

V.

Appellant

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

: No. 3215 EDA 2025

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

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED OCTOBER 22, 2026**

The PCRA court provided the following summary of the facts and procedural posture of this case:

[Getz] was charged with engaging in various [sexual] acts

* Retired Senior Judge assigned to the Superior Court.

involving the victim, [M.E.,] when she was between the ages of five and nine years old. On March 10, 2022, Getz[, represented at trial by Brian Collins, Esquire,] was convicted by a jury of the following offenses: 1) rape of a child, 18 Pa.C.S. § 3121(a)[,(c)]; 2) involuntary deviate sexual intercourse [("IDSI")], 18 Pa.C.S. § 3123(b); 3) aggravated indecent assault of a child, 18 Pa.C.S. § 3125(b); and 4) indecent assault of a child, 18 Pa.C.S. § 3126(a)(7).^[1] Sentencing occurred on July 15, 2022, with Getz being sentenced to an aggregate [term] of not less than sixteen years nor more than thirty-two years in a state correctional institution [to be] followed by three years of state probation supervision. [Following the filing and adjudication of post-sentence motions, a] timely appeal was filed on December 19, 2022, by [new] appellate counsel, Rory B. Driscoll, Esquire.

PCRA Court Opinion, 12/5/25, at 2 (unnecessary capitalization, parentheses, footnote, and brackets omitted; commas added).

On appeal, we affirmed Getz's judgment of sentence. **See Commonwealth v. Getz**, 2024 WL 827964 (Pa. Super., filed Feb. 28, 2024) (unpublished memorandum) (224 EDA 2023). Getz did not, thereafter, petition for review from our Supreme Court.

On August 16, 2024, Getz filed the present petition, which, following a hearing, was denied on December 5, 2025. Getz then filed a timely notice of appeal and, after the court directed him to do so, timely filed a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of

¹ As more fully expounded upon in the trial court opinion written for the purpose of his direct appeal, Getz, while criminally committing these "various sexual encounters," "was between the ages of approximately [thirteen] and [eighteen.]" Trial Court Opinion, 11/21/22, at 2.

Appellate Procedure 1925(b).² Getz thereafter filed a supplemental Rule 1925(b) statement, resulting in a statement amounting to over twelve pages in length. ***See generally*** Supplemental Rule 1925(b) Statement, 12/26/25.

Before this Court, Getz raises four issues for review:

1. Did the PCRA court err in denying the claim that prior counsel were ineffective in failing to take any remedial steps when the court erred at sentencing in assuming without a corresponding verdict that the jury convicted Getz for criminal conduct other than the one incident Commonwealth witness Gregory Wagner testified to?
2. Did the PCRA court err in denying the claim that prior counsel were ineffective in failing to take any remedial steps when the court erred at sentencing in assuming without a corresponding verdict that the jury convicted Getz of rape of a child and [IDSI] with a child for (A) the separate criminal acts of (1) anal sex and (2) oral sex or (B) two counts of either (1) anal sex or (2) oral sex when both statutes criminalize the same two crimes such that the jury's verdict is open to the viable interpretation that the jury convicted Getz of both rape and IDSI for only one count of one of those crimes?
3. Did the PCRA court err in denying the claim that trial counsel was ineffective in failing to object to the trial court's erroneous instruction prohibiting the jury from relying solely on the complainant's years-long delay in reporting Getz's alleged conduct?
4. Did the PCRA court err in denying the claim that direct appeal counsel was ineffective in failing to properly brief the claim that the trial court erred in prohibiting the defense from introducing evidence of the pending criminal matters of two central Commonwealth witnesses to establish that both had a reason to curry the Commonwealth's favor and tailor their testimony against Getz accordingly?

² The court described Getz's statement as "anything but concise." PCRA Court Opinion, 1/20/26, at 2.

Appellant's Brief at 3-4.

In reviewing the dismissal of a PCRA petition, we are guided by the following standard of review:

When reviewing a denial of PCRA relief, we must determine whether the PCRA court's factual findings are supported by the record, and whether its conclusions of law are free from legal error. Our scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party. Although we are bound by credibility determinations, we apply a *de novo* standard of review to legal conclusions.

Commonwealth v. Clancy, 192 A.3d 44, 63 (Pa. 2018) (citations omitted).

