

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
RAFAEL VANEGAS	:	
	:	
Appellant	:	No. 633 EDA 2025

Appeal from the Judgment of Sentence Entered December 16, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0007813-2022

BEFORE: NICHOLS, J., MURRAY, J., and BENDER, P.J.E.

CONCURRING AND DISSENTING MEMORANDUM BY BENDER, P.J.E.:

FILED OCTOBER 13, 2026

I join the Majority on all issues except the claim that the trial court erred by failing to order a pre-sentence investigation ("PSI") report. Because I would remand for resentencing, I therefore dissent as to that aspect of my learned colleagues' memorandum.

I agree that "the purpose of the PSI report is to assist the sentencing court with crafting an individualized sentence." Maj. Memo at 15. Here, the failure to order a PSI prevented the court from imposing an individualized sentence.¹ Rule of Criminal Procedure 702(A)(2) expresses a preference for

¹ The trial transcript reflects that the consecutive sentences were imposed as a symbolic punishment. The trial court remarked that following the verdict Appellant "grabbed ... defense counsel's table, [and] flipped it onto its side," causing damage to various components used to connect computers and
(Footnote Continued Next Page)

PSI reports and requires the judge to “place on the record the reasons for dispensing with the pre-sentence investigation report if the judge fails to order a pre-sentence report” where “incarceration for one year or more is a possible disposition under the applicable sentencing statutes[.]” Pa.R.Crim.P. 702(A)(2),(a).

The Majority explains that, because Appellant faced a mandatory minimum sentence of life imprisonment without the possibility of parole (“LWOP”), “the sentencing court lacks discretion in crafting a sentence.” Maj. Memo at 16. Thus, it appears the Majority finds that the mandatory nature of the sentence constitutes a valid reason for declining to order a PSI.

Even if we were examining a sentence of LWOP without consecutive penalties—which is not the case here—I question this logic. The Majority overlooks other portions of Rule 702, namely, that a PSI “shall also include a victim impact statement as provided by law.” Pa.R.Crim.P. 702(A)(4). Our caselaw “appear[s] to restrict the court’s discretion to dispense with a PSI report to circumstances where the necessary information is provided by another source.” **Commonwealth v. Goggins**, 748 A.2d 721, 729 (Pa. Super. 2000) (*en banc*). Thus, in cases where a victim is authorized by law to address the court, a trial court is required to obtain that information from

microphones. N.T., Vol. VIII, 12/16/24, at 4. The court said that it “took three sheriffs wrestling with [Appellant] to get him out of the room.” **Id.** The sentence was designed “to show ... to anyone who would look at this sentence [that] you behaved in a manner that was so outrageous, so beyond the pale of how people that are civilized act in a courtroom that the sentence is intended to reflect that.” **Id.** at 16.

the victims. **See *Commonwealth v. Henck***, 342 A.3d 726, 741 (Pa. Super. 2025) (holding that “sentencing court in this case had sufficient information to form a fully informed sentencing decision, despite there being no PSI” because, *inter alia*, the victim “testified at ... sentencing”). In fact, the Crime Victims Act grants the following right to victims of crime:

(5) To have opportunity to offer prior comment on the sentencing of a defendant or the disposition of a delinquent child, to include the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim’s family. The written statement shall be included in any predisposition or presentence report submitted to the court. Victim-impact statements shall be considered by a court when determining the disposition of a juvenile or sentence of an adult.

18 P.S. § 11.201. “Victim” as used in this section applies to this case. **See** 18 P.S. § 11.103 (defining “victim” to mean “family member of a homicide victim”). The Majority thus overlooks that sentencing serves multiple functions.

In any event, the trial court imposed a consecutive sentence of 40 to 80 years. Thus, even if the mandatory nature of the LWOP sentence justified dispensing with a PSI, it cannot justify these consecutive and non-mandatory sentences that are separate from the mandatory sentence for first-degree murder; hence, the trial court abused its discretion. The Majority does not cite any “reasons for dispensing with the [PSI]” with respect to these

consecutive and non-mandatory sentences, presumably because it cannot.² Indeed, while the Majority claims to “discern no abuse of discretion in the trial court’s decision to proceed to sentencing without ordering PSI report,” Maj. Memo at 18, its analysis in truth is more in the nature of harmless error. Because Appellant will remain in prison for the rest of his life in any event, the Majority appears to view the consecutive sentences as irrelevant.

On that point, I note that Appellant could theoretically receive relief from his LWOP sentence, such as commutation or new legislation permitting the Board of Parole to consider parole. In those cases, the consecutive periods of incarceration would still presumably apply. The Majority asserts that “it would ... be necessary for the trial court to conduct a resentencing hearing and impose a new sentence, at which point a PSI report would be required” in the event “an appellate court were to overturn his first-degree murder sentence at a later date,” *id.* at 18 n.7, but that would be true only if an appellate court has jurisdiction to order a resentencing.

Accordingly, I would simply apply Rule 702, which does not create an exception for cases in which the trial court must impose a mandatory sentence of LWOP. Our Supreme Court has aptly summarized the underlying philosophy of the individualized sentencing scheme:

[S]entencing must result both from a consideration of the nature and circumstances of the crime as well as the character of the

² Instead, the Majority relies on a non-precedential memorandum reaching the same policy-based result. **See** Maj. Memo at 16-18. For the reasons expressed in this memorandum, I do not find that case persuasive.

defendant. The sentencer has broad discretion to choose a penalty from sentencing alternatives and the range of permissible confinements, provided the choices are consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant. **Discretionary sentencing, in sum, means that a defendant cannot be punished on the basis of the crime alone.**

Commonwealth v. Devers, 546 A.2d 12, 13 (Pa. 1988) (emphasis added).

The exclusion of any language from Rule 702 authorizing the trial court to dispense with a PSI compels my conclusion that the trial court abused its discretion. If consecutive sentences are to be imposed, the trial court must do so based on a balancing of all factors, aided by a PSI. I would therefore vacate and remand for resentencing.