

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
MICHAEL P. CRUM	:	
	:	
Appellant	:	No. 1332 WDA 2025

Appeal from the Judgment of Sentence Entered August 7, 2025
In the Court of Common Pleas of Venango County Criminal Division at
No(s): CP-61-CR-0000512-2022

BEFORE: BOWES, J., OLSON, J., and BENDER, P.J.E.

MEMORANDUM BY BOWES, J.:

FILED: August 20, 2026

Michael P. Crum appeals from the judgment of sentence of two and one-half to seven years of imprisonment imposed after he entered a guilty plea to one count of driving under the influence of alcohol ("DUI") – highest rate of alcohol, graded as a felony of the third degree.¹

On October 8, 2021, Appellant was involved in an accident on Main Street in Venango County. A voluntary blood draw revealed that his blood alcohol content was above the legal limit of 0.08% at 0.2%. He was charged in the instant case with DUI – highest rate of alcohol. After being arraigned and released on bail, he failed to appear at his preliminary hearing in October 2022, which was held *in absentia*. Appellant absconded and could not be

¹ A third or subsequent offense under § 3802(c) is graded as a felony of the third degree. **See** 75 Pa.C.S. § 3803(b) (4.1).

located until March 6, 2025, when he was apprehended, his bail was revoked, and he was placed in the Venango County Jail. On April 28, 2025, he entered his guilty plea in the instant matter.

At the plea hearing, the Commonwealth and Appellant presented the court with an agreement that Appellant would plead guilty to DUI and, in exchange, the Commonwealth would *nolle pros* the remaining charges and recommend a fourteen-month sentence.² During the plea colloquy, the trial court asked Appellant: “Do you understand that, a recommendation by the Commonwealth is exactly that, a recommendation by the Commonwealth to the court and that I am not bound by or another sentencing judge is not bound to follow the recommended sentence?” **See** N.T. Plea Colloquy, 4/28/25, at 22. When Appellant answered in the affirmative, the court further inquired: “Okay and do you understand that if the court does not concur in the recommended sentence, that is not a basis for which to withdraw your plea, nor is it a grounds for purpose of appeal?” **Id.** After Appellant confirmed his understanding, the court accepted the plea and ordered a pre-sentence investigation (“PSI”).

² When presented with the written plea agreement, the Honorable Justin S. Fleeger recognized that, while serving as District Attorney before Appellant absconded, he had personally signed Appellant’s plea offer. Judge Fleeger immediately directed that a new plea form be signed and advised Appellant that he would grant a motion for recusal. After a brief off-record discussion with counsel, Appellant declined to request recusal. Judge Fleeger nonetheless reassigned the case to the Honorable Matthew T. Kirtland for sentencing. **See** N.T. Plea Colloquy, 4/28/25, at 11.

Appellant appeared at his scheduled sentencing hearing with substitute counsel who sought a continuance so that previous counsel could be present at sentencing. The court granted the motion and reiterated to Appellant that the court “is not bound by the recommendation set forth in the plea agreement.” Order, 7/1/25.

At the subsequent sentencing hearing, the court confirmed that it had reviewed the PSI report. **See** N.T. Sentencing 8/7/25, at 10. Although the instant offense was chronologically Appellant’s fourth DUI, by the time he was apprehended and sentenced, it counted as his fifth DUI sentence. Appellant had been convicted of DUI in 2014 and 2019. He was charged with a DUI in Clarion County in January 2020, and that case remained unresolved for nearly four years. He ultimately pled guilty to the Clarion County offense in April 2024 and was sentenced to ninety days to two years of imprisonment.³ While a fugitive from justice in both Clarion and Venango Counties, Appellant committed another DUI offense in September 2022, this time in Butler County.⁴ (“Butler County DUI”). He pled guilty to this offense in March 2025 and was sentenced to six to twenty-three months of imprisonment, concurrent with his Clarion County sentence, with six months of credit for time served.

³ The publicly accessible court docket indicates that Appellant did not appear for the preliminary hearing.

⁴ Again, Appellant failed to appear for the preliminary hearing for this DUI as well.

Two days following his guilty plea in the Butler County DUI, he was apprehended on the instant charges.