As to assertions of ineffective assistance of counsel, we begin with the presumption that counsel was effective; to refute this presumption, an appellant bears the burden to prove otherwise. ***See Commonwealth v. Bennett***, 57 A.3d 1185, 1195 (Pa. 2012). The test for ineffective assistance of counsel is the same under both the Federal and Pennsylvania Constitutions. ***See Strickland v. Washington***, 466 U.S. 668, 687-88 (1984); ***Commonwealth v. Kimball***, 724 A.2d 326, 330-32 (Pa. 1999). Accordingly, an appellant must demonstrate: (1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the proceedings would have been different. ***See Commonwealth v. Solano***, 129 A.3d 1156, 1162 (Pa. 2015). A failure to satisfy any prong of the test for

ineffectiveness will require rejection of the claim. **See id.** at 1163. “[B]oilerplate allegations and bald assertions of no reasonable basis and/or ensuing prejudice cannot satisfy a petitioner’s burden to prove that counsel was ineffective.” **Commonwealth v. Sandusky**, 203 A.3d 1033, 1044 (Pa. Super. 2019) (citation omitted). Moreover, it is well settled that “counsel cannot be deemed ineffective for failing to raise a meritless claim.” **Commonwealth v. Treiber**, 121 A.3d 435, 445 (Pa. 2015) (citation omitted).

In his first issue, Getz contends that prior counsel, both trial and appellate, were ineffective because they failed to challenge an alleged error by the court at sentencing (and derivatively on appeal) because the verdict slip did not establish the existence of “criminal conduct other than the one incident to which Commonwealth witness Gregory Wagner testified.” Appellant’s Brief at 9. According to Getz, M.E. “testified that her uncle [] Wagner was always present during the five or six times Getz sexually assaulted her[,]” but Wagner conversely testified “that there was only one occasion that Getz assaulted [M.E.]” **Id.** at 9-10. Nevertheless, although there was conflicting testimony as to the number of sexual assaults, Getz suggests that, given the verdict slip’s lack of special interrogatories on the charges of rape of a child and IDSI with a child, “it is impossible to tell from the jury’s verdict whether [the] jurors unanimously believed [M.E.’s] version of events, that given by Wagner, or some combination.” **Id.** at 10. Instead, he notes

that “[t]he jury simply found Getz guilty of one count of rape and one count of IDSI.” **Id.**³ Getz believes that this general verdict “could just as easily mean that the jury disbelieved [M.E.’s] testimony of additional crimes on additional days establishing a pattern of repetitive assaults over years and, instead, only credited Wagner’s testimony that Getz assaulted [M.E.] on that one occasion.” **Id.** at 10-11. Getz then avers that this ambiguous verdict led the trial court to impose a sentence “on the assumption that [he] had engaged in a long pattern and history of sexual assault[.]” **Id.** at 11 (citing N.T. Sentencing Hearing, 7/15/22, at 45, 48 (trial court, *inter alia*, stating, at sentencing, that “[t]hese events occurred over a period of time on multiple occasions with the victim[.]”)).

Getz further asserts that, as he concludes that M.E. and Wagner’s collective testimony yields the existence of only one sexual assault date, Getz was, at that agreed-upon event, only fourteen years old at the time. **See id.** at 16. Thus, it was in error for the trial court to “fail to consider that Getz was a child himself when he committed that one day’s worth of crimes.” **Id.** at 16-17. “Instead of fashioning sentence on the basis that Getz was a child, the trial court explicitly found – despite no jury verdict establishing this fact – that

³ The verdict slip reflects that, while the jury found, *inter alia*, that Getz engaged in a course of conduct as to indecent assault of a child, the rape and IDSI guilty verdicts do not include any further findings. **See** Verdict Slip, 3/10/22.

Getz committed some of his crimes against [M.E.] when he was an adult.” ***Id.*** at 17.

Getz continues by arguing that trial counsel had no strategic reason in failing to remedy this alleged error. However, in Getz’s summation, trial counsel should “have objected to the verdict sheet because it was ambiguous and incomplete[.]” ***Id.*** at 18. Thus, when the trial court “expressly formulated the sentence on the basis that Getz committed many crimes over several years, running the lengthy sentences consecutively[,],” Getz concludes that he was prejudiced. ***Id.***

Getz also maintains that direct appeal counsel was ineffective for failing to identify and raise the sentencing court’s error and that there was a reasonable chance this Court would have granted him relief had he raised such a claim in his direct appeal. ***See id.*** at 19-20.

After reviewing the trial testimony, we find that Getz has failed to demonstrate merit to his underlying claim.⁴ Therefore, trial and appellate counsel were not ineffective for failing to challenge the allegedly ambiguous verdict slip.

⁴ While we attempt to discern it as best as possible, we note that the precise thrust of Getz’s claim is unclear, as it touches upon distinct concepts such as whether the jury instructions were appropriate, whether the verdict slip was legally sound, whether the court sentenced Getz absent any basis provided by the jury, and, more broadly, the structure of Getz’s sentence vis-à-vis the facts of this case.

