

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
FRANCIS OGLESBY	:	
	:	
Appellant	:	No. 2729 EDA 2025

Appeal from the Judgment of Sentence Entered July 16, 2025
In the Court of Common Pleas of Monroe County Criminal Division at
No(s): CP-45-CR-0002224-2024

BEFORE: LAZARUS, P.J., MURRAY, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY MURRAY, J.:

FILED SEPTEMBER 11, 2026

Francis Oglesby (Appellant) appeals from the judgment of sentence imposed following his open guilty plea to one count of accidents involving death or personal injury.¹ Appellant challenges the discretionary aspects of his sentence. After careful review, we affirm Appellant's conviction but vacate the judgment of sentence and remand for resentencing.

On October 3, 2024, Appellant was involved in a motor vehicle accident with a motorcyclist when Appellant made a left turn against a red light. Though Appellant initially stopped and got out of his vehicle, he fled the scene after observing the motorcyclist lying on the ground. Appellant did not render

* Retired Senior Judge assigned to the Superior Court.

¹ 75 Pa.C.S.A. § 3742(a).

aid or call for assistance. As a result of the accident, the motorcyclist “suffered a broken femur, broken patella, dislocated shoulder, and a fractured shoulder socket.” Affidavit of Probable Cause, 10/31/24.

Shortly after the accident, police located Appellant. Police observed damage to Appellant’s vehicle consistent with the motorcyclist’s description of the accident. Thereafter, Appellant was arrested and charged with accidents involving death or personal injury, as well as several summary offenses.

On May 16, 2025, Appellant pled guilty to one count of accidents involving death or personal injury, a first-degree misdemeanor. The parties made no agreement regarding sentencing. However, in exchange for his plea, the Commonwealth agreed to *nolle prosequere* the summary offenses. At that time, the Commonwealth requested a two-year probationary sentence. The trial court accepted Appellant’s guilty plea, ordered preparation of a pre-sentence investigation report (PSI), and scheduled a sentencing hearing. Notably, Appellant tested positive for marijuana at the time of his PSI interview. **See** Trial Court Opinion, 12/22/25, at 2; **see also id.** (stating that Appellant reported he is a daily marijuana user).

During a sentencing hearing on July 16, 2025, the Commonwealth emphasized Appellant’s positive drug test as a possible aggravating factor. The trial court sentenced Appellant to two days to two years, less one day in prison, followed by one year of probation. The trial court awarded Appellant two days of credit for time served, and directed that Appellant be immediately

released on parole. The court also ordered Appellant to undergo a drug and alcohol assessment and comply with all recommendations.

Appellant promptly filed a post-sentence motion for reconsideration of sentence. Appellant argued that, based on his prior record score of 0 and offense gravity score of 7, the 8th Edition of the Sentencing Guidelines recommends a minimum term of 24 months' probation, plus or minus 6 months for aggravating or mitigating factors.² Therefore, Appellant argued, the trial court imposed a sentence exceeding the guidelines "without justifying circumstances." Motion for Reconsideration, 7/25/25, ¶ 12.

The trial court held a hearing on Appellant's post-sentence motion on September 4, 2025. At the close of the hearing, the court dictated an order denying Appellant's motion. However,

[s]hortly thereafter, [the trial court] had the opportunity to review the transcript of the sentencing hearing. Since it appeared that the Commonwealth may ... have taken a position [during the reconsideration hearing] that was potentially inconsistent with its plea agreement and different from the position it took at sentencing, for reasons of fairness[, the court] vacated the denial order and scheduled another reconsideration hearing.

Trial Court Opinion, 12/22/25, at 4.

On September 23, 2025, the trial court held a second hearing on Appellant's post-sentence motion. At the close of the hearing, the trial court denied Appellant's post-sentence motion.

² Appellant's prior record score and offense gravity score, as well as the corresponding Sentencing Guidelines' recommendation, are undisputed.

This timely appeal followed. Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant raises the following issues for review:

1. Whether the sentencing court erred in issuing a departure range sentence of incarceration, where the guidelines in the aggravated range only called for probation, because that court misapplied the guidelines, misconstrued the statutory obligation to award time credit, and all where the circumstances did not reasonably support the departure sentence?
2. Whether the sentencing court erred by failing to state its reasons for the sentence and failing to provide a contemporaneous written statement of the reasons for imposing a sentence outside the sentencing guidelines[,] as required by 42 Pa.C.S.A. § 9721(b)?

Appellant's Brief at 6.

We address Appellant's claims together, as they are related. In his first claim, Appellant asserts the trial court imposed a manifestly excessive sentence without regard for certain mitigating factors. **See id.** at 23-46. Appellant also claims the trial court imposed a departure sentence without providing adequate reasons on the record. **See id.** at 23-27. According to Appellant, "the [trial] court repeatedly made clear that it did not understand this was a departure range sentence." **Id.** at 24; **see also id.** at 24-25 ("The [c]ourt suggested that it had to give a jail sentence because [] Appellant had already been in jail and the court was required to give time credit." (citing N.T., 9/23/25, at 9)). Appellant emphasizes that even the aggravated range of the sentencing guidelines does not provide for an incarcerative sentence. **Id.** at 28.

