

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JAMES CATALFANO	:	
	:	
Appellant	:	No. 604 EDA 2025

Appeal from the Judgment of Sentence Entered January 24, 2025
In the Court of Common Pleas of Delaware County Criminal Division at
No(s): CP-23-CR-0000370-2022

MEMORANDUM PER CURIAM:

FILED OCTOBER 9, 2026

Appellant, James Catalfano, appeals from the judgment of sentence imposed by the Court of Common Pleas of Delaware County after the court revoked his prior term of probation. The court imposed a term below the mitigated range recommended by the Resentencing Guidelines after Appellant communicated, with reference to a prior jurist that sat as the probation court, that he thought it would be acceptable for him to “put a gun to the judge’s head.” N.T. **Gagnon II** Hearing, 1/24/25, 14-15, 18. Appellant challenges the revocation court’s admission of e-mails during his revocation sentencing proceeding, and the court’s imposition of a supervisory condition directing him to take recommended medications. We affirm.

On April 20, 2023, Appellant entered a negotiated guilty plea to possession of a firearm without a license, in exchange for a sentencing recommendation of time-served to twenty-three months’ imprisonment, to be

followed by three years' probation, with credit for time served from December 8, 2021, to January 10, 2022, and September 2, 2022, to March 7, 2023, and an agreement that the probation would be terminated after twelve months if Appellant complied with his supervision and did not commit any probation violations.¹ N.T. Guilty Plea Hearing, 4/20/23, 4, 11-15; **see also** Guilty Plea Statement Instructions, 4/20/23, 1-3. At the time the plea agreement was explained on the record, the prosecutor noted that Appellant was "to comply with all evaluations that he underwent," which the prosecutor noted as including drug, alcohol, and psychological evaluations. N.T. Guilty Plea Hearing, 4/20/23, 5. On the same date, the plea court imposed the agreed-upon sentence, granted Appellant's request that his probation supervision be transferred to Philadelphia County where he resided, and ordered Appellant to "comply with the recommendations in the drug and alcohol and psychological evaluation[s]." **See id.** at 16-18; Certificate of Imposition of Sentence, 4/20/23, 1.

At a hearing on May 21, 2024, the plea court presided over a **Gagnon I²** hearing where the court found that Appellant violated his supervision by

¹ 18 Pa.C.S. § 6016(a)(2). In exchange for the guilty plea, the Commonwealth agreed to dismiss Appellant's remaining charges for driving while operating privileges are suspended or revoked and failure to yield to an emergency vehicle. **See** 75 Pa.C.S. §§ 1543(a) and 3325(a); N.T. Guilty Plea Hearing, 4/20/23, 5.

² This Court has explained:

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"[e]xhibiting threatening or overt behavior." **Gagnon I** Hearing Results, 5/21/24, 1. A **Gagnon I** hearing report indicated that Appellant violated two rules of his supervision. **See Gagnon I** Hearing Report, 5/8/24, 1-2. With respect to a rule that he "[r]efrain from overt behavior which may endanger oneself or others," the report indicated that he sent a derogatory e-mail to the Philadelphia Police Department, using a plural antisemitic slur to refer to the police department. **Id.** at 1. Additionally, he left a "threatening phone message" for his probation supervisor. **Id.** The report also indicated that he failed to comply with the recommendation of a psychological evaluation, and his case was returned to the Delaware County Probation Department from the Philadelphia County Probation Department due to his "non-compliance with [m]ental [h]ealth [t]reatment." **Id.** at 1-2. In particular, he failed to attend outpatient treatment that was recommended in a psychological evaluation. **See** Intercounty Transfer of Supervision Progress/Recommendations Report,

In **Gagnon v. Scarpelli**, 411 U.S. 778 (1973), the United States Supreme Court held that a defendant accused of violating the terms of his probation is entitled to two hearings prior to formal revocation and re-sentencing.

When a parolee or probationer is detained pending a revocation hearing, due process requires a determination at a pre-revocation hearing, a **Gagnon I** hearing, that probable cause exists to believe that a violation has been committed. Where a finding of probable cause is made, a second, more comprehensive hearing, a **Gagnon II** hearing, is required before a final revocation decision can be made.

Commonwealth v. Heilman, 876 A.2d 1021, 1026 (Pa. Super. 2005) (citation omitted; cleaned up).

1/10/24, 1 (“[Appellant] stated that he follows God and not Satan and that his lawyer told him not to do the outpatient treatment because it is not court ordered. He stated that the probation office [cannot] make him attend.”). The court deferred the **Gagnon II** hearing to allow Appellant to comply with the conditions of his probation. **See Gagnon I** Hearing Report, 8/27/24, 2.