M.E., who was born in 2000, testified that the first time Getz, who was born in 1991, assaulted her, she was “five or six” years old. N.T. Trial, 3/8/22, at 22, 40. She further indicated that Getz stopped sexually assaulting her in 2010, while Getz was eighteen but before she turned ten, with the last assault happening sometime between January 1, 2010, and May 27, 2010. **See id.** at 63-64; **see also id.** at 44 (establishing that the last time Getz assaulted her, she was nine, almost ten). On the first occasion, Getz and Wagner “began touching” M.E. **Id.** at 41. They proceeded to touch her “breasts [and] vagina.” **Id.** M.E. stated that Getz collectively assaulted her “[f]ive or six times[.]” **Id.** When M.E. was six, Getz and Wagner anally raped her, using soap as a lubricant. **See id.** at 41-42. They also made her perform oral sex on them. **See id.** at 42. M.E. also testified that there “was a couple of other times that [Getz] would come over and they would have [her] go into their room and they would have porn on and they would touch [her] and have [her] perform oral sex on them and they would rub their penis on [her] vagina.” **Id.** at 43.

As his brief before this Court establishes, Getz concedes that M.E. testified to this effect, *i.e.*, there were multiple instances of sexual assault over a multi-year period, spanning until Getz was the age of eighteen. However, relevant to Getz’s underlying contention, Wagner testified that there was only one recallable incident of Getz sexually assaulting M.E., which, in Getz’s summation, happened while Getz was under the age of eighteen. **See** N.T. Trial, 3/9/22, at 88, 115-16.

While instructing the jury, the court specified that, as to indecent assault of a child, if the jury found Getz guilty beyond a reasonable doubt, it then needed to, in relevant part, “make a determination as to whether or not, A, there has been a course of conduct of indecent assault by [Getz], and course of conduct means a pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct.” N.T. Trial, 3/10/22, at 152. At sentencing, the court stated as follows: “I agree that these crimes happened when your client was in his teen years, but I specifically recall that, while some of it happened as a juvenile, some of it clearly happened as an adult.” N.T. Sentencing Hearing, 7/15/22, at 45. Thereafter, the court indicated that “[t]hese events occurred over a period of time on multiple occasions with the victim.” ***Id.*** at 48.

Distilled down, Getz argues that, although M.E.’s testimony expounded upon multiple instances of sexual assault, there was *some* possibility, stemming from “ambiguity” in the verdict slip due to a lack of qualifying interrogatory, that it was, in fact, Wagner’s testimony, exclusively, that was believed by the jury as to rape and IDSI. ***See, e.g.***, Appellant’s Brief at 11 (stating that “Its guilty verdict on rape could signify that it credited Wagner’s testimony that Getz anally penetrated [M.E.] and its guilty verdict on IDSI could signify that Getz forced [M.E.] to perform oral sex, both on the one day Wagner testified to.”). As such, given this possibility, when the court sentenced Getz predicated on multiple occasions without direct clarity from

the jury's verdict, Getz asserts that he received an unsupported and unduly harsh sentence.

Getz does not cite anything directly on point for his underlying supposition that the verdict slip, as used, was fatally defective insofar as the court could not draw upon it at sentencing to conclude that there was a pattern in Getz's behavior and sentence in accordance therewith. To start, generally, it is legally impermissible for there to have been *any* individual interrogatories vis-à-vis the charges of rape of a child and IDSI with a child. In fact, as our Supreme Court has stated, "[t]he proposal of special verdicts in criminal trials to determine what issues the jury actually resolved has been almost universally condemned." ***Commonwealth v. Samuel***, 961 A.2d 57, 64 (Pa. 2008) (citation omitted; bracket in original); ***see also Commonwealth v. Muhammad***, 335 A.3d 1047, 1054 (Pa. 2025) (explaining that "There is no authority expressly authorizing the use of special interrogatories in criminal trials, and they are generally disfavored in this context."). Therefore, on that basis alone, and absent a cited exception to this general rule, there is no merit to his underlying assertion as to counsel's alleged inactivity regarding the verdict slip's lack of interrogatories and corresponding sentence imposed thereon.

