

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
VICTOR ALEXANDER MORALES	:	
	:	
	:	
Appellant	:	No. 3146 EDA 2024

Appeal from the Judgment of Sentence Entered October 24, 2024
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0001358-2020

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

MEMORANDUM BY PANELLA, P.J.E.:

FILED OCTOBER 8, 2026

Victor Alexander Morales appeals from the judgment of sentence of 1 to 3 years' incarceration imposed following the revocation of his probation. After review, we find that Morales's revocation sentence is illegal pursuant to 42 Pa.C.S.A. § 9771(c), as amended by Act 44 of 2023 ("Act 44"). We therefore vacate the revocation sentence and remand for resentencing.

On September 8, 2020, Morales entered a guilty plea to one count of child pornography.¹ All other charges were dismissed. On December 21, 2020, the trial court sentenced Morales to 1 to 3 years' imprisonment, to be followed by 48 months' probation.

¹ 18 Pa.C.S.A. § 6312(d).

Relevant to this appeal, certain special conditions were imposed on his probation, including but not limited to, undergoing drug and alcohol, psychological, and sex offender evaluation, counseling, and treatment.

Morales was also directed as follows:

The defendant shall register with the Pennsylvania State Police consistent with Megan's Law and SORNA. He shall not possess or subscribe to any sexually oriented or sexually stimulating material, which shall include mail, computer or television shows[,], nor patronize any place where such material or entertainment is available. He shall not have any unsupervised contact with any minor children unless ordered by the Court upon recommendation by a certified mental health profession[al] that such contact is appropriate, and may not visit places where children congregate such as, but not limited to, schools, playgrounds, swimming pools, arcades and carnivals, etc. He shall refrain from participation in any youth group or youth group activity such as Boy Scouts, etc. He may not accept employment or volunteer for any activity directly or indirectly involving children such as a school bus driver, daycare worker, coach, costume character or Sunday school teacher, etc., and he shall refrain from using the computer or any smart phone device to access illicit content [on] the Internet[,], and give the Probation Department and the Pennsylvania State Parole Board access to his computer and/or any electronic device that has access to the Internet to determine whether this condition is complied with.

Special Conditions, 12/21/20.

In December 2023, Morales was released from state prison and began his probationary sentence. In September 2024, a violation warrant was entered against Morales, stating Morales had violated the following conditions of his probation:

Condition 1 - Non-Compliance with verbal/written instructions

Condition 13 - Failure to obey other imposed conditions

Details for Condition 13: The defendant failed to comply with sex offender treatment as directed. The defendant failed to refrain

from unsupervised contact with juveniles. The defendant failed to refrain from Internet access.

Probation/Parole Intermediate Punishment Violation Warrant, 9/11/24.

On October 24, 2024, in light of the alleged violation of probation, a **Gagnon II**² hearing was held, during which Morales contested the violation. The Commonwealth first called Dr. Veronique Valliere, who provided clinical services to Morales during his treatment at Forensic Treatment Services. Dr. Valliere testified that Morales “did poorly” during his treatment, and was “generally difficult”, “fairly dismissive”, and “somewhat arrogant.” N.T., **Gagnon II** and Sentencing Hearing, 10/24/24, at 5. Dr. Valliere detailed that they struggled with him finding employment, he was not getting appropriate mental health treatment, and that “approximately around April, [Morales] started deteriorating even more.” **Id.** Specifically, despite upping his treatment, Morales’s “behavior got more and more problematic”:

he was engaging in some tremendously high-risk behaviors and rule violations, like masturbating to memories of child sex abuse material content. He was following minors and sexualizing them and masturbating to them. He was hanging at vape shops where minors were congregated. He got on the internet.

Id. The treatment center increased his monitoring but Morales continued in the behavior described above, which he admitted under polygraph examination. **See id.** at 5-6. Due to becoming extremely high risk, the treatment center made numerous recommendations, including calling group

² **Gagnon v. Scarpelli**, 411 U.S. 778 (1973).

members and utilizing group therapy, but Morales failed to follow the recommendations. **See id.** Accordingly, the treatment center found he was at a high risk to reoffend and they could not manage him in the community, so he was unsuccessfully discharged from treatment. **See id.**

Next, Officer Anthony Mondello, Morales's probation officer, testified. Officer Mondello testified that he often attends treatment groups along with the offenders that he supervises in order to keep abreast of their treatment. **See id.** at 14. Officer Mondello corroborated Dr. Valliere's observations. **See id.** Officer Mondello added that he heard Morales admit during a group treatment that he followed two minors, and that when asked how long he followed them, Morales stated he followed the minors for about ten minutes; which Officer Mondello noted was "a long time to follow two little kids on the street." **Id.** at 14-15. Officer Mondello explained that sex-offender treatment is about self-management and taking responsibility for using tools to manage yourself, and concluded "[t]hat's the bottom line, [] he was not doing that." **Id.** at 15.

