

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
JAVAR RAHEEM WIRFEL	:	
	:	
Appellant	:	No. 1458 MDA 2025

Appeal from the Judgment of Sentence Entered August 19, 2025
 In the Court of Common Pleas of York County Criminal Division at No(s):
 CP-67-CR-0004491-2023

BEFORE: BOWES, J., OLSON, J., and KUNSELMAN, J.

OPINION BY OLSON, J.:

FILED OCTOBER 05, 2026

Appellant, Javar Raheem Wirfel, appeals from the August 19, 2025 amended judgment of sentence entered in the Court of Common Pleas of York County after a jury convicted him of manufacture, delivery, or possession with the intent to manufacture or deliver a controlled substance - cocaine (Count 3) and knowingly or intentionally possessing a controlled substance - cocaine (Count 4).¹ On August 19, 2025, as discussed in greater detail *infra*, the trial court amended Appellant's original judgment of sentence and imposed a term of three to six years' incarceration for his conviction of Count 3 and no further penalty for his conviction of Court 4. We affirm the

¹ 35 P.S. §§ 780-113(a)(30) and (a)(16), respectively. Appellant was found not guilty of two counts of persons not to possess, use, manufacture, control, sell, or transfer firearms. 18 Pa.C.S.A. § 6105(a)(1).

amended judgment of sentence imposed on Count 3 and vacate the amended judgment of sentence imposed on Count 4.

The record reveals that, on March 11, 2025, a jury convicted Appellant of the aforementioned criminal charges. On July 21, 2025, the trial court sentenced Appellant on Count 3 to two to four years' incarceration and imposed no further penalty for Appellant's conviction of Count 4.² On July 29, 2025, the Commonwealth filed a motion that sought reconsideration of Appellant's judgment of sentence based on a letter Appellant sent to the chief deputy prosecutor after his July 21, 2025 sentencing hearing.³ In the letter, Appellant "use[d] vile, disturbing language to describe [the chief deputy prosecutor's] physical appearance [and attacked] her character, integrity, and ethics as a prosecutor." Commonwealth Motion for Reconsideration of Sentence, 7/29/25, at ¶ 8. In his letter, Appellant also stated that he knew what type of vehicle the chief deputy prosecutor drove and that he had "a

² On Count 3, the trial court awarded Appellant 655 days credit for time served. Appellant was found not to be eligible for boot camp, the recidivism risk reduction incentive program, and a state drug treatment program. Sentencing Order, 7/21/25.

The notes of testimony from Appellant's July 2025 sentencing hearing confirm that the trial court failed to state on the record whether Appellant was advised of the time in which to file a post-sentence motion or a notice of appeal. **See** N.T. 7/21/25, at 1-4; **see also** Pa.R.Crim.P. 704(C)((3)(a).

³ As discussed *infra*, Pennsylvania Rule of Criminal Procedure 721 permits the Commonwealth to challenge a sentence by filing a motion for modification of sentence "no later than 10 days after the imposition of sentence." Pa.R.Crim.P. 721(A)(1) and (B)(1).

private investigator ‘watching’ her” and knew the chief deputy prosecutor had a daughter. ***Id.*** at ¶ 9. The trial court scheduled a hearing on the Commonwealth’s motion for August 19, 2025. At the conclusion of the August 19, 2025 hearing, the trial court granted the Commonwealth’s motion to modify Appellant’s sentence, imposed an amended sentence of three to six years’ incarceration on Count 3, and imposed no further penalty for Appellant’s conviction of Count 4.⁴

Earlier that same day, August 19, 2025, Appellant filed *pro se* a petition pursuant to the Post Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-9546. In his petition, Appellant asserted claims of ineffective assistance of trial counsel and a violation of his constitutional right to a fair and speedy trial. *Pro Se PCRA Petition*, 8/19/25, at 2-3. On September 12, 2025, the PCRA court appointed La Tasha C. Williams, Esquire (“Attorney Williams”) as PCRA counsel to represent Appellant.

On September 15, 2025, Appellant filed a motion to withdraw the PCRA petition, explaining that his judgment of sentence had not yet become final and, as such, the PCRA court lacked jurisdiction to adjudicate his claims. *Motion to Withdraw PCRA Petition*, 9/15/25, at ¶¶ 9, 12.⁵ In the same filing,

⁴ In the amended sentence, the trial court awarded the same credit for time served (655 days) and adopted the same restrictions on rehabilitative programing. *Amended Sentencing Order*, 8/19/25.