Nevertheless, the elements underpinning both rape and IDSI do not require *any* kind of interrogatory to glean whether there has been pattern of conduct. However, here, the jury *did* find that Getz engaged in a course of

conduct of indecent assault. **See** Verdict Slip, 3/10/22. Therefore, although not directly germane to rape or IDSI, it strains credulity to reach the corresponding conclusion that the jury believed Getz committed a singular act or that there was a singular event. In other words, Getz failed to prove that it was more likely than not he was prejudiced by prior counsel's failure to object to the alleged defect in the verdict slip. **See, e.g., Harrington v. Richter**, 562 U.S. 86, 111-12 (2011).⁵

Regardless, M.E.'s testimony, establishing the commission of multiple criminal offenses spanning into Getz's age of majority and confirmed by the jury's verdict at all counts, provides the requisite predicate for the court to sentence based on its understanding that "some of [Getz's criminal actions] clearly happened as an adult," N.T. Sentencing Hearing, 7/15/22, at 45, and that "[t]hese events occurred over a period of time on multiple occasions with

⁵ As the United States Supreme Court has explained:

In assessing prejudice under **Strickland**, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Instead, **Strickland** asks whether it is reasonably likely the result would have been different. This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between **Strickland's** prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case. The likelihood of a different result must be substantial, not just conceivable.

562 U.S. at 111-12 (internal quotation marks and citations omitted).

the victim.” ***Id.*** at 48. Furthermore, the information filed against Getz established that he engaged in offenses from 2005 through 2012. ***See generally*** Information, 4/30/19.⁶ Getz was, therefore, on notice that he faced multiple offenses over a period of years, which was consistent with M.E.’s testimony that he had sexually assaulted her over a materially similar period of time. Although Getz argues that her testimony was, at times, inconsistent both with Wagner’s testimony and statements she had made prior, he has provided no basis to wholly discount its existence. Through that testimony, the court was permitted to sentence in the manner that it did, and we find no reason to conclude that counsel was ineffective for not having challenged the court’s contemporaneous statement as to Getz’s pattern of conduct at sentencing. As there is no merit to his claim, counsel, both at trial and on appeal, was not ineffective, and Getz is due no relief at issue one. ***See Treiber***, 121 A.3d at 445.

In his second, related issue, Getz avers that the sentence he received did not reflect the jury’s verdict insofar as both rape of a child and ISDI with a child, where he received separate consecutive sentences for these two crimes, possibly stemming from only one discrete act of either anal intercourse

⁶ The date range was later qualified at a *habeas* hearing as being “to the period of 2006 through 2009, a period of time from when [M.E.] was 6 years of age to either 8 or 9 years of age.” Order Denying Motion for Bill of Particulars, 1/13/20.

or oral sex. **See** Appellant's Brief at 26 (stating that "The crimes of both rape of a child and IDSI with a child prohibit oral and anal intercourse with a complainant less than 13 years old."). Getz believes that, at a minimum, there is ambiguity because "[n]either the trial court's instructions nor the verdict slip specified that in order to convict Getz of both rape of a child and IDSI with a child, it had to unanimously agree beyond a reasonable doubt that Getz committed more than one act of either anal or oral sex." **Id.** Getz identifies that the offenses of rape of a child and IDSI with a child both "criminalize anal and oral sex with a child[.]" **Id.** at 28 (citing 18 Pa.C.S. § 3121(c) (rape of a child); 18 Pa.C.S. § 3101 (definition of sexual intercourse); 18 Pa.C.S. § 3123(b) (IDSI with a child); and 18 Pa.C.S. § 3101 (definition of deviate sexual intercourse)). Accordingly, Getz contends that "[i]t is impossible to conclude which sexual acts the jury convicted Getz of." **Id.** Getz believes that rape and IDSI "should have merged for the purposes of sentencing because this record leaves open the real possibility" that the jury only found him guilty of one discrete act. **Id.**

Getz concedes that "[t]he jury had every right to convict [him] of rape of a child and IDSI with a child" and that "[t]here was sufficient evidence to sustain both convictions." **Id.** at 30. However, Getz avers that "we do not know" whether the jury concluded that he anally raped M.E. one time and also forced her to perform the separate criminal act of oral sex one time or, given the cross definitional possibility criminalizing the same activity, if there is only

one incident of one sexual act. ***Id.*** If the jury's verdict reflected the latter, Getz believes that "separate sentences for rape and IDSI would be improper" as "the jury only convicted him of committing one of those two acts." ***Id.*** at 31.

Beyond the merits of his underlying assertion, Getz also argues that his trial and appellate counsel had no strategic reason for not rectifying this alleged verdict slip ambiguity and corresponding sentencing mistake. ***See id.*** at 32. Getz contends that he was prejudiced given that the court "imposed separate, consecutive sentences on these two counts where no corresponding jury verdict supported the conclusion" that he was convicted of rape and IDSI stemming from separate conduct. ***Id.*** at 33.