On August 22, 2024, Appellant’s probation officer requested the issuance of a bench warrant for Appellant based on the officer’s representation that Appellant had contacted the Administrative Office of Pennsylvania Courts (AOPC) on that date, and “made verbal threats to shoot and kill” the jurist who previously sat as the plea court and was then assigned as the probation court. Request for Bench Warrant, 8/22/24, 1; **see also Gagnon I** Hearing Report, 8/27/24, 1. The threat was communicated in an unrecorded phone conversation with Colleen McKinney, an administrative assistant of the AOPC’s Judicial Conduct Board. **See** Delaware County Park Police Incident Report, 9/5/24, 3. After the threatened judge recused himself from the matter, **see** Order (recusal), 9/3/24, 1, a new judge sitting as the probation court found Appellant to be in violation of his probation for “exhibiting threatening or overt behavior.” **Gagnon I** Hearing Results, 9/5/24, 1.

On January 24, 2025, the probation court presided over a **Gagnon II** hearing.³ The Commonwealth presented testimony from the administrative

³ The delayed scheduling of the **Gagnon II** hearing appeared to be the result of Appellant filing an appeal with this Court in October 2024, purportedly from
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assistant of the AOPC (Colleen McKinney) who was on the phone with Appellant during his threatening call referencing the prior jurist, a state trooper who investigated the threatening call referencing the prior jurist (Trooper John Hanosek), Appellant's probation officer (Keith Taylor), and a supervisor at the Delaware County adult probation office (Justin Lewis).

McKinney testified to the circumstances of her August 22, 2024 phone conversation with Appellant. **See** N.T. **Gagnon II** Hearing, 1/24/25, 13-15. She confirmed that, in the course of him expressing that he was upset about the dismissal of a judicial complaint that he made, he said that, "if it is considered okay for a police officer to commit attempted murder on him and the judge to cover it up, then it would be okay for him to put a gun to the judge's head because there are no rules." **Id.** at 14-15, 18. She also confirmed the authenticity of a voicemail that Appellant left for the Chief Counsel of the AOPC on the same date, in which he admitted that he was bipolar and schizophrenic, and alleged, *inter alia*, that the plea/probation judge had "fucking railroaded" him and covered up a state trooper's attempt to murder him. **Id.** at 21-24, 26. He finished the voicemail by threatening, "You better fix this fucking issue or there will be fucking issues. I am going to file every fucking complaint, and I'll smear everybody fucking into the dirt if I

the April 20, 2023 judgment of sentence, that Appellant later discontinued on January 15, 2025. **See** Superior Court Docket Sheets for **Commonwealth v. Catalfano**, No. 2550 EDA 2024; **see also** N.T. **Gagnon II** Hearing, 1/24/25, 4-5 (THE COURT: "...it's taken quite a period of time to get this **Gagnon II** hearing scheduled. Some of that was because of ... [Appellant] filing a *pro se* appeal, which deprived the court of jurisdiction...").

have to, to get to the bottom of this. So have a fucking good day.” **Id.** at 24.

Trooper Hanosek confirmed that, after he heard the voicemail that Appellant left for the Chief Counsel of the AOPC, he subsequently interviewed Appellant and Appellant admitted to placing that call to the Judicial Conduct Board during the interview. **See** N.T. **Gagnon II** Hearing, 1/24/25, 32-34.

Probation Officer Taylor testified about Appellant’s failure to seek the ordered mental health treatment and comply with a request to be medicated. **See** N.T. **Gagnon II** Hearing, 1/24/25, 37. He confirmed his assertion in a **Gagnon II** hearing notice that Appellant’s probation was transferred back to Delaware County because he would not comply with mental health treatment in Philadelphia. **See id.** at 39. On cross-examination, Officer Taylor confirmed that the recommendation for Appellant to be medicated was made after a psychiatric evaluation was done on September 14, 2024. **See id.** at 55. He confirmed that an issue with non-compliance concerning medication was no longer present due to Appellant’s then status in custody. **See id.** (“That’s not part of the violation now because he’s in jail.”). After hearing that testimony, the court noted that non-compliance with mental health treatments was no longer part of the court’s violation ruling. **See id.** at 56 (“10(c) is out. I don’t find 10(c). Because if he says on 8/21 that he’s compliant, and – because he made his – because he made his appointments, then 10/22, he gets arrested.”); **see also id.** at 58 (“It’s out. Look, 10(c) is out. I don’t find a violation in it.”).