⁵ Appellant’s amended sentence was imposed on August 19, 2025. At this stage in the proceedings, Appellant’s judgment of sentence was set to become

Appellant moved for leave to file a post-sentence motion *nunc pro tunc* and requested the appointment of post-sentence/direct appeal counsel. Appellant requested permission to file a post-sentence motion *nunc pro tunc* because the trial court failed, *inter alia*, to advise Appellant, at the August 19, 2025 sentence modification hearing, of his right to file a post-sentence motion or a notice of appeal and the time period within which to act upon those rights. ***Id.*** at ¶ 17.

On September 16, 2025, the PCRA court granted Appellant's request to withdraw the PCRA petition, and the trial court expressly granted Appellant permission to file a post-sentence motion *nunc pro tunc*.⁶ In its order, the

final on September 18, 2025, upon expiration of the time in which to file a timely post-sentence motion or a direct appeal. Pa.R.Crim.P. 720(A)(1) (stating, a post-sentence motion must be filed "no later than 10 days after the imposition of sentence"); ***see also*** Pa.R.A.P. 903(a) (stating, a notice of appeal must be filed "within 30 days after the entry of the order from which the appeal is taken"); 42 Pa.C.S.A. § 9545(b)(1) (stating, a PCRA petition "shall be filed within one year of the date the judgment of sentence becomes final"); 42 Pa.C.S.A. § 9545(b)(3) (stating, a judgment of sentence "becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking review"). As such, Appellant's PCRA petition, filed on August 19, 2025, was premature because it was filed before his judgment of sentence became final. The premature PCRA petition was a legal nullity, and the PCRA court lacked jurisdiction to consider the filing. ***Commonwealth v. Ramsey***, ___ A.3d ___, 2026 WL 2209742, at *3 (Pa. Super. filed Jul. 31, 2026) (*en banc*) (slip opinion).

⁶ Pursuant to Section 5505 of the Judicial Code, "if no appeal has been taken, within 30 days after the imposition of sentence, the trial court has the discretion to grant a request to file a post-sentence motion *nunc pro tunc*." ***Commonwealth v. Dreves***, 839 A.2d 1122, 1127 (Pa. Super. 2003) (*en*

trial court acknowledged its “failure, at the August 19, 2025 resentencing hearing, to advise [Appellant] of his post-sentence rights” and offered this oversight as grounds for granting Appellant’s request to file a post-sentence motion *nunc pro tunc*.⁷ Trial Court Order, 9/16/25, at 2; **see also** N.T., 8/19/25, at 5-6. In that same order, the trial court appointed Attorney Williams as counsel for the purpose of pursuing Appellant’s post-sentence and direct appeal rights. Trial Court Order, 9/16/25, at 2.

Ultimately, Appellant did not file a post-sentence motion *nunc pro tunc*. Instead, Appellant filed a notice of appeal on October 16, 2025, within 30 days of entry of the order that granted *nunc pro tunc* relief. In the notice of appeal, Attorney Williams stated, “following review of the record, [Appellant] (through the undersigned), declined to file a post-sentence motion and now files the instant notice of appeal for direct review of his judgment of sentence[.]” Notice of Appeal, 10/16/25, at 1 n.1. On October 23, 2025, the trial court

banc); **see also** 42 Pa.C.S.A. § 5505 (stating, “[e]xcept as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed”). The decision to grant *nunc pro tunc* relief must be rendered within 30 days of the imposition of sentence. **Dreves**, 839 at 1128 n.6. The granting of *nunc pro tunc* relief permits the trial court to retain jurisdiction over the matter beyond the 30-day period following the imposition of sentence.

⁷ As explained *supra*, the trial court did not advise Appellant of his post-sentence and direct appeal rights, or of the time within which to exercise those rights, at the conclusion of the July 21, 2025 sentencing hearing. **See** N.T., 7/21/25, at 1-4.

ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b) within 21 days. Appellant filed a Rule 1925(b) statement on December 6, 2025.⁸ The trial court filed its Rule 1925(a) opinion on January 23, 2026.