Given our finding above that Getz failed to establish any basis for trial counsel's authority to request special verdicts as to the rape and IDSI with a child offenses, Getz's claim simply presents an ineffectiveness claim suggesting the failure to properly raise a sentencing merger claim. The rule governing merger is as follows:

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 court may sentence the defendant only on the higher graded offense.

42 Pa.C.S. § 9765 (emphasis added). Building off of this definition, "[t]he preliminary consideration is whether the facts on which both offenses are charged constitute one solitary criminal act. If the offenses stem from two

different criminal acts, merger analysis is not required.” ***Commonwealth v. Healey***, 836 A.2d 156, 157-58 (Pa. Super. 2003) (citation omitted).

Even independent of M.E.’s testimony, which, as has previously been stated, established one incident of anal rape and multiple instances of oral sex and other assaults over a several-year period, Wagner’s *own testimony* demonstrated that Getz engaged in both anal and oral sex with the victim on the same day, providing evidence of two wholly distinct criminal acts. **See** N.T. Trial, 3/9/22, at 87 (Wagner testifying: “We started taking off our clothes and we – I put my penis in her mouth. . . . [Getz] would put his penis in [M.E.’s] butt and we switched[, which meant that Getz thereafter proceeded to put orally penetrate M.E. and Wagner anally penetrated her].”). Thus, from Wagner’s testimony alone, the jury could have concluded that the elements of both rape and IDSI were met through Getz having committed two separate and discrete sexual acts, anally and orally. As the evidence supported the existence of two distinct sexual acts underpinning the rape and IDSI convictions, merger, therefore, does not apply to this situation. Accordingly, counsel cannot be found ineffective for failing to raise a meritless claim, and Getz’s second claim warrants no relief.

In his third claim, Getz maintains that trial counsel was ineffective in failing to object to the court’s “prompt complaint” jury instruction. Appellant’s Brief at 35-36. Getz indicates that, factually, M.E. “did not promptly complain to any person in a position of authority . . . that Getz had assaulted her.” ***Id.***

at 35. Instead, M.E.'s testimony established "that the first person she told regarding Getz was Tammy Neff, a counselor advocate at the Victim Resource Center, when she was 12 years old, approximately seven or eight years after she now claimed Getz first assaulted her[.]" **Id.** However, Neff, in her own testimony, indicated the M.E. "said nothing of the sort." **Id.**

At trial, counsel cross-examined M.E. on her "lack of a prompt complaint" and "emphasized that the only person in a position of authority that [M.E.] told between 2012 and 2018 was Neff, and Neff herself denied even that." **Id.** at 36. Nevertheless, the Commonwealth "devoted [a large portion] of [its] entire closing argument to address" the absence of a prompt complaint issue, delving into, *inter alia*, reliance on the "Commonwealth expert's explanation that sexual assault victims disclose in stages[.]" **Id.** at 37.

Although counsel was able to extensively cross-examine M.E. on this particular issue, Getz takes issue with the court's specific instruction, which mirrored Standard Criminal Jury Instruction 4.13A:

The evidence of [M.E.'s] delay in making a complaint does not necessarily make her testimony unreliable, but may remove from it the assurance of reliability accompanying the prompt complaint or outcry that the victim of a crime such as this would ordinarily be expected to make. Therefore, the delay in making a complaint should be considered in evaluating her testimony and in deciding whether the act occurred at all. You must not consider [M.E.'s] delay in making the complaint as conclusive evidence that the act did not occur. [M.E.'s] failure to complain promptly and the nature of any explanation for that failure are factors bearing upon the believability of her testimony and must be considered by you in the light of all the evidence in this case.

N.T. Trial, 3/10/22, at 146-47.⁷ Getz contends that trial counsel should have objected because “this instruction prohibited any jury from finding reasonable doubt solely on the basis that [M.E.] failed to make a prompt complaint[.]”

⁷ As of September 2024, Instruction 4.13A has been deleted from the Pennsylvania Suggested Standard Criminal Jury Instructions, and the subcommittee has specifically discouraged the use of the former instruction:

The majority of the subcommittee voted to delete this instruction and no longer recommends its use because Instruction 4.13A is incompatible with 18 Pa.C.S. § 3106, which provides in relevant part, “No instruction shall be given cautioning the jury to view the complainant’s testimony in any other way than that in which all complainants’ testimony is viewed.” Former instruction 4.13A was derived from 18 Pa.C.S. § 3105, which historically required a prompt complaint within three months in order to prosecute a sexual offense. In 1995, the General Assembly revised 18 Pa.C.S. § 3105 to remove the prompt complaint requirement and revise 18 Pa.C.S. § 3106 to remove the requirement that the testimony of complaining witnesses in sexual crimes must be viewed differently. Both ***Commonwealth v. Snoke***, 580 A.2d 295, 297 (Pa. 1990), and ***Commonwealth v. Lane***, 555 A.2d 1246, 1251 (Pa. 1989), indicate that 18 Pa.C.S. § 3105 authorizes related arguments by the parties, not specifically the now-deleted jury instruction. Because the instruction is deleted, the majority of the subcommittee believes that attorneys should present relevant arguments on this issue during closing arguments rather than through the use of a jury instruction.

