

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
THOMAS CHIACCHIO	:	
	:	
Appellant	:	No. 2534 EDA 2025

Appeal from the Judgment of Sentence Entered September 12, 2025
 In the Court of Common Pleas of Bucks County Criminal Division at
 No(s): CP-09-CR-0007852-2013

BEFORE: PANELLA, P.J.E., LANE, J., and BENDER, P.J.E.

OPINION BY LANE, J.:

FILED SEPTEMBER 1, 2026

Thomas Chiacchio ("Chiacchio") appeals from the judgment of sentence imposed following the revocation of his probation. We hold that a claim, that the probation department filed an unreasonably untimely petition to revoke probation, after the probation term had already ended, does not implicate the legality of sentencing and is thus waivable. We affirm.

In January 2014, Chiacchio pleaded guilty to receiving stolen property and received a sentence of thirty-six months' probation. The trial court has since found Chiacchio in violation of probation or parole several times.

For ease of review, at this juncture we summarize Chiacchio's summary of the relevant prior procedural history. On June 11, 2019: the trial court found Chiacchio in violation of his probation, revoked the probation, and terminated parole. He received a "split sentence [of] two months and a day[,], which he served," and a concurrent two years' probation. N.T., 8/29/25, at 8. This probation term purportedly expired on June 11, 2021. The probation

department, however, filed a petition to revoke this probation on July 23, 2021, six weeks thereafter. On April 29, 2022, the trial court revoked this probation and imposed a new sentence of two years' probation (the "2022 VOP Sentence").

In January 2024, the probation department filed the underlying "Affidavit on Absconding Probationer/Parole," averring that Chiacchio violated his 2022 probation by: failing to pay restitution and comply with drug treatment; continuing to use illegal drugs; failing to contact his probation officer; and incurring new drug-related charges. In response, Chiacchio filed a counseled motion to dismiss the allegations of probation violations, arguing that the 2022 VOP Sentence was illegal because the petition to revoke probation was untimely, filed after the prior probation had ended.

The trial court conducted a hearing on August 29, 2025, first hearing argument on Chiacchio's motion to dismiss. Chiacchio's probation officer, Melissa Wybranski ("PO Wybranski"), addressed the events leading to the 2022 revocation of probation. While that probation was still in effect, in May 2021, Chiacchio's then-probation officer notified him "verbally . . . that a violation hearing would be filed." N.T., 8/29/25, at 12. On May 17, 2021, Chiacchio suffered a drug overdose and entered treatment from May 26 to June 23, 2021. **See id.** at 13, 15. In the meantime, his probationary term expired on June 11, 2021. The probation department did not immediately file a petition to revoke because it was focusing on "get[ting] him into inpatient

treatment,” and when Chiacchio left inpatient treatment on June 23, 2021, “he started using again.” *Id.* at 14-15. The department then filed the petition to revoke probation on July 23, 2021, citing Chiacchio’s misconduct during the probationary term.

At the hearing, Chiacchio acknowledged that under ***Commonwealth v. Smith***, 860 A.2d 142 (Pa. Super. 2004), the probation department has “a reasonable period of time to file a notice after [a] probation [period has] expired.” *Id.* at 11, 16. Chiacchio averred that in this case, however, the Commonwealth did not establish any of the ***Smith*** factors for permitting a late notice, the probation department “should have issued the violation” during the probationary term, and the delay was not reasonable. *Id.* at 11, 16.

The trial court disagreed, concluding that “in light of all the circumstances,” the probation department “acted reasonably” in 2021. *Id.* at 25. The court further reasoned that Chiacchio did not suffer prejudice from the timing of the late filing. Accordingly, the court denied Chiacchio’s motion to dismiss the instant petition to revoke probation.

The matter then proceeded immediately to a ***Gagnon II***¹ determination. The trial court found Chiacchio in violation of probation,

¹ ***See Gagnon v. Scarpelli***, 411 U.S. 778 (1973). ***See also Commonwealth v. Allshouse***, 969 A.2d 1236, 1240 (Pa. Super. 2009) (explaining that: (1) “[w]hen a parolee or probationer is detained pending a revocation hearing, (Footnote Continued Next Page)

revoked his probation, and imposed a new sentence of fifteen to thirty-six months' imprisonment.