Probation Supervisor Lewis testified that, on May 8, 2024, he received a lengthy voicemail on his work phone which ended with Appellant saying, "Give me my psychological evaluation or else." N.T. **Gagnon II** Hearing, 1/24/25, 66. Lewis asserted that he perceived the reference to "or else" as a threat. **See id.** at 67. On cross-examination, he explained that he was not allowed to provide Appellant with that documentation. **See id.** at 68.

The probation court found a violation under Rule 9 of the probation conditions based on Appellant's threats to the AOPC Judicial Conduct Board. **See** N.T. **Gagnon II** Hearing, 1/24/25, 88 (the court: "I find there has been no violation under Rule 10(c). But there is a violation under Rule 9."); **id.** at 106 (the court: "I find the violation of Rule number 9."). The court noted:

I actually think -- and you're catching a break, I actually think the Commonwealth could prosecute you on the charge of obstruction of the administration of justice by calling the Judicial Conduct Board, which is a governmental function supervised by the Supreme Court of Pennsylvania, and expressing displeasure to them and threatening to put a gun to the head of [the plea court/initial probation court judge], who is a judge who would have been sentencing you on the violation. That is clearly an interference and an attempt to influence the administration of justice.

...

And clearly, the Commonwealth has established[,] by [a] preponderance of the evidence[,] a violation of Rule 9, which is refrain from overt behavior which may endanger oneself or others. Threatening to put a gun to a judge's head is not a good thing to do.

Id. at 88.

The court revoked Appellant's probation and proceeded to sentencing. **See** N.T. **Gagnon II** Hearing, 1/24/25, 93, 107. The court resentenced Appellant to time served (168 days) to twelve months' imprisonment, to be followed by two years of probation.⁴ **See id.** at 107, 115; Certificate of Imposition of Judgement of Sentence, 1/24/25, 1. The court told him that, if he complied with the treatment recommendations set forth in a psychiatric evaluation from September 2024, the court would consider a petition to have the last year of supervision under the new sentence be changed to a non-reporting probationary period and would consider waiving his remaining court costs at that time "if he's done what he's supposed to do." N.T. **Gagnon II** Hearing, 1/24/25, 107, 111, 115. The court also ordered Appellant to: (1) comply with the recommendations of the September 2024 evaluation; (2) comply with an intensive outpatient treatment program; (3) follow up with a psychiatrist, have monthly medication checks, undergo weekly individual therapy "with a focus on support, trauma improvement, and personal responsibility"; (4) be placed on electronic home monitoring GPS "until he is enrolled and compliant and participating with mental health treatment" for at

⁴ The Resentencing Guidelines, Amendment 1, applied here because Appellant's underlying firearms offense was committed on December 8, 2021. **See** 204 Pa. Code § 307a.2(b)(2) (8th ed.). As the instant revocation was based on a technical violation of probation, the Resentencing Guidelines recommended the same minimum term as the Sentencing Guidelines recommended at his original sentencing hearing: twenty-one to thirty months' imprisonment, plus or minus three months for aggravating or mitigating circumstances. **See** 204 Pa. Code § 307.3(a) (7th ed., Amend 1); N.T. Suppression Hearing, 8/2/22, 17. The revocation sentence was thus below the mitigated range recommended by the Resentencing Guidelines.

least a three-month period; (5) comply with “all of the general rules and regulations of adult probation and parole services”; and (6) have no contact with the judge he threatened and have no contact with that judge’s family. ***Id.*** at 115-16. The court specified that Appellant would be paroled on the revocation sentence as soon as he would be “hooked up” with a GPS monitor. ***Id.*** at 116.

Appellant did not file any post-sentence motions. On February 21, 2025, he timely filed a counseled notice of appeal. ***See*** Notice of Appeal, 2/21/25, 1. Appellant and the revocation court subsequently satisfied their obligations under Pennsylvania Rule of Appellate Procedure 1925(b). ***See*** Order (Rule 1925(b)), 2/26/25; Order (granting extension of time to file Rule 1925(b) statement), 1; Rule 1925(b) Statement, 4/8/25, 1-5; Revocation Court Opinion, 6/17/25, 1-8.

Appellant presents the following questions for our review:

- I. Whether the [revocation c]ourt erred in admitting and considering for sentencing prejudicial material occurring before [Appellant’s] conviction and probation over objection[?]
- II. Whether the [revocation c]ourt’s telling [Appellant that] taking psychotropic medication was optional and also ordering him to comply with a psychiatric report that required him to take said medications was error resulting in an improper sentencing condition[?]

Appellant’s Brief, 10 (answers of the revocation court omitted; Roman numeral prompts substituted).