This section will be completely deleted, and other sections will be renumbered in future editions. In order to avoid confusion, however, Instruction 4.13A remains in this edition. For historical purposes only, the subcommittee is providing the now deleted Instruction 4.13A below, although it discourages its use ...

See Pa. SSJI (Crim.), § 4.13A (4th ed. 2024), *subcommittee note*. Nevertheless, such an instruction would have been operative as of Getz’s 2022 trial.

Appellant's Brief at 38. While defendants are permitted to call into question a complainant's credibility when there was no complaint at the first available opportunity, the instruction, from Getz's perspective, created "a *per se* rule of evidence precluding the jury from relying solely on the lack of a prompt complaint to establish reasonable doubt." **Id.** at 39. He asserts, "[b]y instructing the jury that it could not use [M.E.'s] delay in reporting as conclusive evidence that the act did not occur, the court prevented any one juror from finding reasonable doubt based solely on her delay in reporting." **Id.** However, in Getz's summation, "[t]he exact opposite of what the court instructed is true: the jury *may* rely on the delay in reporting as conclusive evidence that the act did not occur." **Id.** (emphasis in original).

Getz further argues that counsel had no strategic reason for not objecting to the court's jury instruction. **See id.** at 44 (establishing that counsel confirmed that he asked the trial court to give instruction 4.13A, and that "the problematic portion of the instruction" was not identified at that juncture). Getz also contends that he was prejudiced because, *inter alia*, the jury instruction, in effect, created an erroneous rule of evidentiary exclusion, which went to the heart of Getz's defense, *i.e.*, the creation of reasonable doubt predicated on the lack of a prompt complaint. **See id.** at 44-45.

Preliminarily, although presently in the context of ineffective assistance of counsel, when this Court evaluates the propriety of jury instructions, we look to the instructions as a whole, and not simply isolated portions, to

determine if the instructions were improper. **See *Commonwealth v. Spatz***, 896 A.2d 1191, 1247 (Pa. 2006). In addition, “[i]t is an unquestionable maxim of law in this Commonwealth that a trial court has broad discretion in phrasing its instructions, and may choose its own wording so long as the law is clearly, adequately, and accurately presented to the jury for its consideration.” ***Id.*** (citation omitted). “Only where there is an abuse of discretion or an inaccurate statement of the law is there reversible error.” ***Commonwealth v. Hall***, 701 A.2d 190, 207 (Pa. 1997).

Although it has since been removed from the list of standard instructions, in relevant part, instruction 4.13A read as follows:

2. The evidence of [*name of victim*]'s [failure to complain] [delay in making a complaint] does not necessarily make [his] [her] testimony unreliable, but may remove from it the assurance of reliability accompanying the prompt complaint or outcry that the victim of a crime such as this would ordinarily be expected to make. Therefore, the [failure to complain] [delay in making a complaint] should be considered in evaluating [his] [her] testimony in deciding whether the act occurred [at all] [with or without [his] [her] consent].

3. You must not consider [*name of victim*]'s [failure to make] [delay in making] a complaint as conclusive evidence that the act did not occur or that it did occur but with [his] [her] consent. [*Name of victim*]'s failure to complain [at all] [promptly] [and the nature of any explanation for that failure] are factors bearing on the believability of [his] [her] testimony and must be considered by you in light of all the evidence in the case.

Pa. SSJI (Crim.) § 4.13A (brackets in original).⁸

Trial counsel indicated that the court's instruction was "materially the same[]" as instruction 4.13A. N.T. PCRA Hearing, 1/23/25, at 90. Prior to the removal of the instruction but following the trial in this matter, we previously approved of another trial court's use of Instruction 4.13A in its own jury charge. **See Commonwealth v. Fratangeli**, 2022 WL 16625595 at *34 (Pa. Super., filed Nov. 1, 2022) (unpublished memorandum cited for persuasive value pursuant to Pennsylvania Rule of Appellate Procedure 126(b)) ("These instructions thoroughly informed the jury of the status of the law and allowed the jury to apply their findings of fact regarding whether or not the victim made a prompt complaint[.] The instructions adequately, accurately, and clearly presented the law to the jury and were more than sufficient to guide the jury in its deliberations."). Additionally, applicable here, "the language used by the trial court closely tracked the language in the Pennsylvania Standard Criminal Jury Instructions, and it [is] presumed that such instructions are an accurate statement of the law." **Commonwealth v. Kerrigan**, 920 A.2d 190, 198 (Pa. Super. 2007).

