

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
ROBERT C. BENNETT, JR.	:	No. 592 MDA 2026

Appeal from the Order Entered March 10, 2026
In the Court of Common Pleas of Franklin County Criminal Division at
No(s): CP-28-CR-0001256-2025

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY PANELLA, P.J.E.: **FILED: SEPTEMBER 15, 2026**

The Commonwealth appeals from the order granting Robert C. Bennett, Jr.'s motion to dismiss the charges of driving under the influence ("DUI")¹, two counts, with prejudice. The Commonwealth asserts the trial court erred in granting the motion because Bennett did not establish prejudice and the Commonwealth sought to dismiss the charges through a *nolle prosequi*. After careful review, we affirm.

The trial court set forth the relevant factual and procedural history:

On June 23, 2025, Trooper Kiersten D. Melder of the Pennsylvania State Police was dispatched to 4690 Fetterhoff Capel Road, Guilford Township, Franklin County, Pennsylvania for a report of a two-car crash. After Trooper Melder's investigation on scene, she determined that probable cause existed to arrest [Bennett] on suspicion of [DUI]. [Bennett] was taken into custody and transported to Chambersburg Hospital for a blood draw. The

¹ 75 Pa.C.S.A. §§ 3802(a)(1) and (b).

results of [Bennett's] blood test determined that [Bennett] had a blood alcohol concentration of [.159%].

Subsequently, [Bennett] was charged with DUI: general impairment, [second] offense on July 8, 2025. On September 2, 2025, a preliminary hearing was held before Magisterial [District] Judge Gomez Shockey, in which the Commonwealth attempted to add an additional charge for DUI: high rate, second offense. However, Judge Gomez Shockey denied the Commonwealth's request to add the additional charge and dismissed the entire matter for lack of a *prima facie* showing. On September 4, 2025, the Commonwealth refiled the charges against [Bennett], which included one count each of DUI[:] general impairment[, second offense,] and DUI[: high rate, second offense]. On October 14, 2025, a preliminary hearing was held on the above matter before Magisterial District Judge Cunningham, in which it was found that a *prima facie* showing was met. Judge Cunningham bound both charges over for trial.

[Bennett] waived his mandatory arraignment on November 12, 2025, and entered a plea of not guilty. Following [Bennett's] appearance before [the trial] court for call of the criminal list on December 15, 2025, a pre-trial conference date was scheduled for January 5, 2026. During the pre-trial conference, the court issued an order approving [Bennett's] request for a status conference. On January 28, 2026, the Commonwealth's application for *nolle prosequi* without prejudice was met with an objection from [Bennett]. [The] court ordered the parties to submit their arguments as to the issues regarding [Bennett's] objection to the Commonwealth's application for *nolle prosequi*.

On March 10, 2026, [the] court filed [an] opinion and order granting [Bennett's] oral motion to dismiss with prejudice. On April 6, 2026, the Commonwealth ... filed a notice of appeal [The trial court] issued an order on April 6, 2026, directing the Commonwealth to file a concise statement of [errors] complained [of on] appeal. [**See** Pa.R.A.P. 1925(b)]. The Commonwealth timely complied.

Trial Court Opinion, 5/13/26, at 1-3 (footnotes and unnecessary capitalization omitted).

The trial court authored its opinion on May 13, 2026. **See** Pa.R.A.P. 1925(a). This matter is now ripe for our review.²

The Commonwealth raises one issue:

Whether the trial court abused its discretion when it denied the Commonwealth's application to *nolle prosequi* the DUI charges filed against [Bennett] without prejudice and grant [Bennett's] oral motion to dismiss the charges with prejudice?

Commonwealth's Brief, at 4.

We begin with our well-established standard of review:

The decision to grant a pretrial motion to dismiss a criminal charge is vested in the sound discretion of the trial court and may be overturned only upon a showing of [an] abuse of discretion or error of law.

The term discretion imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion, within the framework of the law, and is not exercised for the purpose of giving effect to the will of the judge. Discretion must be exercised on the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary actions. Discretion is abused when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will.

² We recognize the recent Pennsylvania Supreme Court decision reaffirming that orders dismissing criminal charges are traditionally interlocutory. **See Commonwealth v. Sutton**, --- A.3d ---, 90 MAP 2024, 104 MAP 2024 (Pa. filed July 21, 2026). However, that only applies where the charges were dismissed without prejudice as the Commonwealth can refile the charges. **See id.** at *14. Here, the charges were dismissed with prejudice, and the Commonwealth does not have the right to refile the charges. We therefore find that this Court has jurisdiction pursuant to 42 Pa.C.S.A. §742 (relating to final orders).

Commonwealth v. King, 932 A.2d 948, 950-51 (Pa. Super. 2007) (quotation marks, brackets, and citations omitted).

The same standard applies when we review a trial court's denial of the Commonwealth's motion to *nolle prosequi* charges. ***See Commonwealth v. Harrison***, 355 A.3d 826, 845 (Pa. 2026) (noting that the standard of review is an abuse of discretion). We therefore review the entirety of the court's decision for an abuse of discretion.