Appellant raises the following issue for our review: “Whether the trial court erred in increasing [Appellant’s] sentence for apparent vindictive reasons[?]” Appellant’s Brief at 5.

Preliminarily, we address the procedural posture of the case *sub judice* as it implicates our jurisdiction. ***Commonwealth v. Crawford***, 17 A.3d 1279, 1281 (Pa. Super. 2011) (stating, “the timeliness of an appeal implicates our jurisdiction and may be considered *sua sponte*”). In a criminal proceeding, a direct appeal lies from the judgment of sentence. ***Commonwealth v. Patterson***, 940 A.2d 493, 497 (Pa. Super. 2007), *appeal denied*, 960 A.2d 838 (Pa. 2008). A notice of appeal “shall be filed within 30 days after the entry of the order from which the appeal is taken.” Pa.R.A.P. 903(a). Therefore, in a criminal proceeding, a notice of appeal challenging a judgment of sentence must be filed within 30 days of imposition of sentence unless the

⁸ Although Appellant filed his Rule 1925(b) statement beyond the 21-day period, the trial court accepted Appellant’s late filing and subsequently issued its Rule 1925(a) opinion addressing the issues raised by Appellant in his concise statement.

On December 15, 2025, Attorney Williams filed a petition for the appointment of new counsel due to her election, in November 2025, to serve on the Court of Common Pleas of Dauphin County. That same day, the trial court appointed Kristen Weisenberger, Esquire to represent Appellant on direct appeal.

defendant files a timely post-sentence motion or the Commonwealth files a motion to modify the sentence. ***Commonwealth v. Green***, 862 A.2d 613, 618 (Pa. Super. 2004) (*en banc*) (stating, “[o]rdinarily, if a defendant does not file a post-sentence motion, the defendant’s notice of appeal shall be filed within 30 days of imposition of sentence”), *appeal denied*, 882 A.2d 477 (Pa. 2005); **see also** Pa.R.Crim.P. 720(A)(3) and (4) (stating, “[i]f the defendant does not file a timely post-sentence motion, the defendant’s notice of appeal shall be filed within 30 days of imposition of sentence, except [when] the Commonwealth files a timely motion to modify sentence[. If the Commonwealth files a timely motion to modify the sentence, then] the defendant’s notice of appeal shall be filed within 30 days of the entry of the order disposing of the Commonwealth’s motion.”).

Pursuant to Pennsylvania Rule of Criminal Procedure 720(A)(1), a written post-sentence motion must be filed “no later than 10 days after imposition of sentence.” Pa.R.Crim.P. 720(A)(1). If the defendant files a timely post-sentence motion, then a notice of appeal must be filed “within 30 days of the entry of the order deciding the motion[,],” “within 30 days of the entry of the order denying the motion by operation of law in cases in which the [trial court] fails to decide the motion[within 120 days,]” or “within 30 days of the entry of the order memorializing the withdrawal in cases in which the defendant withdraws the motion.” Pa.R.Crim.P. 720(A)(2); **see also** ***Green***, 862 A.2d at 618 (explaining that, the filing of a timely post-sentence motion will toll the time in which to file a direct appeal).

Pursuant to Rule 721, the Commonwealth may challenge a sentence by, *inter alia*, filing a motion to modify the sentence. Pa.R.Crim.P. 721(A)(1). The Commonwealth must file a motion to modify the sentence “no later than 10 days after imposition of sentence.” Pa.R.Crim.P. 721(B)(1). As discussed *supra*, if the Commonwealth files a timely motion to modify the sentence, then the defendant may file a notice of appeal “within 30 days of the entry of the order disposing of the Commonwealth’s motion” to modify the sentence. Pa.R.Crim.P. 720(A)(4); **see also Commonwealth v. Capaldi**, 112 A.3d 1242, 1244 (Pa. Super. 2015).

