

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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|------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
|                              | : | PENNSYLVANIA             |
|                              | : |                          |
| v.                           | : |                          |
|                              | : |                          |
|                              | : |                          |
| FAISAL HABEEB MALIK          | : |                          |
|                              | : |                          |
| Appellant                    | : | No. 2094 EDA 2025        |

Appeal from the Judgment of Sentence Entered May 15, 2025  
In the Court of Common Pleas of Delaware County Criminal Division at  
No(s): CP-23-CR-0006405-2008

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

MEMORANDUM BY LAZARUS, P.J.:

**FILED SEPTEMBER 24, 2026**

Faisal Habeeb Malik appeals from the judgment of sentence, entered in the Court of Common Pleas of Delaware County, following the revocation of his parole. After review, we affirm.

On October 8, 2008, Malik entered into a negotiated guilty plea to one count each of terroristic threats<sup>1</sup> and simple assault.<sup>2</sup> In exchange for his guilty plea, the Commonwealth withdrew the remaining offenses including aggravated assault, recklessly endangering another person, intimidation of a witness, harassment, and criminal mischief. Additionally, Malik and the Commonwealth agreed to a sentence of 3 to 23 months' incarceration and a

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A. § 2706.

<sup>2</sup> ***Id.*** at § 2701(a)(1).

concurrent sentence of 2 years' probation. Further, the parties agreed that upon reaching his 3-month minimum, Malik would be placed on electronic home monitoring for the remainder of his incarceration sentence.<sup>3</sup>

On the same day, the trial court accepted Malik's guilty plea and the parties' negotiated sentence. Thus, the trial court imposed an aggregate sentence of 3 to 23 months' incarceration with two years' of concurrent probation. Further, upon completion of his minimum 3 months' sentence, Malik was to be paroled to electronic home monitoring. As it is relevant to the facts of this appeal, Malik was advised, at this time, that he could transfer his parole supervision to Indiana once he completed his minimum 3-month sentence, but that he would need to begin that transfer process with Delaware County Adult Probation and Parole (APP) after his release. ***See id.*** at 19-20, 22-23.

Malik completed his 3-month minimum sentence and began serving his electronic home monitoring parole sentence in January of 2009. On January 17, 2009, Malik sought, and was granted by APP, a permit to travel, via the

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<sup>3</sup> We note that Malik had multiple cases before the trial court and, it seems, all of them were resolved via this same negotiated plea deal. ***See*** N.T. Guilty Plea and Sentencing Hearing, 10/8/08, at 1-6 (Commonwealth summarizing Malik's cases and placing plea deals on record). All of the plea agreements were negotiated, had the same terms of incarceration and electronic home monitoring, but had differing fines and no-contact orders. ***See id.*** In any event, only the case regarding his convictions for terroristic threats and simple assault under the instant docket is before us on appeal.

Interstate Compact for Adult Offender Supervision (Interstate Compact),<sup>4</sup> to resolve legal issues in Indiana. Malik was advised to return and report to APP on January 22, 2009. Malik failed to return on January 22, 2009, and, instead, on January 26, 2009, called APP to report that he was returning on January 27, 2009. APP informed Malik that he was required to return and report by January 30, 2009. Malik did not return to Pennsylvania and did not report. APP left voicemails for Malik on January 30, 2009 and February 5, 2009. Malik did not respond and did not report. As a result, on March 19, 2009, APP sought a bench warrant, which the trial court granted and issued on March 27, 2009.

In February of 2025, more than 16 years later, Malik moved back to Pennsylvania, but still did not report to APP. Shortly thereafter, Malik was involved in an argument with his brother, who called the police. Police

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<sup>4</sup> The Interstate Compact established the Interstate Commission for Adult Offender Supervision (ICAOS). ICAOS' purpose is to fulfill objectives of the Interstate Compact:

to promote, develop and facilitate safe, orderly, efficient, cost effective and uniform transfer and supervision of individuals who are authorized pursuant to the bylaws and rules of this Compact to travel across state lines both to and from each compacting state, and, when necessary, to facilitate the return of these individuals to their originating jurisdictions.

Article I - Commission Purpose, Function and By-laws | ICAOS, [interstatecompact.org/bylaws/article-1](https://interstatecompact.org/bylaws/article-1) (last visited 8/19/26).

discovered that Malik had an outstanding bench warrant from 2009 and arrested Malik. APP began **Gagnon I**<sup>5</sup> proceedings against Malik.