The Commonwealth asserts the trial court erred in failing to grant its request to *nolle prosequi* the charges and instead grant Bennett's motion to dismiss because Bennett did not suffer any prejudice. ***See*** Commonwealth's Brief, at 17-18. Specifically, the Commonwealth admits it violated Rule 544, but submits the violation should not have led to dismissal of the charges because Bennett was required to establish he was prejudiced by the violation. ***See id.*** The Commonwealth claims that the trial court's finding of prejudice is incorrect because Bennett's incarceration was not solely due to the current charges but also because he is subject to a parole detainer. ***See id.*** We disagree.

Rule 544 provides:

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, ... the attorney for the Commonwealth may reinstitute the charges by approving, in writing, the re-filing of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges.

(B) Following the re-filing of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 132 motion with the clerk of courts requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth the reasons for requesting a different issuing authority.

Pa.R.Crim.P. 544.

As the Commonwealth concedes, it failed to comply with Rule 544 when it refiled the charges with a different magistrate without first filing a motion pursuant to Rule 132 with the clerk of courts. The Commonwealth is correct that failure to comply with Rule 544 does not mean a defendant is entitled to dismissal of the charges.

[T]he Commonwealth's non-compliance with Rule 544, alone, does not automatically entitle a defendant to relief. Indeed, a defendant will be entitled to relief only if

he challenges the re-filing of previously dismissed charges before the conclusion of the trial and when: 1) the re-filing of charges occurs after the expiration of the statute of limitations; or 2) when the re-filing of charges constitutes an effort to harass the defendant; or 3) where the re-filing of charges is prejudicial to the rights of the defendant.

Commonwealth v. Davis, 242 A.3d 923, 934 (Pa. Super. 2020) (quotation marks, citation, and brackets omitted).

Here, the trial court found that the statute of limitations had not yet expired and there was no evidence of harassment. **See** Order and Opinion, 3/10/26, at 7-8. The trial court, however, found that Bennett would suffer substantial prejudice if the charges were not dismissed:

[Bennett did] present sufficient evidence that the refiling of charges stands to result in prejudice toward him. ... In this matter, permitting the charges to be refiled [for a second time] would subject [Bennett] to a period of incarceration that exceeds the maximum six-month penalty allowed for a second-offense DUI conviction. As it [stood at the time of Bennett's motion to dismiss, Bennett had] already been incarcerated for five and a half months in both Franklin County Jail and SCI Coal Township. [Bennett] was incarcerated in Franklin County Jail from August 29, 2025[,] to September 5, 2025. [Bennett] was also incarcerated in Franklin County Jail from October 7, 2025, to January 27, 2026 on the above-captioned matter. While [Bennett] remains in custody for the current charges, [he is] also being held regarding a PA State Parole violation directly stemming from this case. This means that [Bennett] has also been held by Pennsylvania State Parole in SCI Coal Township from September 5, 2025, to October 7, 2025, and from January 27, 2026 to [March 10, 2026]. As a result, prolonging [Bennett's] time in jail to allow the Commonwealth to refile once again would likely amount to significant prejudice toward [Bennett] given the amount of time already spent in both Franklin County Jail and SCI Coal Township on this matter. Additionally, should the Commonwealth be able to refile charges, [Bennett] will once again be forced to endure the entire legal process for a third time. [Bennett] would have to face the administrative filings, fingerprint mandates, bail restrictions, and mandatory court appearances three times for every stage of the case. This also amounts to significant prejudice toward [Bennett], as it forces [him] to navigate an excessively prolonged, repetitive pretrial process once more.

Order and Opinion, 3/10/26, 8-9.

The Commonwealth asserts Bennett's incarceration is due to his parole detainer and not the underlying DUI charges in this case. **See** Commonwealth's Brief, at 18. Our review of the record shows otherwise.

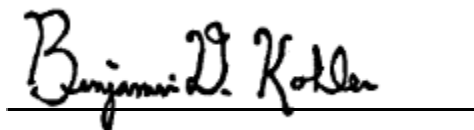
Bennett's bail was set by the magistrate at \$25,000 monetary. Both the magistrate docket and the trial court docket indicate that Bennett never posted bail. **See** Magistrate Docket MJ-39307-CR-0000213-2025, at 1; Court

of Common Pleas Docket CP-28-CR-0001256-2025, at 1. There is nothing in the record indicating Bennett posted bail on this case. He was therefore incarcerated on this case no matter what prison he was incarcerated within. By the time of the order granting dismissal of the charges with prejudice, Bennett had been incarcerated for more than six months, the maximum penalty he would have faced if he was found guilty of the DUI. **See** 75 Pa.C.S.A. § 3803(b)(1).

Based upon our review of the record, we cannot find the trial court abused its discretion in finding Bennett would suffer substantial prejudice if the Commonwealth was permitted to refile the charges for a second time. Refiling the charges would allow Bennett's incarceration to exceed the maximum penalty and force him to relive the charging process again, all due to the Commonwealth's error in refiling the charges the first time. As such, we affirm the order of the trial court.

Order affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/15/2026