Chiacchio filed a timely post-sentence motion. The trial court granted reconsideration and conducted a hearing on September 12, 2025. The court vacated Chiacchio's sentence and imposed an amended sentence of twelve to twenty-four months' imprisonment. Chiacchio timely filed a timely notice of appeal. He and the trial court have complied with Pa.R.A.P. 1925.

Appellant presents the following issue for our review: "Where the Commonwealth initiated revocation proceedings after . . . Chiacchio's probationary term expired, resulting in an illegal sentence, did the court err in revoking that illegal probationary term and resentencing him to 12 to 24 months of incarceration?" Chiacchio's Brief at 4.

Chiacchio contends that the trial court erred in revoking his probation and imposing a new sentence, because the prior 2022 VOP Sentence was "an illegal sentence." *Id.* at 11. Chiacchio maintains that his prior probationary term concluded on June 11, 2021, but the probation department did not file an affidavit for revocation until July 2021, more than a month thereafter. Chiacchio contends that the Commonwealth did not establish any of the

due process requires a determination at a pre-revocation hearing, a **Gagnon I** hearing, that probable cause exists to believe that a violation has been committed;" and (2) "[w]here a finding of probable cause is made, a second, more comprehensive hearing, a **Gagnon II** hearing, is required before a final revocation decision can be made").

factors under **Smith**, 860 A.2d 142, for permitting a petition to revoke after the probationary term has concluded. Chiacchio thus concludes that because the 2022 VOP Sentence was illegal, the trial court could not have found him in violation of that probation, and the instant sentence is likewise illegal.

The trial court considered the **Smith** factors and determined that the probation department's delay in filing the prior petition to revoke was reasonable, due to the department's focus on "Chiacchio's health following his overdose and on ensuring he received the treatment he so clearly and desperately needed." Trial Court Opinion, 11/17/25, at 6. The court also considered that a contrary finding, that the 2021 revocation filing was unreasonably untimely, "would encourage probation officers to neglect the health needs of their clients merely to comply with court-imposed deadlines."

Id.

We first consider the premise of Chiacchio's claim — that the 2022 VOP Sentence was an "illegal sentence" because the probation department filed the revocation petition after his probationary term had already ended. Chiacchio's Brief at 18. Chiacchio cites no legal support for this contention.

The Commonwealth denies that Chiacchio's issue implicates the legality of sentencing, as he did not claim the 2022 VOP Sentence "had no statutory authority at the time it [was] imposed." Commonwealth's Brief at 12. Instead, the Commonwealth reasons, Chiacchio raised a "fact-based challenge" to "the procedure employed to initiate the revocation proceeding

and whether the facts at issue at the time of that proceeding justified the timing of the praecipe to revoke probation.” **Id.** at 12-13. The trial court did not address this issue, but instead, as stated above, reviewed the timeliness of the filing under the **Smith** factors.

“The question of whether a challenge to a sentence implicates its discretionary aspects or its legality presents a pure question of law. As such, our scope of review is plenary, and our standard of review is *de novo*.” **Commonwealth v. Prinkey**, 277 A.3d 554, 560 (Pa. 2022). The Pennsylvania Supreme Court has “defined an illegal sentence as one that was imposed without authority.” **Id.** at 561 (*citing Commonwealth v. Barnes*, 151 A.3d 121 (Pa. 2016), “our seminal decision on the distinction between” a challenge to legality of a sentence or the discretionary aspects of a sentence). The Court has explained:

[T]he inquiry is whether, assuming the appellant’s claim prevails, the result would be that the trial court lacked authority to impose the sentence at issue. If so, then the appellant’s challenge implicates the legality of his sentence.^[] Conversely, if the challenge is not to the existence of certain authority but to the exercise of that authority, then the challenge goes to the discretionary aspects of a sentence, not to its legality.^[]

Id. at 563-64 (footnotes omitted).