For a 30-day period following the imposition of sentence, Section 5505 of the Judicial Code permits a trial court, in its discretion, to, *inter alia*, grant a request by a defendant to file a post-sentence motion *nunc pro tunc* if no appeal has been taken. **Dreves**, 839 A.2d at 1128; **see also** 42 Pa.C.S.A. § 5505. To be entitled to file a post-sentence motion *nunc pro tunc*, a defendant must, within 30 days after the imposition of sentence, request permission from the trial court to file a post-sentence motion *nunc pro tunc* and demonstrate sufficient cause to excuse the late filing. **Dreves**, 839 A.2d at 1128 (stating, “[m]erely designating a motion as ‘post-sentence motion *nunc pro tunc*’ is not enough”). If the trial court is satisfied that the defendant demonstrated sufficient cause, then the trial court must expressly grant the request to file a post-sentence motion *nunc pro tunc* and the order granting

the request must be entered within 30 days after the imposition of sentence.⁹ ***Id.***; ***see also*** 42 Pa.C.S.A. § 5505. If “the trial court grants a request to file a post-sentence motion *nunc pro tunc*, the post-sentence motion filed as a result must be treated as though it were filed within the 10-day period following the imposition of sentence.” ***Dreves***, 839 A.2d at 1129. In other words, the filing of a post-sentence motion *nunc pro tunc* upon express leave to proceed under Section 5505 will, *inter alia*, toll the time in which to file a direct appeal.

Once the trial court expressly grants a defendant permission to file a post-sentence motion *nunc pro tunc* (in other words, once the trial court restores a defendant’s post-sentence rights), the defendant has 10 days from the date the order is entered on the record in which to file a timely post-sentence motion *nunc pro tunc*. This 10-day deadline in which to file a post-sentence motion *nunc pro tunc* stems from the requirement, under Rule 720(A)(1), that a post-sentence motion “shall be filed no later than 10 days

⁹ If the trial court does not enter an order expressly granting *nunc pro tunc* relief within 30 days of the imposition of sentence, the trial court cannot act, pursuant to Section 5505, on a defendant’s request. 42 Pa.C.S.A. § 5505; ***see also Dreves***, 839 A.2d at 1128-1129. A trial court’s resolution of the merits of an untimely post-sentence motion “is no substitute for an order expressly granting *nunc pro tunc* relief.” ***Dreves***, 839 A.2d at 1129.

If no appeal has been filed and the trial court has taken no action pursuant to Section 5505 within 30 days of the imposition of sentence, then the defendant’s judgment of sentence becomes final and all remedies pertaining to the reinstatement of post-sentence and direct appeal rights must be pursued through the PCRA.

after imposition of sentence.” **See** Pa.R.Crim.P. 720(A)(1). Although we find no rule of criminal procedure that specifically states the deadline by which a post-sentence motion must be filed once *nunc pro tunc* relief has been granted, we find case law support for a 10-day requirement.¹⁰ As this Court explained in ***Commonwealth v. Wright***, 846 A.2d 730 (Pa. Super. 2004),

the term *nunc pro tunc* means “now for then.” **See** Black’s Law Dictionary, at 1069, (Sixth Edition 1990). It is “a phrase applied to acts allowed to be done after the time when they should be done, **with a retroactive effect, i.e., with the same effect as if regularly done.**” ***Id.*** Thus, reinstatement of direct appeal rights *nunc pro tunc* denotes that the [defendant] now has the same direct appeal rights as he [or she] would have had in the beginning. Since in the beginning [a defendant] ordinarily must file his [or her] direct appeal within thirty days of the date of imposition of sentence (or the date of entry of the order disposing post-sentence motions), it is logical and fair to apply the same thirty-day rule when [a defendant’s] direct appeal rights are restored *nunc pro tunc*.

Id. at 735 (footnote omitted; emphasis added). If we apply the reasoning in ***Wright*** to the *nunc pro tunc* restoration of post-sentence motion rights, it

¹⁰ We note that the official comments to Rule 720 state that “[i]n those cases in which a petitioner under the [PCRA] has been granted leave to file a post-sentence motion or to appeal *nunc pro tunc*, the filing of the post-sentence motion or the notice of appeal must comply with the timing requirements contained in paragraph (A) of this rule.” Pa.R.Crim.P. 720 at *Comments – Optional Post-Sentence Motion*. In other words, a petitioner, who has been granted such collateral relief, is required to file his or her post-sentence motion *nunc pro tunc* within 10 days of the order granting relief.