In his first issue, Appellant challenges the admission of e-mails during the sentencing portion of his revocation hearing over objections raised by his counsel. **See** Appellant's Brief, 25-28. In his second issue, he presents, for the first time on appeal, a claim concerning the revocation court's imposition of a condition to his sentence requiring him to comply with a medication recommendation included in a prior psychiatric report. **See id.** at 29-34. He addresses both issues in a statement pursuant to Pennsylvania Rule of Appellate Procedure 2119(f), suggesting that both claims implicate the discretionary aspects of his sentence. **See id.** at 20-22. He alleges the admission of the e-mails resulted in the "improper consideration of irrelevant factors" for sentencing and that the medication mandate reflected the "imposition of a sentencing condition absent established necessity." **Id.** at 22.

As a preliminary matter, we conclude that neither of Appellant's claims implicate the discretionary aspects of the sentence imposed by the revocation court. The first issue merely presents a claim addressing the admissibility of evidence. While discretionary sentencing claims and evidence admission claims are both reviewed under an abuse of discretion standard, distinct issue preservation requirements apply. Discretionary sentencing claims, unlike evidence admission claims, can be raised for the first time in a timely post-sentence motion for appellate preservation purposes. **See Commonwealth v. Mastromarino**, 2 A.3d 581, 585 (Pa. Super. 2010) (stating that, pursuant to Pennsylvania Rule of Criminal Procedure 720, discretionary sentencing

issues must be preserved at sentencing or in a motion to reconsider sentence). Evidentiary admission claims, on the other hand, require a timely contemporaneous and specific objection to properly preserve the challenge for appellate review. ***See Commonwealth v. Spone***, 305 A.3d 602, 612 (Pa. Super. 2023) (“With respect to preserving challenges to the admission or exclusion of evidence [Pennsylvania Rule of Evidence] 103 addresses rulings on evidence and requires a contemporaneous objection in order to preserve a claim of error in the admission of evidence[.]”). While the consideration of the e-mails at the focus of Appellant’s first issue at the revocation sentencing hearing may be relevant for considering the harmfulness of any error in connection with the admission of those e-mails, we do not discern that the first claim directly implicates the discretionary aspects of Appellant’s sentence. ***See, e.g., Commonwealth v. Warren***, 350 A.3d 1018, 1033-34 (Pa. Super. 2025) (reviewing challenge to trial court’s decision to admit gang affiliation evidence at sentencing hearing as evidentiary challenge).

With respect to the second issue, Appellant challenges the revocation court’s decision to include a supervisory condition requiring him to comply with medication recommendations that he equates to the “imposition of involuntary medication.” Appellant’s Brief, 34. He does not allege that the condition at issue is inconsistent with or barred by the Sentencing Code. In particular, he does not address 42 Pa.C.S. § 9754(b) and 42 Pa.C.S. § 9763(b), which allow courts to attach reasonable conditions to probation that are deemed necessary and the least restrictive means available to promote,

inter alia, a defendant's rehabilitation and the protection of the public. Nor does he allege that the revocation court lacked the statutory authority to create the medication condition of his supervision such that he raises a challenge to the legality of his sentence. **Compare with Commonwealth v. McGraw**, 344 A.3d 813, 818-19 (Pa. Super. 2025) (reviewing a claim that a court lacked the statutory authority to impose a condition requiring a defendant to, *inter alia*, "take his prescribed medications as part of requiring him to undergo medical/psychiatric treatment" as a legality of sentence claim and finding the condition to be authorized by 42 Pa.C.S. § 9763(b)(5), (15)).

We interpret the second issue presented to allege a constitutional violation because Appellant's primary citations to authority in support address cases reviewing assertions of violations of rights guaranteed under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Appellant's limited argument in support of the claim alleges a due process violation. **See** Appellant's Brief, 34 ("The imposition of involuntary medication ... violated due process."); **see also id.** at 32-33, **citing Washington v. Harper**, 494 U.S. 210, 236 (1990) (holding that treatment of prisoner, including administration of antipsychotic drugs, against prisoner's will, did not violate substantive due process where prisoner was found to be dangerous to himself or others and treatment was in prisoner's medical interest), and **Riggins v. Nevada**, 504 U.S. 127, 133-38 (1992) (holding, upon grant of *certiorari* to decide whether forced administration of antipsychotic medication during trial violated rights guaranteed by the Sixth and Fourteenth

Amendments of the United States Constitution, that order for administration of the drugs during the course of the trial was error without findings that there were no less intrusive alternatives, the medication was medically appropriate, and it was essential for the sake of the defendant's safety or the safety of others).

