

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

BRAIJON AMIR BURTON

Appellant

: No. 456 WDA 2025

Appeal from the Judgment of Sentence Entered October 22, 2024
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0000727-2024

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Appellant

: No. 457 WDA 2025

Appeal from the Judgment of Sentence Entered October 22, 2024
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0007191-2021

BEFORE: LAZARUS, P.J., BOWES, J., and LANE, J.

MEMORANDUM BY LAZARUS, P.J.:

FILED: September 16, 2026

Braijon Amir Burton appeals from the judgment of sentence, entered in the Court of Common Pleas of Allegheny County, on October 22, 2024, after the trial court found him guilty of one count of persons not to possess a

firearm.¹ After review, we vacate Burton's judgment of sentence and remand for resentencing.

The trial court summarized the factual history as follows:

Corey Dick was best friends with the victim, Jacob Jaillet, who was a 21-year-old college student. Both men were working summer jobs at the U-Haul store in the Larimer section of the City of Pittsburgh[.] On the afternoon of July 27, 2021, [Burton] came into the store to inquire about renting a truck for a period of two weeks. He was informed that no trucks were available for that length of time. He left the store but returned a few times and asked to see the inside of a truck. He was informed that all of the vehicles were unlocked, and he could do so. When he came in for the last time, he stated that a particular truck was locked. [] Jaillet retrieved the keys and followed [Burton] to the truck. [] Dick stated that he then heard "2 pops" and he saw [] Jaillet drop to the ground. As he ran out of the store calling 911, he saw [Burton] leave in a U-Haul pick-up truck at a high rate of speed. When [] Dick reached his friend, he observed that the victim was bleeding. He attempted to stop the bleeding by covering the wound with his hand and a moving blanket.

Several police officers and detectives arrived on the scene. [] Jaillet was treated by a paramedic for a gunshot wound to the neck and transported to UPMC-Presbyterian Hospital.

Detective Joshua Anderson, along with other police vehicles, pursued [Burton], who was driving erratically at 80+ MPH on city streets. As he was driving south on Route 28 toward downtown Pittsburgh, [Burton] fired his handgun at a Chevy Tahoe being

¹ **See** 18 Pa.C.S.A. 6105(a)(1). Prior to trial, the court severed Burton's persons not to possess a firearm charge from the other offenses he was charged with. The non-severed charges went before a jury, and Burton was convicted of one count each of second-degree murder, robbery of a motor vehicle, aggravated assault—attempts to cause or causes bodily injury, firearm not to be carried without a license, fleeing or attempting to elude officer, endangering a law enforcement officer or member of the general public by engaging in a high-speed chase, and two counts of recklessly endangering another person. Burton does not challenge any of these convictions on appeal.

driven by Isaac Ngandwe[,] shattering a window, with the bullet lodging into the passenger side rear door, causing approximately \$1,300[.00 in] damage.

In an effort to stop the U-Haul truck, Officer Ryan McDonald positioned his police cruiser at the Route 28 entrance ramp to the 31st Street Bridge. As he was getting "spike strips" out of the trunk of his cruiser, he observed the U-Haul speeding toward him. At the last second, as he was jumping over a concrete barrier, the truck hit his left leg[,] causing an injury. The U-Haul then plowed into his cruiser, blowing out a tire, and wrecking both vehicles. [Burton] was ordered to exit the truck, and he was arrested.

During his arrest and while being transported to the hospital to be evaluated, [Burton] admitted that he shot [] Jaillet, saying he was sorry "that the voices made me do it[.]" A search of [Burton] and the U-Haul truck at the time of the arrest revealed a .38 Special with a holster and a "Crown Royal" bag containing both empty shell casings and live rounds for a .38 Special.

During an interview at the police station, after [Burton] was advised of his constitutional rights, [Burton] stated that he did not know why he shot the victim, the "voices" told him to do it, he panicked and blacked out. [Burton] further stated that he stole the gun from his grandfather, without his knowledge, on July 4, 2021.