Our approach clarifies that *nunc pro tunc* filing of a post-sentence motion pursuant to Section 5505 now aligns with the filing of a post-sentence motion where the right has been restored under the PCRA.

logically follows that a defendant, upon restoration of his or her post-sentence rights *nunc pro tunc*, would be required to file a post-sentence motion *nunc pro tunc* within 10 days of the date the order granting *nunc pro tunc* relief is entered on the record. **See id.; see also Commonwealth v. Taylor**, 277 A.3d 577, 584 n.2 (Pa. Super. 2022) (finding a post-sentence motion filed within 10 days of being granted *nunc pro tunc* relief to be timely); **Commonwealth v. Mitchell**, 311 A.3d 567, 2023 WL 8471596, at *3 n.5 (stating, pursuant to the reasoning set forth in **Wright, supra**, “when a petitioner’s post-sentence and appeal rights are both reinstated, the [] time limit requirements [found in Rule 720(A)] apply: a post-sentence motion must be filed within 10 days of the order reinstating post-sentence rights, and a notice of appeal must be filed either within 30 days of the order reinstating appeal rights, or within 30 days of the order denying the post-sentence motion”).

Applying Rule 720’s 10-day time limit within which to file a post-sentence motion upon the entry of an order granting *nunc pro tunc* relief is further supported by our decision in **Dreves, supra**. In **Dreves**, this Court explained that “when the trial court [expressly] grants a request to file a post-sentence motion *nunc pro tunc*, the post-sentence motion filed as a result **must be treated as though it were filed within the 10-day period following the imposition of sentence.**” **Dreves**, 839 A.2d at 1129. From **Wright, Dreves**, and their progeny, we are able to glean that an order granting *nunc pro tunc* relief “winds back” the procedural timeclock to the

point of sentencing and from there a defendant must adhere to the time limits prescribed by the post-sentence procedures set forth in Rule 720. In other words, once an order granting *nunc pro tunc* relief has been entered, the procedural timetables in Rule 720 should be followed.

With these principles in mind, we turn now to the procedural posture of the case *sub judice*. On July 21, 2025, the trial court sentenced Appellant. At the time of sentencing, the trial court did not inform Appellant of his post-sentence or direct appeal rights. N.T., 7/21/25, at 1-4. On July 29, 2025, the Commonwealth filed a timely motion to modify the sentence pursuant to Rule 721. On August 19, 2025, the trial court granted the Commonwealth's motion and amended Appellant's sentence. Again, the trial court did not inform Appellant of his post-sentence or direct appeal rights. N.T., 9/19/25, at 6. On September 15, 2025, Appellant filed a timely motion seeking permission to file a post-sentence motion *nunc pro tunc*. Within the 30-day period following the imposition of Appellant's amended sentence, the trial court, on September 16, 2025, expressly granted Appellant's request to file a post-sentence motion *nunc pro tunc*. In its order granting *nunc pro tunc* relief, the trial court did not inform Appellant of the deadline by which the post-sentence motion must be filed. Ultimately, Appellant choose not to file a post-sentence motion *nunc pro tunc* but, instead, filed a notice of appeal on October 16, 2025, within 30 days of the order expressly granting *nunc pro tunc* relief.

As discussed *supra*, a post-sentence motion *nunc pro tunc* filed pursuant to the requirements under **Dreves, supra**, will be treated as though it were filed within 10 days of the imposition of sentence, thereby tolling the time in which to file a notice of appeal. **Dreves**, 839 A.2d at 1129. Appellant did not, however, file a post-sentence motion *nunc pro tunc*. As such, no post-sentence motion tolled the 30-day period in which to file a timely notice of appeal challenging Appellant's August 19, 2025 amended sentence. **Id.** at 1126 (explaining that, "if a defendant does not file a post-sentence motion, the notice of appeal shall be filed within 30 days of imposition of sentence"); **see also** Pa.R.Crim.P. 720(A)(3) (stating, "[i]f the defendant does not file a timely post-sentence motion, the defendant's notice of appeal shall be filed within 30 days of imposition of sentence"); Pa.R.A.P. 903(c)(3) (stating, "[i]n a criminal case in which no post-sentence motion has been filed, the notice of appeal shall be filed within 30 days").