The court noted that the offense gravity score was six and the prior record score was two. The court acknowledged that pursuant to 75 Pa.C.S. § 3804(c)(3)(i), Appellant's offense carried a statutory minimum sentence of one year, and that the sentencing guidelines called for a standard-range minimum sentence of nine to sixteen months, plus or minus six months. ***Id.*** at 11. The Commonwealth, consistent with the plea agreement, recommended a prison sentence with a minimum term of fourteen months, *i.e.*, two months in excess of the mandatory minimum, based upon Appellant's violation of his bail conditions and the fact that this was his fifth DUI conviction. ***Id.***

Defense counsel advised the court that Appellant had been accepted into the Erie City Mission Program to address his addiction and recovery. ***Id.*** at 12. During his allocution, Appellant requested the court allow him to complete that program concurrently with the fourteen-month sentence recommended by the Commonwealth. ***Id.*** at 13-14. In response, the court observed as follows:

[Y]ou had a point two BAC. There was an accident. The argument that you would be better suited to remain locally to get treatment here, the [c]ourt's not going to keep you locally. This is a state sentence. In fairness, based on your prior history, your continued abuse of alcohol, your continued [choices] to drink and drive, the standard range is not appropriate either. With such a significantly high BAC with an accident, you haven't stopped. Your words here today that you want an opportunity and that you know you need

to stop, there has been plenty of opportunity for you to stop. You could have stopped after your ARD, for instance.⁵ Which was for a DUI. Again, then you've actually had convictions and each time you would have received treatment. You would have received the care, but you didn't stop. And then in this case, you were on bail for this case and then you abscond[ed]. You abscond for a long period of time. Again, that is not something that we should keep you here locally for. You have demonstrated that what we have here locally is not appropriate for you. So a state prison sentence is appropriate. I think on the continued nature of all of these, again, the standard range is not appropriate and I don't believe the aggravated range is appropriate either in this case. I indicated on July 1, 2025 when you were before this [c]ourt that the [c]ourt was not bound by the recommendation set forth in the plea and therefore, I am not following it. I am not bound by it. I have given you that opportunity to have that conversation with counsel and yet, here we are.

Id. at 18-19. The court proceeded to sentence Appellant to a term of two and one-half to seven years of imprisonment. **Id.** at 19.

Appellant timely filed a post-sentence motion requesting that his "sentence be modified to reflect the sentence recommendation as provided within the plea offer." **See** Post Sentence Motion, 8/7/25, at 2. The court denied the motion. Appellant then filed a timely notice of appeal and complied with the court's order to file a concise statement of errors pursuant to Pa.R.A.P. 1925(b). The trial court filed a Rule 1925(a) opinion in response.

Appellant presents us with the following issue:

⁵ An ARD (Accelerated Disposition) is a pre-trial diversionary program available in Pennsylvania for certain first-time offenders, including first-offense DUI defendants. Acceptance of an ARD does not constitute a prior conviction for purposes of sentencing on future DUI convictions. **See, Commonwealth v. Shifflett** 335 A.3d 1158, 1172 (Pa. 2025).

The sentence in this case is manifestly excessive and clearly unreasonable in that the court handed down a sentence in the aggravated range of the sentencing code without providing reasons and the plea bargain in this case provided for a much lower period of incarceration, and failed to provide for inpatient treatment.

Appellant's brief at 2.

Appellant's argument implicates the discretionary aspects of sentencing. We begin our review mindful of the following legal principles. "An appellant is not entitled to the review of challenges to the discretionary aspects of a sentence as of right." ***Commonwealth v. Bowens***, 265 A.3d 730, 762–63 (Pa.Super 2021) (*en banc*) (cleaned up).

Rather, an appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction. We determine whether the appellant has invoked our jurisdiction by considering the following four factors: (1) whether appellant has filed a timely notice of appeal; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence; (3) whether appellant's brief has a fatal defect; and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code.

Id. at 763 (cleaned up).