The Commonwealth and defense counsel stipulated that [Burton] did not have a license to carry a firearm.

Jonathan Elmer, M.D., who treated [] Jaillet in the emergency room and in the ICU, stated that the gunshot wound was to the "highest point of the spinal cord" and was a "life-ending injury[.]" [] Jaillet was fully paralyzed on "full life support[,]" with only the ability to blink and move his eyes around. With the consent of [] Jaillet and his family, life support was withdrawn, and he died on August 1, 2021.

Trial Court Opinion, 6/19/25, at 2-4 (citations to notes of testimony omitted).

The matter proceeded to a trial on February 5, 2024, with a jury considering all of the charged offenses except for persons not to possess, for

which the trial court sat as the fact-finder.² During trial, with the jury not present, the Commonwealth put on testimony relating to the persons not to possess charge. The trial court ultimately found Burton guilty of persons not to possess. Burton's status as a person not to possess subject to section 6105(a)'s prohibition was based on his having outstanding warrants for receiving stolen property³ at the time of the instant offense.⁴ Burton's sentencing was deferred for the preparation of a presentence investigation report. Ultimately,⁵ on October 22, 2024, the court⁶ imposed a sentence of life without the possibility of parole plus a consecutive term of two to four

² Because Burton's appeal challenges only his conviction for 18 Pa.C.S.A. 6105(a)(1), we omit the irrelevant procedural history for his unchallenged convictions.

³ 18 Pa.C.S.A. § 3925(a).

⁴ **See** 18 Pa.C.S.A. § 6105(c)(1) (providing that "[a] person who is a fugitive from justice" is subject to the statute's prohibition).

⁵ The court had initially sentenced Burton on May 6, 2024. Burton filed an omnibus post-sentence motion on May 16, 2024, arguing, *inter alia*, that his non-mandatory sentences should be modified. In its response, the Commonwealth conceded that Burton's sentence for robbery of a motor vehicle should have merged with his sentence for second-degree murder. The sentencing court granted Burton's motion, in part, on October 11, 2024, finding that Burton's sentences should have merged. The court vacated Burton's judgments of sentence and set a new sentencing date for October 22, 2024.

⁶ Burton's case went to trial before the Honorable Judge Anthony M. Mariani. Judge Mariani subsequently stepped down from the bench in April of 2024, and Burton's case was reassigned to President Judge Susan Evashavik DiLucente.

years. The persons not to possess conviction accounted for six to twelve months of Burton's consecutive term of incarceration.

Burton filed a post-sentence motion on November 1, 2024. The 120-day period for a decision on Burton's post-sentence motions expired on March 3, 2025. **See** Pa.R.Crim.P. 720(B)(3)(a) (post-sentence motion denied by operation of law when judge fails to decide motion within 120 days). The clerk of courts entered orders deeming Burton's motions denied by operation of law on March 17, 2025.⁷ Burton filed a notice of appeal and his concise statement of errors complained of on appeal on April 16, 2025. Burton raises two questions for our review:

1. Whether [] Burton's conviction for person[s] not to possess a firearm must be vacated pursuant to ***United States v. Rahimi***, 602 U.S. 680 (2024)[,] because [s]ection 6105(a)(1), as applied to [] Burton, violated his rights under the Second Amendment?
2. Whether [] Burton's conviction for person[s] not to possess a firearm must be vacated pursuant to ***United States v. Rahimi***, 602 U.S. 680 (2024)[,] because [s]ection 6105(a)(1) facially violated [] Burton's rights under the Second Amendment?

Appellant's Brief, at 8 (unnecessary capitalization omitted).