From the foregoing discussion, it logically follows that once a trial court restores the post-sentence rights of a defendant and the defendant files a timely post-sentence motion *nunc pro tunc*, the defendant has 30 days after the resolution of the post-sentence motion to file a notice of appeal challenging the judgment of sentence. As we stated *supra*, it is the filing of a timely post-sentence motion that tolls the appeal period. Without such a timely filing, the appeal period is not tolled. Thus, when Appellant failed to file a timely post-sentence motion after securing *nunc pro tunc* relief, the deadline for his notice of appeal remained 30 days after the imposition of his amended

sentence and his appeal was untimely in this case. **Dreves**, 839 A.2d at 1127 (stating, “the time for filing an appeal can be extended beyond 30 days after the imposition of sentence **only** if the defendant files a timely post-sentence motion”); **see also** Pa.R.A.P. 903. The record, however, demonstrates that when the trial court initially sentenced Appellant on July 21, 2025, and then again when it amended Appellant’s sentence on August 19, 2025, it failed to provide Appellant with accurate and specific information regarding, *inter alia*, the right to file a post-sentence motion and an appeal, together with information about the time period within which to exercise those rights. Based upon the long-standing requirement that a trial court must provide a defendant, at the time of sentencing, with accurate and specific information regarding post-sentence and appeal rights, we are troubled by the trial court’s failure to do so in this case. Therefore, we conclude that the failure of the trial court to provide notice of the 10-day deadline by which to file a post-sentence motion and the 30-day time limit by which to take an appeal constituted a breakdown in the judicial system. **See Patterson**, 940 A.2d at 498 (stating, a breakdown in the judicial system occurs when a trial court, at the time of sentencing, “either failed to advise [a defendant] of his [or her] post-sentence or appellate rights or misadvised him [or her]”).

Typically, an appellate court may not enlarge the time for filing a notice of appeal. Pa.R.A.P. 105(b); **see also Patterson**, 940 A.2d at 498. An appellate court, however, may grant relief “in the case of fraud or breakdown in the processes of the court.” **Patterson**, 940 A.2d at 498. In the case *sub*

judice, the trial court twice failed to advise Appellant of his post-sentence and appeal rights after imposing a sentence upon Appellant. Therefore a breakdown in the judicial system occurred. Consequently, under the circumstances of the case *sub judice*, we deem Appellant's notice of appeal filed on October 16, 2025, to be timely and proceed to entertain the merits of this appeal.

Appellant contends that the trial court violated his due process rights when it resentenced him to an increased term of incarceration after he expressed his frustration with the prosecution of his case. Appellant's Brief at 9. Appellant asserts that his expression of frustration, namely a letter he directed to the chief deputy prosecutor, did not amount to objective information regarding his case that permitted the trial court to impose an amended sentence after the Commonwealth filed a motion for reconsideration of the original sentence. ***Id.*** at 9-10. As such, Appellant challenges the trial court's authority to impose an amended sentence and, therefore, raises a legality of sentence claim. ***Commonwealth v. Prinkey***, 277 A.3d 554, 567-568 (Pa. 2022) (stating, a claim that "the resentencing court lacked authority to extend [the] term of incarceration beyond the length of [the] original sentence because[] no event occurred between the two sentencing hearings that could (or would) have justified the imposition of a lengthier sentence" raises an illegal sentencing claim); ***see also Commonwealth v. McFarland***, 311 A.3d 560, 2023 WL 8370237, at *4 (Pa. Super. filed Dec. 4, 2023) (unpublished memorandum) (explaining that, more recent decisions

consider a claim asserting judicial vindictiveness in resentencing to challenge the legality of sentencing). “Challenges to the legality of a sentence present pure questions of law. Our standard of review, therefore, is *de novo* and our scope of review is plenary.” ***Commonwealth v. Asbury***, 299 A.3d 996, 998 (Pa. Super. 2023).