In his second claim, Appellant contends the trial court failed to place on the record, at the time of sentencing, its reasons for imposing a departure sentence. **See id.** at 46-50.

Both of Appellant's claims challenge the discretionary aspects of his sentence, from which there is no automatic right to appeal.³ **Commonwealth v. Bernarsky**, 348 A.3d 304, 331 (Pa. Super. 2025).

Rather, an appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction. We determine whether the appellant has invoked our jurisdiction by considering the following four factors: (1) whether appellant has filed a timely notice of appeal; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence; (3) whether appellant's brief has a fatal defect; and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code.

Id. (citation omitted).

Instantly, Appellant filed a timely notice of appeal and preserved his sentencing challenge in a timely post-sentence motion. Appellant also included in his brief the requisite statement of reasons relied upon for allowance of appeal. **See** Pa.R.A.P. 2119(f).

We next consider whether Appellant presents a substantial question for review. "A substantial question exists only when the appellant advances a

³ Because Appellant's guilty plea did not include an agreement as to sentencing, Appellant is not precluded from challenging the discretionary aspects of his sentence on appeal. **See Commonwealth v. Harris**, 352 A.3d 460, 464 (Pa. Super. 2026) ("A hybrid plea agreement does not preclude appellate review of those discretionary aspects of the sentence that were not agreed upon in the negotiation process.") (citation omitted).

colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." **Commonwealth v. McLendon**, 293 A.3d 658, 670 (Pa. Super. 2023) (citation omitted). "The determination of what constitutes a substantial question must be evaluated on a case-by-case basis." **Commonwealth v. Moury**, 992 A.2d 162, 170 (Pa. Super. 2010).

In his Rule 2119(f) statement, Appellant argues the trial court imposed an excessive sentence, which was disproportionate to Appellant's crimes, and did not adequately account for mitigating factors. Appellant's Brief at 20-21. Appellant also asserts the trial court failed to state its reasons for imposing a departure sentence. **Id.** at 22. We conclude Appellant's issue raises a substantial question. **See Commonwealth v. Caldwell**, 117 A.3d 763, 770 (Pa. Super. 2015) (*en banc*) ("This Court has [] held that an excessive sentence claim—in conjunction with an assertion that the [trial] court failed to consider mitigating factors—raises a substantial question.") (citation omitted); **see also Commonwealth v. Robertson**, 874 A.2d 1200, 1212 (Pa. Super. 2005) ("This Court has found a substantial question exists where the sentencing court failed to provide sufficient reasons for imposing a sentence outside of the guidelines.").

Our standard of review for a discretionary sentencing challenge is well settled:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Warren, 350 A.3d 1018, 1031 (Pa. Super. 2025)

(citation omitted).

The Sentencing Code provides that

the [trial] court shall follow the general principle that the sentence imposed should call for total confinement that is consistent with ... the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing....

42 Pa.C.S.A. § 9721(b); ***see also Commonwealth v. Sheller***, 961 A.2d 187, 190 (Pa. Super. 2008) (stating that “[w]hen imposing a sentence, the [trial] court is required to consider the sentencing ranges set forth in the Sentencing Guidelines....”). Additionally, “[i]n every case in which the court imposes a sentence for a ... misdemeanor, ... the court shall make as part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed.” 42 Pa.C.S.A. § 9721(b).

Our Supreme Court has explained that the Sentencing Guidelines are advisory in nature. ***Commonwealth v. Yuhasz***, 923 A.2d 1111, 1118 (Pa. 2007); ***see also Commonwealth v. Holiday***, 954 A.2d 6, 11 (Pa. Super. 2008) (stating that “the guidelines have no binding effect, in that they do not

predominate over individualized sentencing factors and that they include standardized recommendations, rather than mandates, for a particular sentence.”). Nevertheless, where, as here, the trial court imposes a sentence outside the guidelines, “the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines.... Failure to comply shall be grounds for vacating the sentence ... and resentencing the defendant.” 42 Pa.C.S.A. § 9721(b); **see also id.** § 9781(c)(3) (providing that an appellate court shall vacate a sentence where “the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable”).

This Court has explained that

a sentencing judge must demonstrate on the record, as a proper starting point, its awareness of the sentencing guidelines. Having done so, the sentencing court may deviate from the guidelines, if necessary, to fashion a sentence which takes into account the protection of the public, the rehabilitative needs of the defendant, and the gravity of the particular offense as it relates to the impact on the life of the victim and the community, **so long as it also states of record the factual basis and specific reasons which compelled it to deviate from the guideline range.**

Commonwealth v. Beatty, 227 A.3d 1277, 1287-88 (Pa. Super. 2020) (emphasis added; citation, brackets, and ellipses omitted); **see also *Commonwealth v. McClaine***, 150 A.3d 70, 76 (Pa. Super. 2016) (stating that “the sentencing judge must state of record the factual basis and specific reasons which compelled him or her to deviate from the guideline ranges.”).