Because Appellant's claims do not implicate the discretionary aspects of his sentence, as he suggests, we may dispense with consideration of the four-part analysis necessary for allowance of appeal with respect to the discretionary aspects of a sentence, including whether Appellant raised a substantial question for our under Rule 2119(f). ***See Commonwealth v. Neafie***, 341 A.3d 813, 817 (Pa. Super. 2025) (addressing four-part analysis which must be satisfied prior to reaching the merits of a discretionary sentencing issue).

Having determined that the first issue raises a challenge to the admission of evidence, we must apply the following standard of review:

The admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial court clearly abused its discretion. An abuse of discretion is not merely an error in judgment, but is rather the overriding or misapplication of law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will[,], or partiality, as shown by the evidence of record.

Commonwealth v. Ganjeh, 300 A.3d 1082, 1091 (Pa. Super. 2023) (citations, internal quotation marks, and brackets omitted).

With respect to claims addressing the admission of evidence in a sentencing proceeding, we have noted that, “[t]o determine an appropriate penalty, the sentencing court may consider any evidence it deems relevant.” ***Commonwealth v. Bowens***, 265 A.3d 730, 764 (Pa. Super. 2021) (*en banc*) (citation omitted). At the same time, however, “[i]nformation outside of the record, not subject to review and dispute by the parties, is not properly considered.” ***Id.*** (citation omitted). “[T]he court violates the defendant’s right to due process if, in deciding upon the sentence, it considers unreliable information, or information affecting the court’s impartiality, or information that it is otherwise unfair to hold against the defendant.” ***Id.*** (citation omitted).

Appellant challenges the admission of two exhibits at his revocation sentencing hearing: an e-mail which he allegedly sent to the chambers of his original plea/probation judge in August 2022 (Exhibit CG5) and an e-mail thread from July 2023, between the director of the Delaware County Courthouse’s Pretrial, Bail, and Diagnostic Services Division and an employee from the county adult probation office (Exhibit CG6). ***See*** Appellant’s Brief, 25-28. Appellant characterizes the following attachment to the email in Exhibit CG5 as a “pre-conviction political cartoon”:



Appellant's Brief, 25. In the e-mail thread in Exhibit CG6, the court director informed the probation office that Appellant's interactions with the staff for a doctor who conducted a mental health evaluation of Appellant had been "disturbing," and the parties to the e-mail exchange agreed that Appellant would be reminded not to contact that doctor again. Exhibit CG6. A block-quoted e-mail from the office manager for the doctor, included in the thread, referenced that Appellant had told them they were "very unhelpful and conniving" after they were unable to fulfill his repeated requests for a copy of a medical report, that he threatened to "sue [them] for misrepresentation," and, before the manager hung up a phone on him, he said, "This world is messed up and I'll tell you why... It's all these [plural antisemitic slur.]" ***Id.***

Exhibit CG5 was addressed in the sentencing record after a discussion in which the prosecutor referenced that the prior plea/probation judge requested a “no-contact” provision for the revocation sentence that would bar Appellant from contacting the judge and members of his family. **See** N.T. **Gagnon II** Hearing, 1/24/25, 90-91. The revocation court noted that it did not find that request to be unreasonable. **See id.** at 91. The court then told Appellant, “[G]ood judges want criminal defendants to get help. They really do. Because if you don’t get help and you continue to do the wacky things, you’ll wind up back in the criminal justice system, wind up in jail, and it’s a lose-lose situation for everybody.” **Id.** The court then stated its intent to have the record supplemented with the “cartoon” in Exhibit CG5, which it referred to as “a photograph that was e[-]mailed to [the prior plea/probation judge’s] staff on or about August 22, 2022,” from Appellant. **Id.** at 93.

Appellant’s counsel raised an objection to the admission of the “cartoon” e-mail, noting that the date it was sent on, August 22, 2022, was before Appellant was placed on probation, and asserting that the exhibit was not relevant to the proceedings before the court. **See** N.T. **Gagnon II** Hearing, 1/24/25, 93. The court referred to the exhibit as “wacky,” a characterization that Appellant’s counsel agreed with, and the court mentioned, with respect to Appellant, “But I want him to understand what wacky is.” **Id.** The prosecutor argued that the court “can and should consider all information available to it about [Appellant] and his history of communications with people involved in the case.” **Id.** at 93-94. The prosecutor also advised the court

that the exhibit was “the subject of a previous hearing before [the former assigned judge], where [that judge] brought [Appellant] in and talked to him about [the exhibit], and [Appellant] did admit to sending it.” ***Id.*** at 94. Appellant thereafter denied that he sent the e-mail and claimed that his brother had sent it after getting “ahold” of his phone. ***Id.*** at 94-95.

