

2026 PA Super 235

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

KRISTIAN A. CARWELL

Appellant

: No. 2494 EDA 2025

Appeal from the Judgment of Sentence Entered August 28, 2025
In the Court of Common Pleas of Monroe County
Criminal Division at No: CP-45-CR-0000738-2023

BEFORE: PANELLA, P.J.E., STABILE, J., and FORD ELLIOTT, P.J.E.*

OPINION BY STABILE, J.:

FILED OCTOBER 22, 2026

Appellant, Kristian A. Carwell, appeals from the judgment of sentence imposed on August 28, 2025, by the Court of Common Pleas of Monroe County following revocation of his probation. Upon review, we reverse the revocation order, vacate the August 28, 2025, violation of probation ("VOP") judgment of sentence, and reimpose Appellant's August 2023 sentence.

On August 3, 2023, Appellant pleaded guilty to one count of default in required appearance, 18 Pa.C.S.A. § 5124. He was sentenced to five years of probation, concurrent with his sentences on three Carbon County dockets (731 CR 2022, 728 CR 2022, and 729 CR 2022). On August 12, 2025, the Commonwealth filed a petition for violation of probation.

Following a hearing on August 28, 2025, the court found Appellant violated a specific term of his probation, revoked his probationary sentence,

* Retired Senior Judge assigned to the Superior Court.

and re-sentenced him to nine to 48 months of incarceration. This timely appeal followed.

Appellant raises the following issues for our review:

1. Whether the VOP court erred in finding a violation of probation conditions for possession of a narcotic and failure to update on change of residency, where the evidence was insufficient in that the only evidence was that the probationer had THC in his urine and was released from prison without a place to live[.]
2. Whether the VOP court erred when it sentenced Appellant to a period of total confinement without statutory authority to do so, as the trial court made no finding under 42 Pa.C.S.A. § 9771(c)(1) to overcome the presumption against incarceration and where none of the enumerated exceptions allowing incarceration had been met[.]
3. Whether the VOP court imposed an illegal sentence and failed to follow the recidivist philosophy dictated by the legislature's graduated sentencing scheme in 42 Pa.C.S.A. § 9771(c)(2) when the court stacked multiple technical violations in the Appellant's first probation violation hearing and resented Appellant, instead of imposing the 14-day maximum period of confinement for a first technical violation[.]

Appellant's Brief, at 5.

"In an appeal from a sentence imposed after the court has revoked probation, we can review the validity of the revocation proceedings, the legality of the sentence imposed following revocation, and any challenge to the discretionary aspects of the sentence imposed." ***Commonwealth v. Shires***, 240 A.3d 974, 977 (Pa. Super. 2020). Revocation of a probation sentence is a matter within the sound discretion of the trial court and will not be disturbed absent an error of law or an abuse of discretion. ***Id.*** It is well-established in our Commonwealth

that only upon proof of a violation of the “specified conditions” of a probation order may a court revoke the defendant’s probation. 42 Pa.C.S.A. § 9771(b). Our Supreme Court has held that “the VOP court must find, based on a preponderance of the evidence, that the probationer violated a specific condition or committed a new crime to be found in violation.” ***Commonwealth v. Foster***, [214 A.3d 1240, 1243 (Pa. 2019)] (cleaned up). Pennsylvania Rule of Criminal Procedure 708 likewise provides that probation shall not be revoked absent “a finding of record that the defendant violated a condition of probation[.]” Pa.R.Crim.P. 708(B)(2).

Commonwealth v. Baumann, 307 A.3d 1231, 1237 (Pa. Super. 2023).

Appellant argues that “[n]o evidence was introduced that these alleged violations were within the Appellant’s control, i.e. willful or flagrant.” Appellant’s Brief, at 25. We construe his argument as a challenge to the sufficiency of the evidence that he violated a specific condition of his probation.

Preliminarily, we must determine the specific conditions of Appellant’s probation, and whether he was informed of those conditions at the time of his initial sentencing. ***See Foster, supra***.

Appellant was sentenced to five years of probation. The order does not include any specific conditions of probation. Rather it states that Appellant is “subject to the rules, regulations and conditions authorized and adopted by [the trial court] in Administrative Order No. 97 AD 2021, a copy of which is available on www.monroepacourts.us and which shall be provided to

[Appellant] by his probation officer[.]” Sentencing Order, 8/3/24.¹ Further, the sentencing hearing was never transcribed, therefore, there is no transcript in the certified record.