Following the hearing, the court found Morales had violated his probation. The court then resentenced Morales to 18 to 36 months' in state prison, to be followed by 12 months' probation. The court entered its sentencing order that same day, revoking Morales's probation, resentencing him, and imposing all original conditions.

On November 3, 2024, Morales filed a motion for modification of sentence, arguing the sentence was excessively severe because of the following mitigating factors (1) the violations did not involve any new convictions; (2) the violations did not involve any actual interactions with young or underage persons; and (3) the violations were reported by Morales to persons in authority during sex offender treatment, demonstrating compliance with the imperative to be open and honest. **See** Motion for Modification, 11/3/24, at 2-3. The trial court denied the motion. This timely appeal followed.³ Morales and the trial court complied with Rule 1925. **See** Pa.R.A.P. 1925(a), (b).

Morales raises the following issues on appeal:

1. Did the [revocation c]ourt unlawfully sentence [Morales for technical probation violations to a period of total confinement of not less than eighteen months nor more than thirty-six months for technical probation violations in that the sentence exceeds the allowed sentences set forth in 42 Pa.C.S.A. § 9771(c)(2)?
2. Did the [revocation c]ourt abuse its discretion in sentencing [Morales] for technical probation violations to a period of total confinement of not less than eighteen months nor more that thirty-six months, which is in the aggravated Sentencing

³ This panel initially affirmed the judgment of sentence finding both of Morales's claims challenged the discretionary aspects of sentence, and were both without merit. In doing so, we relied on case law stating that a challenge under 42 Pa.C.S.A. § 9771 is a challenge to the discretionary aspects of sentence. However, as explained in more detail below, Section 9771 was amended after that case law, and a few months prior to Morales's resentencing in this matter. Accordingly, this Court granted reconsideration of the instant appeal on September 11, 2025. With the above in mind, we proceed to reconsider Morales's issues.

Guidelines range, in that it is manifestly excessive and the [trial c]ourt failed to consider on the record the appropriate factors?

Appellant's Brief, at 5.

Morales first argues that the revocation court unlawfully sentenced him for a technical probation violation to a period of total confinement that exceeds the allowed sentences set forth in Section 9771(c)(2).

Initially, we observe that an *en banc* panel of our Court recently held "a claim that the trial court failed to adhere to section 9771(c) when resentencing a probationer to a period of total confinement implicates the legality of the sentence, not its discretionary aspects." ***Commonwealth v. Seals***, 353 A.3d 747, 763 (Pa. Super. 2026) (*en banc*). The ***Seals*** panel further held, "Section 9771(c)(2) specifically delineates the maximum allowable sentence of total confinement for a first and second technical violation. [42 Pa.C.S.A.] § 9771(c)(2). Any sentence imposed in excess of the statutory maximum is unquestionably illegal." ***Id.*** at 764 (citation omitted).

In sentencing Morales, the court applied the version of 42 Pa.C.S.A. § 9771 ("Modification or revocation of order of probation") that was effective from December 18, 2019 to June 10, 2024, which only limited the court's sentencing alternatives upon revocation to "the same as were available at the time of initial sentencing." 42 Pa.C.S.A. § 9771(b) (effective: December 18, 2019 to June 10, 2024).

However, Section 9771 was significantly amended to institute "a presumption against total confinement for technical violations of probation,"

and to limit the length of a sentence of total confinement to fourteen days upon revocation for a first technical violation. 42 Pa.C.S.A. § 9771(c). Relevantly, Section 9771 now provides that “[i]f a court imposes a sentence of total confinement following a revocation, ... [t]he defendant shall be sentenced as follows: (i) For a first technical violation, a maximum period of 14 days.” **Id.** at § 9771(c)(2)(i). The amendments to Section 9771 “apply to individuals sentenced or resentenced on or after” its effective date. **See** § 5 of 2023, Dec. 14, P.L. 381, No. 44 (effective June 11, 2024).

It is uncontested that the instant revocation sentence of 1 to 3 years’ imprisonment was for a first technical probation violation. It is also clear from the record that the revocation sentence was imposed after the effective date of Act 44’s amendments to Section 9771. Accordingly, the sentence imposed is illegal as it exceeds the fourteen-day maximum allowed by our legislature.

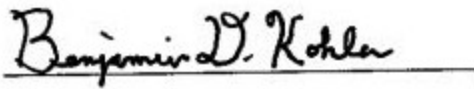
This case is deeply troubling especially in light of Morales’ admission that he followed two minors for about ten minutes. However, due to the amendments to Section 9771 enacted by the Legislature, and our decision in **Seals**, we are constrained to conclude Morales’ sentence must be vacated and the case remanded for resentencing consistent with 42 Pa.C.S.A. § 9771(c).⁴

⁴ In accordance with 42 Pa.C.S.A. § 9771(c)(2)(iv), additional confinement “not to exceed 30 days” is also available to the trial court if evaluation or treatment is found to be needed.

Due to our disposition, we need not reach the second claim challenging the discretionary aspects of the sentence imposed.

Judgment of sentence vacated. Case remanded for resentencing.
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: 10/8/2026