On May 15, 2025, Malik appeared before the trial court for a **Gagnon II** hearing related to his parole violations. The Commonwealth informed the trial court of the above background. In addition, Malik's defense counsel informed the trial court that Malik had an outstanding extradition warrant for recent crimes committed in Illinois. Malik argued that he believed his parole had been transferred to Indiana years prior because he had hired private counsel to inquire with APP how to transfer his parole. In response, the Commonwealth presented evidence from APP that "the Deputy Director [of APP] advised [Malik's] private attorneys what he needed to do [to transfer parole as recently as 2017, but w]e never heard from him." **See** N.T. **Gagnon II** Hearing, 5/15/25, at 22-23.

On May 15, 2025, at the conclusion of the **Gagnon II** hearing, the trial court revoked Malik's parole and sentenced him to his full back time of 556 days, with release after 210 days' incarceration. On May 27, 2025, Malik filed a timely motion for reconsideration, in which he sought to present additional evidence to contravene the trial court's finding that he had violated parole. On June 3, 2025, the trial court entered an order expressly granting reconsideration and directing the Commonwealth to show cause why Malik's motion should not be granted on the merits. **See** Order, 6/3/25, at 1.

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<sup>5</sup> **See Gagnon v. Scarpelli**, 411 U.S. 778 (1973).

Additionally, the trial court scheduled a hearing on Malik's motion for July 2, 2025. **See id.**

Following the July 2, 2025 hearing, the court denied Malik's motion for reconsideration. **See** Order, 7/2/25, at 1. On August 1, 2025, Malik filed the instant notice of appeal. Both Malik and the trial court have complied with Pa.R.A.P. 1925. Malik now raises the following claims on appeal:

[1.] Whether the appeal should be quashed as untimely filed on August 1, 2025, where reconsideration[,] although expressly granted in the sentencing court's June 3, 2025 order[,] also gave [a] directive to the Commonwealth to show cause why the motion for reconsideration should not be granted on the merits[?]

[2.] Whether the sentencing court erred, as a matter of law, in deciding to revoke parole because the Commonwealth failed to set forth sufficient facts at the revocation hearing to establish that [] Malik acted in violation of parole, specifically the Commonwealth failed to show that [] Malik willfully failed to report as directed?

[3.] Whether the sentencing court abused its discretion in deciding to recommit [Malik] to prison when there were sufficient facts presented by [the] defense which established that continued supervision would both protect society and improve chances of rehabilitation for [] Malik?

Brief for Appellant, at 4.

In his first claim, Malik contends that the trial court expressly granted reconsideration in accordance with Rule 708(E) and, thus, his appeal is timely, and this Court has jurisdiction. **See id.** at 15-18. Upon review, we agree. **See** Pa.R.Crim.P. 708(E) ("The filing of a motion to modify sentence will not toll the thirty-day appeal period"). Additionally, in the probation and parole

context, a post-sentence motion only tolls the 30-day appeal period if the trial court **expressly grants** reconsideration. **See** Pa.R.Crim.P. 708(E).

“Generally, when an appellant files a motion for reconsideration of a final order, they must file a protective notice of appeal to ensure preservation of their appellate rights if the court does not expressly grant reconsideration within the thirty-day appeal period prescribed under Pa.R.A.P. 903(a).” ***Commonwealth v. Ziegler***, 322 A.3d 256, 262 (Pa. Super. 2024) (citing ***Commonwealth v. Moir***, 766 A.2d 1253, 1254 (Pa. Super. 2000)). In other words, the mere filing of a motion for reconsideration does not toll the thirty-day appeal period. **See id.; see also** Pa.R.Crim.P. 708(E). “Rather, the trial court must expressly grant reconsideration within thirty days of entry of its [final] order. Failure to expressly grant reconsideration within the time set by the rules for filing an appeal will cause the trial court to lose its power to act on the application for reconsideration.” ***Moir***, 766 A.2d at 1254; **see also** Pa.R.Crim.P. 708(E), cmt. (“Any appeal must be filed within the 30-day appeal period unless the sentencing judge[,] within 30 days of the imposition of sentence[,] expressly grants reconsideration or vacates the sentence.”).

Instantly, as stated above, on June 3, 2025, within 30 days of Malik’s May 15, 2025 judgment of sentence, the trial court entered the order which states as follows:

AND NOW this 3<sup>rd</sup> day of June, 2025, upon consideration of Defendant’s Motion for Reconsideration filed on May 27, 2025, it is hereby ORDERED and DECREED that **Reconsideration shall be and the same is hereby GRANTED.**

IT IS FURTHER ORDERED AND DECREED that the Commonwealth shall show cause, if any it has, why Defendant's Motion should not be granted on the merits.