In finding that Appellant violated a specific condition of probation, the trial court relied on testimony from Pennsylvania Board of Probation and Parole Agent Cameron Alber at the VOP hearing. Agent Alber testified that prior to Appellant’s release from incarceration on his Carbon County dockets, on July 25, 2025, he was given written instructions to report to the parole office in Scranton. N.T. VOP Hearing, 8/28/25, at 5, 7. Agent Alber was provided with a document during the VOP hearing that was purportedly signed by Appellant. ***Id.*** at 8. However, that document was not admitted into evidence and is not part of the certified record. Nor does Agent Alber explain what the document is.

The trial court’s reliance on Agent Albert’s testimony is misplaced for two reasons. First, as far as we can ascertain, based on the reference to Monroe County’s probation conditions in Appellant’s sentencing order, and lack of an explicit order stating that Appellant’s case was transferred to state

¹ The web address on the sentencing order takes visitors to the main page for Monroe County’s website. From there, one would have to click different links to locate the webpage where the administrative order setting forth the conditions of probations. The current administrative order is 1 AD 2026. **See** https://www.monroepacourts.us/getmedia/df25c001-a936-4117-bd38-7e84c3dd4aaa/AdminOrder_1AD_2026_Adult_Probation-Parole-Pretrial_Rules_Filed.pdf (last visited July 22, 2026). The prior versions are not available on the website.

probation, Appellant was sentenced to county probation, not state probation or parole.² **See generally** 61 Pa.C.S.A. § 6172 (state supervision of an offender requires an order of court). Second, even if Appellant received conditions of probation and/or parole on July 25, 2025, they are irrelevant due to the lack of evidence regarding the conditions imposed at the *time of sentencing*. Our Supreme Court has distinguished between “conditions of probation,” which are imposed by a trial court, and “conditions of supervision,” which are imposed by the Pennsylvania Department of Corrections (“DOC”)³ and its agents:

The Board and its agents may impose conditions of supervision that are germane to, elaborate on, or interpret any conditions of probation that are imposed by the trial court. This interpretation gives meaning to all of the statutory provisions relevant to this case and thus: (1) maintain the sentencing authority solely with a trial court; (2) permits the Board and its agents to evaluate probationers on a one-on-one basis to effectuate supervision; (3) sustains the ability of the Board to impose conditions of supervision; and (4) authorizes that a probationer may be detained, arrested, and “violated” for failing to comply with either a conditions of probation or conditions of supervision. In summary, a trial court may impose conditions of probation in a generalized manner, and the Board or its agents may impose more specific conditions of supervision pertaining to that

² To the extent that the trial court’s decision is based on finding that Appellant’s case was transferred to the Pennsylvania Department of Corrections for special probation, there is no evidentiary support for such a finding. Appellant was not specifically sentenced to special probation and there is no order in the certified record transferring the case to the DOC.

³ At the time ***Elliott*** was decided, Section 6131 permitted the Board to create uniform standards for the supervision of offenders. 61 Pa.C.S.A. § 6131 (effective October 13, 2009 to February 17, 2020). That authority has moved to the DOC. **See** 61 Pa.C.S.A. § 6171(a)(11)(ii) (effective June 30, 2021).

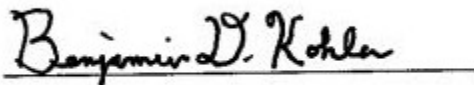
probation, so long as those supervision conditions are in furtherance of the trial court's conditions of probation.

Commonwealth v. Elliott, 50 A.3d 1284, 1292 (Pa. 2012).

Here, there is no evidence of record as to what, if any, conditions of probation were imposed at the time of sentencing. Since there is no evidence of any conditions of probation, the DOC lacked authority to impose conditions of supervision. Without evidence of the conditions of probation imposed at the time of sentencing, the trial court erred in finding Appellant violated his probation. Accordingly, we reverse the order revoking Appellant's probation, vacate the August 28, 2025, judgment of sentence, and re-impose Appellant's August 3, 2023, sentence. Since we have vacated the revocation sentence, we need not address Appellant's remaining issues.

Order reversed. VOP judgment of sentence vacated. The August 3, 2023, judgment of sentence is reinstated.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/22/2026