We observe that Burton did not raise his constitutional challenge during trial, at sentencing, or in either of his two post-sentence motions. Burton

⁷ Burton appealed from both dockets, and we consolidated the appeals *sua sponte* on April 11, 2025.

instead raised the issue for the first time in his Rule 1925(b) statement.⁸ Accordingly, Burton's claims are waived for failure to preserve them below. **See Commonwealth v. McIntyre**, 333 A.3d 417, 425 (Pa. Super. 2025) (finding facial and as-applied constitutional challenges to Section 6105 waived where Appellant did not raise claim with trial court); **see also** Pa.R.A.P. 302(a) ("Issues not raised in the trial court are waived and cannot be raised for the first time on appeal."); **Commonwealth v. Armolt**, 294 A.3d 364, 378–79 (Pa. 2023); **Brown v. Philadelphia Tribune Co.**, 668 A.2d 159, 162 (Pa. Super. 1995) (issues not raised with trial court are waived on appeal "even if the issues raised on appeal are of constitutional dimension").

Burton's waiver of his constitutional challenges notwithstanding, we turn to the issue of his sentence of life without parole for his second-degree murder conviction. We may raise *sua sponte* the legality of an appellant's sentence. **See Armolt**, 294 A.3d at 376. At the time Burton was sentenced, Pennsylvania law mandated a term of life imprisonment without parole for second-degree murder convictions. **See** 18 Pa.C.S.A. § 1102(b) (requiring life imprisonment for second-degree murder conviction); 61 Pa.C.S.A. § 6137(a)(1) (prohibiting those serving life imprisonment from parole eligibility).

⁸ Burton's brief fails to identify where he raised the issue during the proceedings below. **See** Pa.R.A.P. 2117(c), 2119(e).

Our Supreme Court has since considered the issue of whether a mandatory life sentence without parole under sections 1102(b) and 6137(a)(1) violates the Eighth Amendment to the United States Constitution or Article 1, Section 13 of the Pennsylvania Constitution where the defendant was convicted of second-degree murder but did not kill or intend to kill and, therefore, had “categorically diminished culpability[.]” ***Commonwealth v. Lee***, 357 A.3d 356, 360–61 (Pa. 2026) (Table). After reviewing the history of the felony murder rule and mandatory life sentences without parole in Pennsylvania, our High Court surveyed the traditional penological justifications for punishment and determined that they could not justify the categorical application of life without parole for all individuals convicted of second-degree murder. ***See id.*** at 361–65, 395. Accordingly, our Supreme Court concluded the mandatory sentencing scheme for second-degree murder “pose[d] too great a risk of disproportionate punishment,” and, therefore, violated Article 1, Section 13’s prohibition of cruel punishments. ***Id.*** at 396.⁹

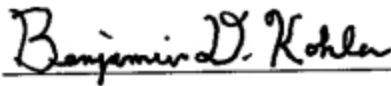
Because Burton was sentenced pursuant this unconstitutional sentencing scheme, we vacate his judgment of sentence and remand the matter to the sentencing court for resentencing not inconsistent with the dictates of ***Lee***. This requires the sentencing court to consider Burton’s

⁹ When issuing ***Lee*** on March 26, 2026, our Supreme Court initially stayed its mandate for 120 days to provide the Pennsylvania General Assembly time to consider appropriate remedial measures. ***Id.*** at 397. This 120-day period lapsed on July 24, 2026 without the legislature having acted to amend sections 1102(b) or 6137(a)(1).

“individual culpability [and] determine whether he should be resentenced to life imprisonment without the possibility of parole; or to a maximum sentence of life imprisonment, as required by 18 Pa.C.S.[A.] § 1102(b), accompanied by a minimum sentence[.]” **Id.** at 397. The sentencing court should conduct “an individualized assessment of the circumstances” of Burton’s offense and take into consideration Burton’s “characteristics and culpability in fashioning an appropriate punishment.”¹⁰ **Id.** at 392, 394.

Judgment of sentence vacated. Case remanded. 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: 9/16/2026

¹⁰ Our Supreme Court made clear that its decision in **Lee** does not “ensure parole or eventual release to someone convicted of second[-]degree murder[.]” **Id.** at 396 n.18. Rather, such an offender “must receive a meaningful consideration of release, based upon their individual culpability and the circumstances surrounding their crime.” **Id.**