A substantial question is raised when an appellant sets forth a colorable argument that his sentence is either: "(1) inconsistent with a specific provision of the sentencing code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***See Commonwealth v. Radecki***, 180 A.3d 441, 468 (Pa.Super. 2018) (cleaned up). In addressing whether an appellant has presented a substantial question, "[o]ur inquiry must focus on the reasons for which the appeal is sought, in contrast to the facts underlying

the appeal, which are necessary only to decide the appeal on the merits.” ***Commonwealth v. Rhoades***, 8 A.3d 912, 916 (Pa.Super. 2010) (cleaned up). To determine whether an appellant has raised a substantial question, our review is generally confined to the appellant’s Rule 2119(f) statement, although we may also consider the statement of questions presented. ***See Commonwealth v. Dodge***, 77 A.3d 1263, 1271 (Pa.Super. 2013) (“[A] court may look to both Pa.R.A.P. 2119(f) statement and statement of questions presented to determine if substantial questions are raised[.]” (citation omitted)).

Here, Appellant timely appealed and preserved his challenge to the discretionary aspects of his sentence in his post-sentence motion. His brief includes a Pa.R.A.P. 2119(f) statement, asserting that he raised a substantial question because: (1) the court imposed a sentence above and beyond the aggravated range with no statement of reasons therefor; (2) the period of incarceration went beyond what was agreed to by the Commonwealth as a part of the plea bargain; and (3) the sentence was manifestly excessive because it was “not individualized,” in violation of 42 Pa.C.S. § 9781’s requirement that a sentence not be clearly unreasonable. ***See*** Appellant’s brief at 4.

At the outset, we dispose of Appellant’s contention that a substantial question arises because the period of incarceration imposed exceeded the sentence recommended by the Commonwealth as part of the plea agreement.

This claim satisfies neither of the ***Radecki*** prongs. No provision of the sentencing code obligates a court to adopt the Commonwealth's sentencing recommendation, and a court's decision to impose a sentence outside of a recommendation is therefore not "inconsistent with a specific provision of the sentencing code." Further, adherence to such a recommendation is not a fundamental norm underlying the sentencing process. On the contrary, the settled rule is that the terms of a plea agreement involving mere recommendations are not binding upon the court, which may reject those terms if it believes they do not serve justice. ***See Commonwealth v. Steckley***, 128 A.3d 826, 835 (Pa.Super. 2015). A claim premised solely on the court's departure from a nonbinding recommendation thus identifies no norm the court was obliged to observe. Appellant offers only the bald assertion that the court's failure to sentence him in accordance with the recommendation raises a substantial question, without articulating any provision of the sentencing code or sentencing norm that the court's action contravened. ***See Commonwealth v. Neafie***, 341 A.3d 813, 818 (Pa.Super 2025) (finding no substantial question where the appellant asserted his sentence was excessive but failed to identify how the court's action violated a specific provision of the sentencing code or a fundamental norm of the sentencing process). Appellant has therefore failed to raise a substantial question as to this claim, and we do not consider it further.

Appellant's remaining claims, by contrast, present substantial questions for our review. Considered together, as Appellant presents them, Appellant alleges that the trial court imposed a sentence above the aggravated range of the guidelines without stating adequate reasons therefor on the record, and that the resulting sentence is manifestly excessive and clearly unreasonable because it was not individualized to Appellant's circumstances and rehabilitative needs, including his need for inpatient treatment. **See Commonwealth v. Simpson**, 829 A.2d 334, 338 (Pa.Super. 2003) (holding that an allegation that the trial court did not sufficiently state the reasons for its sentence on the record raises a substantial question); **Commonwealth v. Caldwell**, 117 A.3d 763, 770 (Pa.Super. 2015) (*en banc*) (holding that an excessiveness claim raised in conjunction with an assertion that the court failed to consider the defendant's rehabilitative needs presents a substantial question); **Commonwealth v. Mulkin**, 228 A.3d 913, 916 (Pa.Super. 2020) (finding substantial question presented by claim that court imposed aggravated-range sentence without considering mitigating factors). We therefore proceed to the merits of these claims.

The following principles govern our review of Appellant's challenges:

To prevail, Appellant must demonstrate that the sentencing court abused its discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, Appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Solomon, 247 A.3d 1163, 1168 (Pa.Super. 2021) (cleaned up). Where, as here, the trial court has the benefit of a PSI report, “it is presumed that the court is aware of all appropriate sentencing factors and considerations, and that where the court has been so informed, its discretion should not be disturbed.” ***Commonwealth v. Torres***, 303 A.3d 1058, 1065 (Pa.Super. 2023) (cleaned up). “We cannot re-weigh the sentencing factors and impose our judgment in the place of the sentencing court.” ***Commonwealth v. Macias***, 968 A.2d 773, 778 (Pa.Super. 2009).