Hearing scheduled for [July 2, 2025.]

Order, 6/3/25, at 1 (emphasis added).

Based upon our review of the foregoing case law and the trial court's order, we conclude that the trial court's June 3, 2025 order expressly granted reconsideration and, consequently, tolled the 30-day appeal period.<sup>6</sup> As a result, the trial court's subsequent July 2, 2025 denial of Malik's motion to reconsider commenced the 30-day appeal period. Accordingly, Malik's notice of appeal, filed on August 1, 2025, was timely and we have jurisdiction over this appeal.

In his second claim, Malik argues that the Commonwealth failed to present sufficient evidence that he violated parole. **See** Brief for Appellant, at 19-22. Malik contends that the Commonwealth presented two allegations of parole violations: first, Malik's failure to obtain permission from the parole office prior to leaving Pennsylvania and traveling to Indianapolis; and, second,

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<sup>6</sup> We note that the Commonwealth argues the trial court's order amounts to little more than a rule to show cause directing the filing of briefs and scheduling a hearing. **See** Commonwealth Brief, at 9-11. However, the salient language in the June 3, 2025 order is "Reconsideration shall be and the same is hereby GRANTED." Order, 6/3/25, at 1. Based upon this language, it is clear that the trial court expressly granted reconsideration. **See id.** Indeed, our case law has long held that a trial court must expressly grant **or** vacate the underlying judgment or order, it need not do both. **See Commonwealth v. Butler**, 566 A.2d 1209, 1211 (Pa. Super. 1989) (if trial court desires additional time to reexamine ruling, it must **expressly grant** reconsideration **or vacate** its order within 30 days).

Malik's failure to report to the parole office as directed. ***Id.*** at 19-20. Regarding his first violation, Malik asserts that APP Agent Gail Buchanan testified at the parole violation hearing that Malik was given a 30-day travel permit to leave Pennsylvania and travel to Indianapolis to "take care of legal issues." ***Id.*** at 20. Regarding his second violation, Malik posits that he complied with his permit, but, upon arrival in Indiana, was placed on probation there and was prohibited from traveling from Indiana to Pennsylvania. ***See id.*** at 20-21. Malik argues that, therefore, he was bound to comply with his probation in Indiana and that, in light of this evidence, the Commonwealth's evidence did not show Malik willfully failed to report to parole. ***See id.*** at 21-22.<sup>7</sup>

This Court has stated that "[f]ollowing parole revocation and recommitment, the proper issue on appeal is whether the [trial] court erred, as a matter of law, in deciding to revoke parole and, therefore, to recommit the defendant to confinement." ***Commonwealth v. Kalichak***, 943 A.2d 285, 291 (Pa. Super. 2008) (citation omitted); ***see also id.*** ("an appeal of a parole revocation is not an appeal of the discretionary aspects of sentence"). This Court has explained that

The purposes of a court's parole-revocation hearing—the revocation court's tasks—are to determine whether the parolee

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<sup>7</sup> We note that Malik's claim regarding willfulness is waived as it was not preserved before the trial court. ***See*** Pa.R.A.P. 302(a) ("[I]ssues not raised in the [trial] court are waived and cannot be raised for the first time on appeal."). Further, Malik cites to no authority supporting his proposition and, thus, it is waived on this basis as well.

violated parole and, if so, whether parole remains a viable means of rehabilitating the defendant and deterring future antisocial conduct, or whether revocation, and thus recommitment, are in order.

***Commonwealth v. Baldassano***, 330 A.3d 1255, 1259-60 (Pa. Super. 2025).

Further, an “order revoking parole does not impose a new sentence; [rather,] it requires [the defendant] . . . to serve the balance of a valid sentence previously imposed.” ***Commonwealth v. Simmons***, 262 A.3d 512, 528 (Pa. Super. 2021) (en banc).

“The Commonwealth bears the burden to prove a parole violation by a preponderance of the evidence.” ***Commonwealth v. Reed***, 285 A.3d 334, 337 (Pa. Super. 2022) (citation omitted); ***see also Commonwealth v. Easter***, 331 A.3d 675, 680 (Pa. Super. 2025) (defining “preponderance of the evidence” as “the greater weight of the evidence, i.e., to tip a scale slightly in one’s favor”). Once a VOP court finds a parole violation occurred, by a preponderance of the evidence, “the decision to revoke parole is a matter for the court’s discretion. We will not disturb the [VOP] court’s discretion absent an error of law or abuse of discretion.” ***Id.*** at 337 (internal citations, brackets, and quotation marks omitted).