Regardless of Appellant’s explanation for how the “cartoon” e-mail was sent to the former judge’s chambers, the revocation court noted that the e-mail was emblematic of “wacky” things going on with him that had resulted in his incarceration and suggested his need for mental health treatment:

THE COURT: Well, regardless, if it got – it was sent from your e[-]mail address to a judge’s chambers. Now that – if that ain’t wacky, I don’t know what it is. If you have people in your life, whether it was sent by you or by your brother, people who are sending this kind of stuff, you’re hanging out with wacky people. This is wacky. People don’t – well, I don’t know. Maybe they do send this kind of stuff to people. But it’s wacky.

[APPELLANT]: I agree, sir.

THE COURT: And if a judge gets that, a judge that you’re appearing in front of – so you’re in a wacky environment, even if you take it as true that your brother sent that to the wrong person. You’re in a wacky environment that people are sending crazy stuff out. Living in a wacky environment doesn’t help somebody who has a tendency to go wacky themselves.

And you got a history of this stuff. What I mean by the history of this stuff is, and I can consider it now because it is sentencing, on this – in the reports, there was a return from Philadelphia of your supervision because you sent a nasty gram to the cops. That’s wacky.

[APPELLANT]: Yes, Your Honor.

THE COURT: It's not normal stuff. It's certainly not normal for somebody who's under court supervision to do that kind of stuff. You're begging to get in trouble. I mean, you're begging somebody to get you in trouble.

[APPELLANT]: I'm sorry, Your Honor.

...

THE COURT: ... This wackiness has cost you a considerable amount of time in jail, away from your life. You've wasted your life by doing this wacky stuff.

And I would suggest to you, most earnestly, that you go to these mental health evaluations and comply with the treatment recommendations that are in the report. Because if you don't, and you continue to engage in this wacky stuff that's going to violate sentences, you're going to wind up back in jail again. You're wasting more of your time and your assets and the assets of the system.

I would like nothing more than to never see you again. And that means you're going to have to comply with the sentence that I'm about to impose.

See N.T. **Gagnon II** Hearing, 1/24/25, 95-96.

After the discussion about Exhibit CG5, the prosecutor introduced the e-mail thread in Exhibit CG6 and argued that documented communications between Appellant and the staff of the doctor who conducted a mental health evaluation reflected "a common flavor ... of [Appellant] badgering people with whom he's interacted." N.T. **Gagnon II** Hearing, 1/24/25, 98. The prosecutor also noted that his "racial epithet directed at Jewish people" was "another commonality." **Id.** Appellant's counsel objected to the exhibit as "entirely inappropriate for purposes of a violation of his probation," noting that

the e-mail thread was exchanged at a time during which Appellant was on parole rather than probation. ***Id.*** at 99.

In a subsequent exchange between the court and counsel, Appellant's counsel made clear that she objected to admission of Exhibits CG5 and CG6 as proof to sustain findings for violations of his probation but *did not* object to the court's use of the exhibits for sentencing purposes. ***See*** N.T. ***Gagnon II*** Hearing, 1/24/25, 99-101. The court agreed that the exhibits were only being used for sentencing purposes to support the court's determination that he needed mental health treatment:

THE COURT: It's not being considered. And I can tell you right now, I won't consider that or the other one for purposes of the violation. I think it's important that [Appellant] sees these things and understands that this stuff is wacky. He needs – he needs mental health treatment.

[APPELLANT'S COUNSEL]: ***Well, I don't have a problem if the court wants to use them for that purpose.***

THE COURT: That's the purpose I wanted –

[APPELLANT'S COUNSEL]: My objection is to having – I have the objection that I'm having these admitted into evidence, because then they become something that gets used later on against [Appellant]. These things become part of the record. They get used later on against him. And if it's in the record.

THE COURT: But I think, [counsel], they're not being considered for the violations, because I've already found the violations.

[APPELLANT'S COUNSEL]: And, again, for purposes of sentencing, I think that I don't –

THE COURT: On whether or not he's going to comply. Because there is a question in the record about whether or not he's going to comply and whether or not he thinks he needs to have a mental

health evaluation. All of these things are red flags, [Appellant], that you do need it.

[APPELLANT'S COUNSEL]: Well – and, Your Honor, that – I understand what the court is saying. I understand what the court is trying to do. I object to having what the court is trying to do. I object to having these made part of the record. First of all, if they're being admitted ... for **Gagnon** purposes, it's not being distinguished as being considered for sentencing. And I understand what the Commonwealth is trying to do.