While it is broad, “the trial court’s discretion is not unfettered.” ***Commonwealth v. Coulverson***, 34 A.3d 135, 144 (Pa.Super. 2011). The sentence imposed “should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant.” 42 Pa.C.S. § 9721(b). A sentencing court must weigh the specific facts of the offense alongside the defendant’s character, looking to factors such as criminal history, age, individual traits, and prospects for rehabilitation. ***See Commonwealth v. Taylor***, 277 A.3d 577, 593 (Pa.Super. 2022). Furthermore, “the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed.” 42 Pa.C.S. § 9721(b). When deviating from the sentencing guidelines, the sentencing judge must state of record the factual basis and specific reasons which compelled him or her to deviate from

the guideline ranges. **See *Commonwealth v. McLaine***, 150 A.3d 70, 76 (Pa.Super 2016).

With this background in mind, we turn to Appellant's arguments, which we address together. Appellant observes that the guidelines called for a standard-range minimum of nine to sixteen months, and an aggravated-range minimum of no more than twenty-two months, yet the court imposed a minimum sentence of thirty months while stating only that "the standard range is not appropriate and [this court does not] believe that the aggravated range is appropriate either in this case." **See** Appellant's brief at 6. In Appellant's view, this statement announced a departure from the guidelines without supplying any reasons for it. Relatedly, he maintains that the resulting sentence was not individualized to his rehabilitative needs, noting that despite this being his fifth DUI conviction, he had never participated in a treatment program, his counsel advised the court that he had been accepted into an inpatient rehabilitation program in Erie, and a sentence of state incarceration would foreclose his participation in that program. **Id.** at 6-7.

These assertions are belied by the record. As reproduced above, the court explicitly detailed at the sentencing hearing why it chose to depart from the guidelines. In particular, it cited Appellant's 0.2% BAC, the accident occasioned by his intoxication, his four prior DUIs, his failure to reform despite the treatment opportunities attending his prior convictions, and his flight from prosecution while on bail. **See** N.T. Sentencing, 8/7/25, at 18-19. Far from

evinced a failure to consider Appellant's rehabilitative needs, or a decision that was the product of partiality, prejudice, bias, or ill will, the court's explanation demonstrates that it cogently explained why Appellant's particular, individualized conduct warranted a lengthy term of incarceration. **See Solomon**, 247 A.3d at 1168; **McLaine** 150 A.3d at 76.

The court also did not overlook Appellant's request for inpatient treatment. In fact, it expressly addressed, and rejected, Appellant's request to participate in the Erie rehabilitative program, explaining that each of Appellant's prior convictions had afforded him the opportunity for treatment and care, that "there has been plenty of opportunity for [him] to stop," and that his conduct demonstrated that local resources were "not appropriate" for him. **See** N.T. Sentencing, 8/7/25, at 18-19. Moreover, the court's review of the PSI report gives rise to the presumption that it was aware of and weighed all relevant mitigating circumstances, including Appellant's history of alcohol addiction and his rehabilitative needs. **See Torres**, 303 A.3d at 1065.

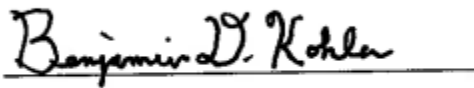
That the court weighed these considerations differently than Appellant would have preferred renders the sentence neither insufficiently individualized nor manifestly excessive, as we cannot re-weigh the sentencing factors and impose our judgment in the place of the sentencing court. **See Macias**, 968 A.2d at 778. The court measured the circumstances of the offense, the character of Appellant, his prior record, and his rehabilitative needs, and

stated on the record the factual basis and specific reasons compelling its deviation from the guidelines. We discern no abuse of discretion.

In sum, the court considered all necessary sentencing factors and properly placed the reasons for the sentence on the record, hence Appellant's sentencing claims reveal no abuse of discretion. Accordingly, we affirm the 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: 8/20/2026