A mere error of judgment does not constitute an abuse of discretion. Rather, a trial court abuses its discretion if[,] in reaching a conclusion, the law is overridden or misapplied, or the judgment exercise is manifestly unreasonable or the result of partiality, prejudice, bias, or ill-will as shown by the evidence or the record.

***Commonwealth v. Westlake***, 295 A.3d 1281, 1286 (Pa. Super. 2023)

(citation and brackets omitted).

Technical violations of parole, such as the failure to report to the probation department or not residing at a given address, can, alone, be sufficient to support a parole revocation. **See *Commonwealth v. Mitchell***, 632 A.2d 934, 937 (Pa. Super. 1993). However, a trial court may only revoke parole after finding the defendant violated a condition of his parole for which he had notice. **See** Pa.R.Crim.P. 708(B)(2). Additionally, “a defendant’s sentence does not run while he is an absconder and not under supervision.” ***Commonwealth v. Stafford***, 29 A.3d 800, 804 (Pa. Super. 2011) (citation omitted); **see also *Commonwealth v. Ortega***, 995 A.2d 879, 885 (Pa. Super. 2010) (“courts of this Commonwealth have long rejected the notion that the sentence of an absconder or delinquent parolee continues to run, as if it were being served, to the point of expiring on its scheduled expiration date”) (disapproved of on other grounds by ***Commonwealth v. Foster***, 214 A.3d 1240 (Pa. 2019)).

The trial court addressed Malik’s claim as follows:

[Malik] disappeared from the Commonwealth of Pennsylvania for **sixteen years** while on [parole]. Though he claims he was trying to figure out how to transfer supervision to Indiana, or that he thought it was transferred to Indiana, the court found that to be completely disingenuous. Over the years, [Malik] hired different attorneys to reach out to [APP] to figure out how to transfer his case. Those attorneys were repeatedly told that [Malik] would have to contact [APP] to start the transfer process, but [Malik] never did so. Even when he moved back to Pennsylvania in February of 2025, he still did not reach out to [APP] to voluntarily handle his case, but was instead picked up on a warrant following an incident at his family’s home in Broomall.

Trial Court Opinion, 10/26/25, at 4-5.

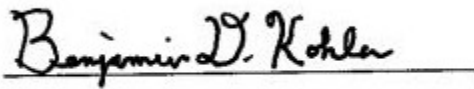
Additionally, we observe that Malik's 30-day travel permit required him to return and report to APP on January 22, 2009. **See** N.T. Guilty Plea and Sentencing Hearing, 10/8/08, at 19-20 (Malik advised on record he needed to initiate supervision transfer process); **see also** N.T. **Gagnon II** Hearing, 5/15/25, at 4-7. Initially, Malik did report to say that he would not be returning to Pennsylvania on time as he was on probation in Indiana. **See id.** Malik was advised to return by January 27, 2009, which he failed to do. **See id.** Malik then continued, for sixteen years, to abscond with virtually no contact with APP beyond occasionally hiring attorneys to ask APP how to transfer his supervision to Indiana. **See id.** at 22-23 (Malik stating he knew he had to "transfer to Indiana"); **id.** (APP Agent Buchanan testifying Deputy Director informed Malik's private attorneys Malik needed to initiate supervision transfer process by contacting APP). Notably, Malik did not follow up with APP after admittedly receiving instructions on how to transfer his supervision to Indiana. **See id.** Thus, the Commonwealth presented sufficient evidence that Malik was in technical violation of his parole by absconding without permission and, further, that he failed to report to APP after exceeding the time allotted by his travel permit. Consequently, the trial court did not commit an error of law when it found Malik in violation of his parole and recommitted him to serve the balance of his sentence. **See Kalichak, supra.** Accordingly, Malik is entitled to no relief on this claim.

Regarding Malik's third claim, our review of the record reveals that he did not preserve this challenge before the trial court and, therefore, it is

waived. **See *Commonwealth v. Williams***, 900 A.2d 906, 909 (Pa. Super. 2006) (“including an issue in a [c]oncise [s]tatement does not revive issues that were waived in earlier proceedings”); **see also** Pa.R.A.P. 302(a) (“[I]ssues not raised in the [trial] court are waived and cannot be raised for the first time on appeal.”). Accordingly, we affirm Malik’s judgment of sentence.

Judgment of sentence 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: 9/24/2026