa. Super. 2008) (holding that where counsel files a statement of intent to file an ***Anders*** brief, a Rule 1925(a) opinion "is not necessary[.]").

several continuances from this Court, and on April 27, 2026, she filed a merits brief.

Appellant raises the following issues for our review:

> 1. Did the trial court err when it failed to properly credit Appellant for the time served from the date that he was taken into custody?
>
> 2. Does Appellant's conviction for [F]alse [I]mprisonment merge with his conviction for [U]nlawful [R]estraint?

Appellant's Br. at 8.

Appellant first argues that he is entitled to more credit for time served than that provided in the sentencing order. ***Id.*** at 13-14. The Commonwealth concedes "that it appears that Appellant should have received additional time credit at sentencing for his incarceration between August 1, 2023, and August 26, 2023." Commonwealth's Br. at 4. Upon review of the record and applicable authority, we agree.

A claim asserting that the sentencing court failed to properly award credit for time served implicates the legality of sentence. ***Commonwealth v. Gibbs***, 181 A.3d 1165, 1166 (Pa. Super. 2018). A legality of sentence challenge is "not subject to the traditional waiver doctrine" and can be raised for the first time on appeal, regardless of whether it was included in a Rule 1925(b) statement. ***Commonwealth v. Hodges***, 193 A.3d 428, 433 (Pa. Super. 2018) (citing ***Commonwealth v. Wolfe***, 140 A.3d 651, 660 (Pa. 2016)). Issues relating to the legality of sentence are questions of law and,

therefore, our standard of review is *de novo* and our scope of review is plenary. ***Id.***

The Pennsylvania Sentencing Code, with regard to awarding credit for time served, provides in relevant part, the following:

> **§ 9760. Credit for time served**
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> After reviewing the information submitted under section 9737 (relating to report of outstanding charges and sentences) the court shall give credit as follows:
>
> > (1) Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal.

42 Pa.C.S. § 9760.

Our review of the certified record indicates that Appellant was taken into custody pursuant to the arrest warrant issued for the crimes at issue in this appeal on August 1, 2023. ***See*** Original Papers Received from Lower Court, Arrest Warrant and Return, at 28-29 (unpaginated) ("Return"). Specifically, the Return annexed to the arrest warrant and signed (illegibly) by a police officer explicitly states: "By authority of this warrant, on Aug 1, 2023, I took into custody the within named Michael Weber and he/she is in the Allegheny County Jail." ***Id.*** at 29. Because the record indicates August 1, 2023, was the start date of Appellant's confinement on these charges, pursuant to Section 9760(1), the court's calculation of time-served starting at August 26,

2023, appears to be incorrect. Accordingly, we vacate that portion of the sentencing order and remand for the sentencing court to recalculate and apply the proper amount of credit for time served.

* * *

In his second issue, Appellant alleges that the sentencing court erred "when it imposed a sentence for false imprisonment as this conviction merges with unlawful restraint for sentencing purposes." Appellant's Br. at 14. The Commonwealth agrees. Commonwealth's Br. at 4.

"A claim that crimes should have merged for sentencing purposes raises a challenge to the legality of the sentence; therefore, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Hill***, 140 A.3d 713, 715 (Pa. Super. 2016).

The doctrine of merger is governed by 42 Pa.C.S. § 9765, which provides as follows:

> No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. Where crimes merge for sentencing purposes, the court may sentence the defendant only on the higher graded offense.

Id.

"It is well-settled that Section 9765 prohibits merger unless two distinct facts are present: 1) the crimes arise from a single criminal act; and 2) all of the statutory elements of one of the offenses are included in the statutory elements of the other." ***Commonwealth v. Dewald***, 317 A.3d 1020, 1043

(Pa Super. 2024), *appeal denied,* 333 A.3d 647 (Pa. 2025). "In determining whether two or more convictions arose from a single criminal act for purposes of sentencing, we must examine the charging documents filed by the Commonwealth." ***Id.*** at 1044 (citations omitted).

A person will be found guilty of Unlawful Restraint, graded as a first-degree misdemeanor, "if he knowingly [] restrains another unlawfully in circumstances exposing him to risk of serious bodily injury[.]" 18 Pa.C.S. § 2902(a)(1). Likewise, a person will be found guilty of False Imprisonment, graded as a second-degree misdemeanor, "if he knowingly restrains another unlawfully so as to interfere substantially with his liberty." ***Id.*** at § 2903(a).

Our review of the Criminal Information indicates that both Unlawful Restraint and False Imprisonment were charged because Appellant used handcuffs to restrain the victim while he brutally beat him. ***See*** Criminal Information, filed 10/11/23, at Counts 7, 9.[5] There is no dispute that the

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[5] **Count 7**

"AND THE DISTRICT ATTORNEY FURTHER CHARGES that on the day and year aforesaid in the said County of Erie and State of Pennsylvania, the said MICHAEL GEORGE WEBER, did knowingly restrain another unlawfully in circumstances exposing him to a risk of serious bodily injury, to-wit: the **said MICHAEL GEORGE WEBER did PLACE VICTIM, BRIAN BACHMANN IN HAND CUFFS BEFORE ASSAULTING HIM, occurring at 1339 EAST 28TH STREET, CITY OF ERIE, Erie County, Pennsylvania**; thereby the said MICHAEL GEORGE WEBER did commit the crime of **UNLAWFUL RESTRAINT**, a Misdemeanor of the First Degree."

Count 9

(Footnote Continued Next Page)

crimes arose from a single criminal act and "all of the statutory elements of one of the offenses are included in the statutory elements of the other." ***Dewald***, 317 A.3d at 1043.

Accordingly, we vacate the sentence imposed for False Imprisonment. However, because that sentence was imposed to run concurrently with the 18-to-32-year sentence imposed for Attempted Murder, the court on remand need only correct its time-served calculation, as discussed above.[6]

Judgment of sentence vacated in part, and case remanded for further proceedings. Jurisdiction relinquished.

"AND THE DISTRICT ATTORNEY FURTHER CHARGES that on the day and year aforesaid in the said County of Erie and State of Pennsylvania, the said MICHAEL GEORGE WEBER, did knowingly and unlawfully restrain another so as to interfere with his or her liberty, to-wit: the **said MICHAEL GEORGE WEBER did HAND CUFF VICTIM, BRIAN BACHMANN, BEFORE ASSAULTING HIM, occurring at 1339 EAST 28m STREET, CITY OF ERIE, Erie County, Pennsylvania;** thereby the said MICHAEL GEORGE WEBER did commit the crime of **FALSE IMPRISONMENT**, a Misdemeanor of the Second Degree."

[6] ***See Commonwealth v. Thur***, 906 A.2d 552, 569–70 (Pa Super. 2006) ("[I]f our decision does not alter the overall scheme, there is no need for a remand.").

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 08/25/2026