⁸ Relatedly, 18 Pa.C.S. § 3105 establishes that "Prompt reporting to public authority is not required in a prosecution under this chapter: Provided, however, [t]hat nothing in this section shall be construed to prohibit a defendant from introducing evidence of the complainant's failure to promptly report the crime if such evidence would be admissible pursuant to the rules of evidence." 18 Pa.C.S. § 3105.

Although this presumption does not render the instruction immune from attack, Getz has failed to specifically and conclusively show the instruction's infirmity; he has cited no direct authority for the proposition that its language is unconstitutional or that any previous decision of this Court or our Supreme Court has called a similar instruction into question. Parsing the language even further, the court's instructions, given here, effectively say that the jury was prohibited from utilizing M.E.'s reporting delay as *irrefutable* or *unassailable* proof of no sexual assaults committed by Getz. When read in tandem with the rest of the instruction, the jury was still permitted to consider the delay as evidence of M.E.'s unreliability in its assessment of the overall veracity of her claims.

Moreover, we emphasize that, although jury instructions are not inherently the law, they are directly referential thereto, and "counsel cannot be ineffective for failing to anticipate a change in the law." ***Commonwealth v. Drummond***, 285 A.3d 625, 646 (Pa. 2022) (citation omitted). Thus, even if Instruction 4.13A's language is discouraged today, based on "the law" as it existed in 2022, "counsel was under no reasonable obligation to raise a challenge to the instruction, as any such objection would have lacked a then-existing legal foundation." ***Id.*** Nevertheless, the present case is even clearer than ***Drummond*** because, in that case, our Supreme Court explicitly found that a jury instruction was constitutionally defective more than a decade after the fact, yet it held that trial counsel was not ineffective for having not

predicted that determination. **See id.** As such, counsel was not ineffective for having not challenged the court's prompt complaint jury instruction, the very instruction that counsel requested. **Cf. Commonwealth v. Dooley**, 2026 WL 2351365, *5 n.3 (Pa. Super., filed Aug. 13, 2026) (noting, upon direct review of a claim that a trial court erred by not issuing a requested charge modeled after Instruction 4.13A at a 2023 trial, considered after the deletion of the suggested instruction, we would not consider the subsequent deletion of the suggested instruction in our review of the trial court's decision not to provide the requested instruction) (unpublished memorandum cited persuasively pursuant to Pennsylvania Rule of Appellate Procedure 126(b)); **Commonwealth v. Dircio**, 2026 WL 1847304, *9 n.3 (Pa. Super., filed June 26, 2026) (same) (unpublished memorandum cited persuasively pursuant to Pennsylvania Rule of Appellate Procedure 126(b)).

In his fourth and final issue, Getz argues that his direct appeal counsel was ineffective for failing to properly present the claim that the trial court erred in prohibiting him from introducing evidence of "open criminal matters" that were associated with two of the Commonwealth witnesses, evidence of which would have allegedly demonstrated motivations to curry the Commonwealth's favor. **See** Appellant's Brief at 47, 50 (stating, further, that "[n]on-final dispositions in criminal cases are always admissible to impeach a witness's credibility[]"). Specifically, Getz identifies that both M.E. and M.M., the victim's mother, "both had criminal cases that were pending at relevant

time periods.” **Id.** at 47.⁹ Trial counsel opposed the Commonwealth’s pre-trial motion *in limine* to preclude any reference to these open cases. **See id.** at 49. At the corresponding hearing on the motion, Getz indicates that “[b]oth witnesses denied that any Commonwealth representative made any promises of help on their own criminal cases in exchange for their cooperation against Getz and testified that they were not expecting any benefits or motivated by such an expectation.” **Id.** The court found the witnesses credible and granted the Commonwealth’s motion. **See id.** However, Getz believes that the court should have permitted cross-examination into these considerations at trial “so the jury could decide for itself whether the witnesses [were] motivated by their open cases to curry the Commonwealth’s favor[.]” **Id.** at 50.

Getz suggests that “[d]irect appeal counsel . . . identified this claim but . . . ineffectively presented it to [this] Court [in his direct appeal].” **Id.** As such, he concludes that “the claim is not previously litigated.” **Id.** at 55. Getz, at this point, also “proffers evidence the courts did not consider at the pre-trial hearing or on direct appeal[.]” **Id.** at 56. Getz castigates direct appeal counsel, stating that he “used a mere two sentences to argue why [M.E.’s] criminal activities should have been admitted, citing no authority.” **Id.** at 57.