Different rules of issue preservation apply to the two categories of sentencing challenges:

Where a claim concerns the sentencing court’s exercise of discretion in fashioning a sentence, the defendant must preserve and present the claim at trial by way of a contemporaneous objection and/or a post-trial motion and on appeal through the

process provided by 42 Pa.C.S. § 9781(b)¹ and Pa.R.A.P. 2119(f).²

Where a claim concerns the sentencing court's authority to impose a sentence, it is reviewable as of right on direct appeal, without regard to preservation of the claim. . . .

Commonwealth v. Weir, 239 A.3d 25, 34 (Pa. 2020) (some citations and footnotes omitted).

In **Smith**, this Court held:

[T]he Commonwealth may, under certain circumstances, file allegations of a violation of probation even after the probationary term has expired.

The circumstances where this is allowable are limited to such instances where either the Commonwealth cannot ascertain that it was the probationer who committed another offense; the Commonwealth cannot show that a violation has actually occurred . . . ; or the violation has occurred so late in the probationary term that the Commonwealth cannot actually file the proper paperwork in time.³ “. . .

Smith, 860 A.2d at 145 (paragraph break added and footnote omitted).

Smith plainly held that the Commonwealth **may** file an allegation of a probation violation after the probationary term has expired. **See id.** **Smith** set forth criteria for a court to consider in determining whether to allow such a filing. Chiacchio does not claim that the trial court, in 2022, lacked authority to consider the probation department's untimely revocation filing, but rather concedes that the court had such authority. Instead, Chiacchio's assertion is that the trial court should have considered the particular facts and determined that the filing was unreasonably untimely. We conclude that this allegation does not implicate the legality of the 2022 VOP Sentence, but instead

challenges the trial court's discretion in applying the **Smith** factors. **See Prinkey**, 277 A.3d at 560, 563-64. Accordingly, we determine Chiacchio's 2022 VOP Sentence was not an illegal sentence.

Consequently, we further determine that Chiacchio's attempt to challenge the timeliness of the 2022 probation revocation, as well as the 2022 VOP Sentence, in the present revocation proceedings, was untimely. **See Weir**, 239 A.3d 34. Instead, Chiacchio should have raised any objection contemporaneously with the 2022 probation revocation and imposition of sentence. **See id.** We thus conclude no relief is due on Chiacchio's issue.

At this juncture, we *sua sponte* consider the legality of the present amended sentence of twelve to twenty-four months' imprisonment under this Court's recent *en banc* decision in **Commonwealth v. Seals**, 353 A.3d 747 (Pa. Super. 2026) (*en banc*). **See Commonwealth v. Simmons**, 262 A.3d 512, 515 n.3 (Pa. Super. 2021) (*en banc*) (stating that "challenges to an illegal sentence can never be waived and may be raised *sua sponte* by this Court").

The **Seals** decision held "that a claim that a court failed to follow the limitations imposed by section 9771(c) [of the Sentencing Code²] is a challenge to the legality of a sentence and thus not subject to issue preservation requirements." **Seals**, 353 A.3d at 752. Section 9771(c), in turn, provides in pertinent part:

² **See** 42 Pa.C.S.A. §§ 9701-9799.95.

(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[.]

42 Pa.C.S.A. § 9771(c)(1)(i).

At the underlying revocation hearing, the Commonwealth averred that in addition to Chiacchio's failure to comply with drug treatment and report to the probation department, he incurred a new charge of possession of a controlled substance, and had already received a sentence of six months' probation. **See** N.T., 8/29/25, at 3, 5-6. As Chiacchio "has been convicted of another crime," the court had authority to impose the underlying sentence of total confinement. **See** 42 Pa.C.S.A. § 9771(c)(1)(i).

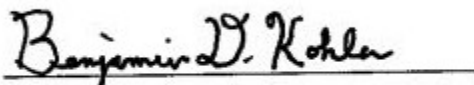
For the foregoing reasons, we affirm the judgment of sentence.

Judgment of sentence affirmed.

President Judge Emeritus Panella joins.

President Judge Emeritus Bender files a concurring opinion.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/1/2026