THE COURT: Well, the record will show that that is for purposes of sentencing.

[APPELLANT'S COUNSEL]: I understand. And it will be in the file, and it will be available to anybody in the future. Nothing here is under seal. And the evaluation, as long as I'm standing up, should be filed under seal. That contains confidential information that should not be available to the public. But you already have enough of a record as far as what [Appellant] has been found to have done.

THE COURT: But not really. I mean, it is enough. But these documents should be in the record. Again, because if [Appellant] comes back and says, ["I don't have any problems, I don't need any mental health,["] you can't come back and say, "We didn't talk about this wacky stuff you did."

[APPELLANT'S COUNSEL]: Okay.

THE COURT: And if you come back and then say, ["I don't need a mental health evaluation, [I don't need to take medication, I'm perfectly okay," this is not the actions of somebody who's perfectly okay.[]

[APPELLANT'S COUNSEL]: I haven't had the opportunity to review this. I have not had an opportunity to respond to it. There's no one here I can ask about this. All we have are e[-]mails that were submitted that took place two years ago, July 24, 2023. I just got them here in open court.

[PROSECUTOR]: That's correct, Your Honor. I just got them here in open court as well, of course. To be clear for the record-and I think the record is clear-the Court has already found a violation.

[Exhibits] CG5 and CG6, I only marked them for posterity of the record, for identification purposes, and we've now moved onto sentencing.

THE COURT: And it helps to put [Appellant] on notice that he should comply with the recommendations that I'm going to impose, which are contained in the psychological report of September 12th, 2024.

[APPELLANT'S COUNSEL]: ***I have no objection to the Court's driving those points home.*** My objection is that I've received it here in open court during the course of the sentencing without an opportunity to address or review them. Now they're being made part of the record of sentencing.

Id. (emphasis added).

On appeal, Appellant claims that the revocation court "erred and abused its discretion in admitting" Exhibits CG5 and CG6 "and considering them in deciding [his] sentence." Appellant's Brief, 23. With respect to the "cartoon" e-mail in Exhibit CG5, he asserts that: (1) he denied sending the e-mail to his former judge; (2) the email "was not a threat or slur;" (3) the court "employed" the "cartoon" e-mail to determine that he was acting "wacky" or in a "wacky environment," and had "a tendency to go wacky [him]self"; and (4) the court "misapprehended" that "he was under court supervision when it was sent[,] although the episode occurred before he was initially convicted." ***Id.*** at 25-26. He characterizes Exhibit CG6 as "an irrelevant e[-]mail thread" and both exhibits at issue as "prejudicial." ***Id.*** at 26. He suggests that the court's consideration of the exhibits for sentencing purposes was improper because "neither [e]xhibit related to [his] belief (present or future) [that] he needed mental health treatment or whether he would comply with a sentence

requiring mental health treatment.” **Id.** He concludes that the exhibits “served merely to inflame the sentencing [j]udge.” **Id.** at 27.

To the extent that Appellant intermingles an evidentiary admission claim with a discretionary sentencing challenge concerning the exhibits, he generally asserts that the admission of the exhibits was prejudicial and lacked a legitimate sentencing purpose:

[T]he Learned Court did not examine how the [e]xhibits contributed to its determination of [Appellant’s] character, propensity to commit a future crime, rehabilitative needs or other legitimate sentencing consideration under 42 Pa.C.S. §[]9721(b). They did not strengthen the basis for the sentence imposed, *i.e.*, the vindication of the court, especially since the court found the Commonwealth failed to prove a violation of Rule 10(C) [failing to comply with the mental health conditions of the original sentence].

In sentencing Appellant, the court considered these materials the Commonwealth offered only to prejudice the defendant. Along with its exclusive emphasis on the seriousness of the telephone call statement to the Judicial Conduct Board receptionist, the court failed to explain how its sentence was consistent with [the] protection of the public, the gravity of the offense as it related to the impact on the life of the victim and on the community and the rehabilitative needs of the defendant. [**See**] 42 Pa.C.S. § 9721.

The remote, irrelevant, and prejudicial Commonwealth [e]xhibits served no legitimate sentencing purpose and inflamed the court. The [c]ourt, in turn was influenced by them concluding the defendant was “wacky” and the sentencing procedure was outside the established norms of sentencing. They contributed to the [c]ourt’s abuse of discretion in imposing an overly long sentence.

Appellant’s Brief, 27-28 (footnote).