Instantly, during the sentencing hearing, the Commonwealth noted that “the only aggravating factor is [Appellant] did test positive for marijuana at the time of the PSI.” N.T. (Sentencing), 7/16/25, at 4. Nevertheless, the Commonwealth requested a standard-range sentence of two years’ probation. ***Id.*** (“The only thing I would add beyond the two years of probation we’d be requesting in this matter is a drug and alcohol evaluation and treatment.”).

Before imposing sentence, the trial court stated the following:

So sir, I did have a chance to obviously take your plea. I’ve reviewed that, I’ve reviewed the [c]ourt’s record in this matter. I reviewed the [PSI] prepared by our probation office. ... [T]hat report has information about you, your history, your background, the facts of the case and so forth. You [], concussion or not, obviously left a motorcyclist that you had hit lying in the road, significantly injured. I don’t believe this is a probationary case, but -- I’m a little distressed to hear and see that after this amount of time, that there’s still self-medication, or at least a claim of self-medication, with marijuana.

Id. at 5-6. The foregoing constitutes the entirety of the trial court’s statement concerning the reasons for its departure sentence.

Upon review, we conclude the trial court abused its discretion in sentencing Appellant. Though the parties reviewed the applicable prior record score and offense gravity score at the start of the hearing, the trial court made no mention of the relevant Sentencing Guidelines when imposing a departure sentence. Most significantly, the trial court did not directly acknowledge that its sentence constituted a deviation from the aggravated range of the Sentencing Guidelines, or state its reasons for a deviation. ***See Beatty***, 227 A.3d at 1287-88; ***see also*** 42 Pa.C.S.A. § 9721(b), *supra*.

In fact, the trial court has been reluctant throughout these proceedings to acknowledge that its sentence deviated from the Sentencing Guidelines. During the second post-sentence motion hearing, the trial court stated as follows:

I'm not sure I agree with the characterization of this as a departure sentence in the traditional sense. Since, you know, the time was already spent. [Appellant] was not going to get this back.... [H]e was going to spend two days in jail whether he was on probation or not.

N.T. (Post-Sentence Hearing 2), 9/23/25, at 9 (emphasis added); **id.** at 8 (“[B]y the way, as I said before, [the sentence] did not result in [Appellant] spending any more time in jail than he had long before I was involved with the matter....”); **see also** N.T. (Post-Sentence Hearing 1), 9/4/25, at 5 (stating, “[T]o the extent we’re going to consider this scenario a departure sentence when someone has already served that amount of time....”).

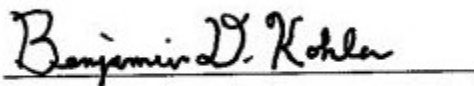
Under these circumstances, the trial court demonstrated its lack of awareness of the applicable Sentencing Guidelines. **See Beatty**, 227 A.3d at 1287. As the court failed to acknowledge the standard range of the Sentencing Guidelines or its deviation therefrom, it necessarily failed to render a contemporaneous statement on the record of its reasons for deviating from the Sentencing Guidelines. **Cf. Beatty**, 227 A.3d at 1288 (“[W]hen imposing a sentence, the trial court has rendered a proper contemporaneous statement under the mandate of the Sentencing Code so long as the record demonstrates with clarity that the court considered the sentencing guidelines in a rational

and systematic way and made a dispassionate decision to depart from them.”
(citation and internal quotation marks omitted)).⁴

Because the requirements of Section 9721(b) have not been met, we must vacate the judgment of sentence and remand for resentencing in compliance with the Sentencing Code. **See** 42 Pa.C.S.A. § 9781(c)(3); **see also Beatty**, 227 A.3d at 1290-91 (vacating the appellant’s judgment of sentence and remanding for resentencing where the trial court neither indicated it was imposing a sentence outside of the guidelines nor provided a contemporaneous statement of its reasons for the deviation).

Conviction affirmed. Judgment of sentence vacated. Case remanded for resentencing. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/11/2026

⁴ We acknowledge the trial court’s indication that it had reviewed the PSI before sentencing Appellant. N.T., 7/16/25, at 5. Generally, “[w]here the sentencing judge had the benefit of a [PSI], it will be presumed that he or she was aware of the relevant information regarding the defendant’s character and weighed those considerations along with mitigating statutory factors.” **Commonwealth v. Finnecy**, 135 A.3d 1028, 1038 (Pa. Super. 2016). However, we cannot countenance the trial court’s wholesale reliance on the PSI, where its actions demonstrated a misunderstanding of the guidelines in this case.