⁹ As summarized by the Commonwealth, M.E. faced uncharged conduct, which occurred in January 2022, two months prior to Getz’s trial, in Lehigh County, and M.M. was admitted into Accelerated Rehabilitative Disposition (“ARD”) in December 2021 in Carbon County. **See** Commonwealth’s Brief at 43.

Moreover, he asserts that direct appeal counsel “failed to argue why the trial court erred in preventing the jury from making the necessary credibility determinations.” **Id.** As to M.M., he argues that direct appeal counsel “failed to argue that her criminal charges were pending at the time she gave her statements to police.” **Id.** at 58. Getz avers that, had there been competent briefing on direct review, “it is reasonably probable the original [direct appeal] panel [of this Court] would not have repeated the trial court’s error prohibiting this impeachment[evidence.]” **Id.** at 59.

In his direct appeal, upon review of a related trial court error claim regarding the motion *in limine*, we unequivocally held that, because “[b]oth witnesses explained their motivation for testifying and denied that they were doing so in exchange for more favorable treatment by the Commonwealth,” “to the extent the trial court improperly limited the scope of cross-examination at trial, that testimony would not have affected the outcome of trial.” **Commonwealth v. Getz**, 2024 WL 827964 at *7 (Pa. Super., filed Feb. 28, 2024) (unpublished memorandum). We conclude that there is no indication of any reasonable probability that the outcome would have been different had there been “proper briefing,” much less any of this information as to knowledge of the witnesses’ uncharged conduct or ARD reaching the jury.

As to M.M., we have previously held that “admission into an ARD [program] is not a conviction for impeachment purposes.” **Commonwealth v. Brown**, 673 A.2d 975, 979 (Pa. Super. 1996); **see also Commonwealth**

v. *Flemister*, 2022 WL 3652713 at *4 (Pa. Super., filed Aug. 25, 2022) (same) (unpublished memorandum cited persuasively pursuant to Pa.R.A.P. 126(b)). Furthermore, as the Commonwealth points out, M.M.'s original interview about Getz's "sexual abuse of [M.E.] occurred on March 28, 2019, which was more than a year before the date of [M.M.'s] September 2020 offense in her own case[.]" Commonwealth's Brief at 51 (footnote and emphasis omitted). Getz does not suggest that M.M.'s original interview was materially different than the testimony she provided at trial. Thus, although she had been admitted into the ARD program several months before Getz's trial, there is no discernable relationship between the two events evident of record, and these circumstances reflect that appellate counsel was not ineffective for more vigorously challenging this portion of the court's grant of the Commonwealth's motion *in limine*.

Regarding M.E., we emphasize that the investigation into her Lehigh County matter, as of the date of her testimony, was still ongoing, and she had not been charged. Getz states that, "[w]here a witness is *at risk* of prosecution, that interest is fair game for impeachment," Appellant's Brief at 53 (emphasis added), but provides no authority for this specific proposition, nor does he qualify what "risk," in fact, means. Although Getz repeatedly states that "any non-final disposition is admissible to impeach a prosecution witness[.]" ***id.*** at 53, he does not go one step further to establish that non-charged conduct, as M.E. was not charged prior to her trial testimony, falls

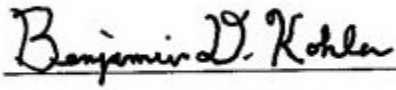
within the ambit of a “non-final disposition.” **See** Commonwealth’s Brief at 45 (stating that “At the [motion *in limine*] hearing, [M.E.] testified that between the time charges were filed against [Getz] in early 2019 and [March 8, 2022, just prior to trial,] she had not been arrested for any criminal conduct.”).

Here, while M.E. was “transported to the state police barracks handcuffed in the police car . . . [and had] a discussion with the state police at the barracks,” *id.*, in connection with the January 2022 Lehigh County incident, there were never any charges filed against her, at least none prior to her at-issue trial testimony. Therefore, regardless of there being no actual evidence of favorable treatment, and independent of this Court’s prior determination that not being able to cross-examine these witnesses in front of the jury had no impact on the trial, Getz has fundamentally failed to prove that he could have impeached either witness, either on ARD or uncharged conduct grounds. As such, because there is no merit to his contention, appellate counsel was not ineffective before this Court in Getz’s direct appeal.

As none of Getz’s issues provide any basis for relief, we affirm the court’s order dismissing his PCRA petition.

Order 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: 10/22/2026