In ***Prinkey, supra***, our Supreme Court reiterated that “the existence of retaliatory motivation[, *i.e.*, vindictiveness,] would, of course, be extremely difficult to prove in any individual case[.]” ***Prinkey***, 277 A.3d at 564 (original brackets omitted), *citing* ***North Carolina v. Pearce***, 395 U.S. 711, 725 n.20 (1969), *overruled on other grounds by* ***Alabama v. Smith***, 490 U.S. 794 (1989). As such, a presumption that the lengthier sentence is unconstitutional arises “in the absence of an on-the-record statement [by the trial court] that the increased term of incarceration was the product of objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding.” ***Prinkey***, 277 A.3d at 565 (original quotation marks omitted), *citing* ***Pearce***, 395 U.S. at 726. “This legal paradigm emanates from the protections safeguarded to individuals by the Due Process Clause. The ***Pearce*** presumption creates a constitutional barrier to the [trial] court’s authority to impose a sentence found in a facially constitutional statute.” ***Prinkey***, 277 A.3d at 565.

The ***Pearce*** presumption, the ***Prinkey*** Court explained, “does not apply in every case where a convicted defendant receives a higher sentence on [resentencing].” ***Prinkey***, 277 A.3d at 565, *citing* ***Smith***, 490 U.S. at 799.

Rather, the **Pearce** presumption “applies only in circumstances in which there is a reasonable likelihood that the increase in sentence is the product of actual vindictiveness on the part of the sentencing authority. Where there is no reasonable likelihood of vindictiveness, the burden remains upon the defendant to prove actual vindictiveness.” **Prinkey**, 277 A.3d at 565 (citations, original quotation marks, and ellipses omitted). In other words, the **Pearce** presumption does not apply when there is objective evidence presented that an event occurred post-original sentencing that “makes it likely that the [trial] court obtained new details about the defendant’s moral character and suitability for rehabilitation.” **Id.** (original quotation marks and citation omitted).

As discussed *supra*, Appellant was sentenced on July 21, 2025. Shortly after his sentencing, the district attorney’s office for York County received a letter written by Appellant and directed to the chief deputy prosecutor. As the Commonwealth explained, the letter did not exist at the time of the July 21, 2025 sentencing hearing. N.T., 8/19/25, at 3. Appellant acknowledged that he wrote the letter. **Id.** at 2-3; **see also** Appellant’s Brief at 11. The trial court summarized the content of the letter as follows:

[Appellant] referred to [the chief deputy prosecutor] - a respected prosecuting attorney of this Commonwealth, as a miserable pig of a woman and a white devil. And he said - and I quote, I have a private investigator watching you. [How do] you think that I knew you had a daughter and drive - and then I am not going to say, but a specific type of car, which is the type of car this prosecutor drives.

. . .

[Appellant] refers to [the chief deputy prosecutor] as Ms. Piggy, which is highly inappropriate, especially because she had nothing to do with the case except for she was in the courtroom at the time of sentencing.

N.T., 8/19/25, at 4; **see also** Commonwealth's Motion for Reconsideration of Sentence, 7/29/25, at Exhibit B. The trial court characterized Appellant's letter as "a veiled threat" against the chief deputy prosecutor. N.T., 8/19/25, at 4 (stating, I don't know how you want me to take that as anything other than a veiled threat. There is no other way to take that."); **see also** Commonwealth's Motion for Reconsideration of Sentence, 7/29/25, at Exhibit B (stating, "You [(referring to the chief deputy prosecutor)] or no other [district attorney] puts fear in my heart. I will go to war with each and every one of you.").

Upon review, we find that the trial court, prior to amending Appellant's sentence, received objective evidence of an event, namely the sending of a letter by Appellant to the chief deputy prosecutor, that occurred after the trial court sentenced Appellant on July 21, 2025. The content of this letter provided the trial court with new details about Appellant's moral character and his suitability for rehabilitation. Under these circumstances, the **Pearce** presumption of vindictiveness did not exist, and the burden fell on Appellant to demonstrate that the trial court acted in a vindictive manner when it resentenced him on August 19, 2025.

At the August 19, 2025 sentencing hearing, Appellant offered the following explanation for his action,

I was just frustrated, honestly. I didn't - like, I was upset about the whole thing. It was a mistake. I wasn't really meaning, like, to threaten anybody. I was just frustrated because I had a whole different plan in my head and it just - it was just out of frustration.

N.T., 8/19/25, at 2-3. Appellant asserts that his statement of frustration was ignored by the trial court when it fashioned the amended sentence. Appellant contends that the only rationale to explain the imposition of what he describes as an "excessive sentence" is that the trial court acted out of vindictiveness towards him. We disagree.