Upon our review, we conclude that Appellant has entirely failed to preserve any of the arguments that he is making in support of his first issue about the admission of Exhibits CG5 and CG6. His overarching assertions that

the exhibits were improperly considered for sentencing purposes is waived because his counsel explicitly *consented* to the revocation court's consideration of the exhibits for sentencing purposes and for the particular purposes that the court used them. **See** N.T. **Gagnon II** Hearing, 1/24/25, 99 ("Well, I don't have a problem if the court wants to use them for that purpose."); **id.** at 102 ("I have no objection to the Court's driving those points home."). To the extent that he is challenging the court's admission of the exhibits, his objections below were limited to concerns that: (1) the exhibits would be used to prove a violation of probation; (2) the exhibits could possibly be used against him for prejudicial purposes in future hypothetical court proceedings; and (3) the Commonwealth failed to provide advance notice of an intent to admit the exhibits at the **Gagnon II** hearing. None of those assertions preserved his instant arguments about the admission of the exhibits for sentencing purposes. Accordingly, his arguments are waived for lack of preservation. **See** Pa.R.A.P. 302(a) ("Issues not raised in the trial court are waived and cannot be raised for the first time on appeal."); **see Commonwealth v. York**, 465 A.2d 1028, 1032 (Pa. Super. 1983) ("The doctrine of waiver has become firmly entrenched in Pennsylvania law and it is clear that on appeal a new and different theory of relief may not be successfully advanced for the first time on appeal.").

To the extent that Appellant's first issue presents a challenge to the discretionary aspects of the revocation sentence that claim also waived for lack of preservation. "To properly preserve an issue challenging the

discretionary aspects of sentencing, a defendant must object and request a remedy at sentencing, or raise the challenge in a post-sentence motion.” ***Commonwealth v. Clary***, 226 A.3d 571, 579 (Pa. Super. 2020). “The purpose of requiring a party to object to a sentence after it is imposed, is to give the trial judge an opportunity to reconsider or modify the sentence imposed; failure to do so deprives the trial court of this chance.” ***Commonwealth v. Perzel***, 291 A.3d 38, 48 (Pa. Super. 2023). Thus, a discretionary sentencing issue is waived if it was not raised “at sentencing or in [a] post-sentence motion.” ***Commonwealth v. Tejada***, 107 A.3d 788, 798 (Pa. Super. 2015).

Here, Appellant did not raise any objection after the imposition of his sentence at the sentencing hearing. ***See*** N.T. ***Gagnon II*** Hearing, 1/24/25, 107-20. Thereafter, he never filed any post-sentence motion. Accordingly, he waived any discretionary sentencing claim for purposes of our review.

In his second issue, Appellant claims that the revocation court’s imposition of a condition on his supervision, requiring him to comply with medication recommendations, violates his constitutional right to due process where it was imposed without consideration as to the necessity of the condition:

[Appellant’s] liberty interests not to be involuntarily medicated were ignored at the ***Gagnon II*** [h]earing. The Commonwealth did not offer any of the predicate requirements justifying the sentencing [o]rder. The sentencing court’s initial discussion with Appellant suggested it found the Commonwealth’s request inadequate. However, the sentencing [o]rder fully and specifically

enforced the condition without requiring any legal standard for doing so.

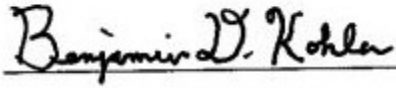
The imposition of involuntary medication for a defendant who was not found incompetent, had not committed a new criminal offense, let alone a violent one, where the court had not found he was dangerous to anyone violated due process. The [c]ourt abused its discretion in imposing the administration of psychotropic medication to the objecting defendant absent any meaningful examination of the necessary factors to permit it or stating reasons for doing so. A remand for resentencing is required.

Appellant's Brief at 33-34.

Much like his first claim, the instant claim is waived because it was not presented to the revocation court, in any form, following the imposition of the medication condition to the revocation sentence. Appellant did not raise any objection to the medication condition following the imposition of his sentence and did not assert a due process violation by the revocation court. As a result, this claim is waived and may not be considered for the first time on appeal. **See** Pa.R.A.P. 302(a); **see also Commonwealth v. Cline**, 177 A.3d 922, 927 (Pa. Super. 2017) ("The law is clear that issues, even those of constitutional dimension, are waived if not raised in the trial court.") (internal quotation marks and citation omitted); **Commonwealth v. Strunk**, 953 A.2d 577, 579 (Pa. Super. 2008) ("Even issues of constitutional dimension cannot be raised for the first time on appeal.").

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: 10/9/2026