The trial court aptly found, and the record supports, that Appellant's letter was a veiled threat to bring harm to the chief deputy prosecutor for what Appellant believed was her role in trial court fashioning the terms of his original sentence. This letter, which was written after Appellant's original sentencing hearing on July 21, 2025, resonates as to his moral character and the length to which he will "wage war" on the chief deputy prosecutor. Appellant asks this Court to find that the trial court acted with pure vindictiveness when it resentenced him simply because he believed his declaration of frustration presented a viable excuse for his actions and required no further punishment for his actions. We cannot agree, nor does the record support, that Appellant satisfied his burden of showing vindictiveness on the part of the trial court in fashioning its amended sentence. The trial court received objective evidence after Appellant's original sentencing that supports its decision to impose an amended and enhanced sentence.

We are constrained, however, to vacate that portion of Appellant's amended sentence that imposed no further penalty for his conviction of Count 4 - intentionally possessing a controlled substance - cocaine because this portion of the amended sentence constitutes an illegal sentence.¹¹ **See Commonwealth v. Infante**, 63 A.3d 358, 363 (Pa. Super. 2013) (stating that, "[a]s long as the reviewing court has jurisdiction, a challenge to the legality of the sentence is non-waivable and the court can even raise and address it *sua sponte*").

The Commonwealth proceeded to a verdict on the drug charges (Count 3 - manufacture, delivery, or possession with the intent to manufacture or deliver a controlled substance – cocaine and Count 4 - intentionally possessing a controlled substance – cocaine) based upon Appellant's possession of, and use of, cocaine on August 11, 2023. N.T., 3/11/25, at 183-184, 220-221 (instructing the jury that Appellant "is charged with unlawfully possessing cocaine" and "is charged with unlawfully possessing cocaine with the intent to deliver"). In its amended sentence, the trial court imposed a term of incarceration of three to six years on Count 3 and no further punishment on Count 4. Appellant's conviction of Count 4 - intentionally possessing a controlled substance – cocaine merged for sentencing purposes with his conviction of Count 3 - manufacture,

¹¹ We review the legality of a sentence *de novo*. **Commonwealth v. Prinkey**, 277 A.3d 554, 564 (Pa. 2022) (stating, "all legality challenges implicate a question of law, which is reviewed by appellate courts *de novo*").

delivery, or possession with the intent to manufacture or deliver a controlled substance – cocaine since both charges stemmed from the same act of possession, namely cocaine. **See Commonwealth v. Murphy**, 592 A.2d 750, 753 (Pa. Super. 1991) (stating, the trial court imposed an illegal sentence when it failed to merge “for sentencing purposes the crimes of possession of controlled substances and possession with intent to deliver since both charges stemmed from the same act of possession”); **see also** 42 Pa.C.S.A. § 9765 (explaining, “No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. Where crimes merge for sentencing purposes, the [trial] court may sentence the defendant only on the higher graded offense.”). Because the trial court imposed an amended sentence of no further punishment on Count 4, there is no need to remand this case for resentencing since our finding that the sentence imposed on Count 4 was illegal does not disturb the trial court’s overall sentencing scheme, namely the sentence imposed on Count 3.¹²

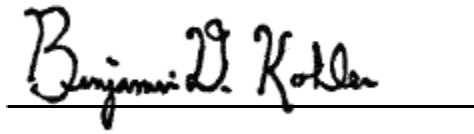
¹² Our Supreme Court, as well as this Court, has held that a sentence of “no further penalty” is a sentence, and it must be vacated when imposed on a conviction that merges with another offense for which a defendant is also sentenced. **See Commonwealth v. Hill**, 238 A.3d 399, 411 (Pa. 2020); **see also Commonwealth v. Westlake**, 295 A.3d 1281, 1289 (Pa. Super. 2023) (stating that, because the defendant’s sentences for DUI offenses merged for the purpose of sentencing, the sentence of no further penalty must be vacated).

Amended judgment of sentence on Count 3 affirmed. Amended judgment of sentence on Count 4 vacated. Jurisdiction relinquished.

Judge Kunselman joins this Opinion.

Judge Bowes concurs in the result.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/05/2026