

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

ALEXANDER CLARK, JR.

Appellant

: No. 516 WDA 2025

Appeal from the Judgment of Sentence Entered November 26, 2024
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0005212-2024

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
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v.

ALEXANDER CLARK

Appellant

: No. 517 WDA 2025

Appeal from the Judgment of Sentence Entered November 26, 2024
In the Court of Common Pleas of Allegheny County Criminal Division at
No(s): CP-02-CR-0008574-2022

BEFORE: STABILE, J., LANE, J., and BENDER, P.J.E.

MEMORANDUM BY LANE, J.:

FILED: October 13, 2026

Alexander Clark, Jr. ("Clark") appeals from the judgments of sentence imposed following his jury convictions for aggravated assault, criminal conspiracy, recklessly endangering another person, firearms not to be carried without a license, and non-jury conviction of persons not to possess firearms.¹ We affirm.

¹ **See** 18 Pa.C.S.A. §§ 2702(a)(1), 903, 2705, 6105, 6106.

We summarize the relevant factual and procedural history of this matter as follows. On October 18, 2022, at approximately 10:00 a.m., Clark and two companions, Darrius Rainey (“Rainey”) and Robert Walls (“Walls”), chased Brentel Clark (“the victim”) through the Homewood neighborhood of Pittsburgh and shot him multiple times. The victim survived. Police arrested Clark and charged him with the aforementioned charges.²

Clark filed a motion to suppress the firearm, gunshot residue swab, and all statements,³ arguing that the police officer did not have reasonable suspicion to detain him. In November 2023, the trial court held a suppression hearing, where the Commonwealth presented testimony from three police officers involved in the investigation. Pittsburgh Police Officer Leroy Schrock (“Officer Shrock”) testified that he was in his police vehicle on patrol in the Homewood neighborhood, a “[v]ery high crime area, day, night, [where at] anytime you could be subject to being robbed[,], assaulted or murdered.” N.T., 11/2/23, at 9-10. He received a ShotSpotter alert of gunfire on the 7200

² The Commonwealth charged Clark at docket CP-51-CR-008574-2022 with aggravated assault, conspiracy, recklessly endangering another person, and firearms not to be carried without a license. It separately charged him with persons not to possess firearms at docket CP-51-CR-005212-2024.

³ There is no further mention in the suppression testimony regarding a gunshot residue swab or Clark making any statements to police.

block of Kelly Street.⁴ Officer Shrock was at that location, but did not see anything suspicious.

As he looked around the area, he received a second ShotSpotter alert for three gunshots fired on the 700 block of North Homewood Avenue, which was approximately one block away. Officer Shrock drove down Fleury Way toward Homewood Avenue, and saw three men in different colored hoodies — green, grey, and black — walking “very quickly” away from Homewood Avenue. **Id.** at 12. Officer Shrock testified that they were “the only people [he] saw in the area,” and immediately used his radio to relay their descriptions to other police officers. **Id.** He continued to track their

⁴ The Pennsylvania Supreme Court has recently explained:

ShotSpotter is an electronic system, utilized by the City of Pittsburgh, to detect sounds of gunfire and report it to the police. The system’s audio sensors detect sounds which may be gunfire. The sounds are then reviewed by experts to determine whether they are gunfire or other similar noises. Their location is triangulated using the coordinates of the sensors in the vicinity. If the noise is determined to be gunfire, the information is sent to the subscribing police department.

Commonwealth v. Foster, 356 A.3d 747, 752 (Pa. 2026) (citation omitted). In **Foster**, the Court considered “whether the Superior Court erred in affording too much weight to [the defendant’s] temporal and spatial proximity to a ShotSpotter alert in assessing whether reasonable suspicion existed to support a **Terry** stop.” **Id.** at 755 (unnecessary capitalization omitted). **See also Terry v. Ohio**, 392 U.S. 1 (1968). The Court held that the totality of the circumstances — which included the ShotSpotter alerts and other articulable facts — established the reasonable suspicion necessary to conduct an investigative detention. **See id.** at 764.

movements from his police vehicle⁵ and reported over the radio when the men ducked between houses and into alleyways. When a marked police vehicle turned onto Fleury Way moments later, Officer Shrock observed the men begin to run, with two running toward North Lang Avenue and the third running further down Fleury Way.

Pittsburgh Police Officer Jesse Carter ("Officer Carter") testified that he was approximately three blocks away from the location of the first ShotSpotter alert and arrived on the scene in less than twenty seconds. He was in his marked police vehicle at the intersection of Bennett Street and Homewood Avenue when he received the second ShotSpotter alert, and two older men pointed him down the block. Officer Carter drove to the corner of Homewood Avenue and Fleury Way, where he observed Clark, Rainey, and Walls. He noted that the three men matched the descriptions provided by Officer Schrock, and further observed that Rainey wore black body armor over his hoodie. When the men saw Officer Carter, they "looked appalled, in a frenzy, kind of looked at each other, and then it was simultaneously as [he was] getting ready to tell them to stop, they all just [ran]." N.T., 11/2/23, at 33.

Officer Carter, who was still inside his patrol vehicle, drew his weapon and ordered the men to stop. He testified: "Essentially as soon as they [saw] me, they look and run." *Id.* at 70. Clark and Rainey fled on North Lang

⁵ Officer Shrock testified that there was a barrier across Fleury Way and he was unable to drive his vehicle closer to the three men but could still observe them.

Street, while Walls ran further down Fleury Way. Officer Carter followed Clark and Rainey in his police vehicle and observed Rainey hide behind a parked vehicle, remove his body armor, and then continue running. Officer Carter then exited his vehicle, with his gun drawn, and chased the two men on foot. He eventually detained Clark and Rainey on Bennett Street and placed them in handcuffs. Police searched behind the vehicle where Rainey hid and recovered body armor and a magazine for a firearm. On cross-examination, the defense played Officer Carter's body worn camera footage from the encounter.

Pittsburgh Detective Ryan Del Vecchio ("Detective Del Vecchio") testified that police searched the area where Officer Schrock had seen the three men ducking into alleyways and between houses. Police recovered two firearms in an abandoned building at 712 North Lang Avenue, and recovered a third firearm from inside a tire behind 7047 Kelly Street.

Clark argued that the firearm, gunshot residue swab, and any statements should be suppressed because Officer Carter did not have reasonable suspicion to conduct an investigatory detention of him. **See** N.T., 11/2/23, at 106. Clark averred that there was no indicia of his involvement in criminal activity "other than being with somebody who was wearing what appeared to be body armor, there being a ShotSpotter notification in this general area, and having a description of these individuals walking quickly from another police officer who observed them." **Id.** at 102. After taking the matter under advisement, the trial court denied the motion to suppress.

Clark's instant charges proceeded to a jury trial, where the Commonwealth presented several police officers who testified consistently with the summary above. In addition, the Commonwealth showed footage from the police officers' body worn cameras and police vehicle dashboard cameras, as well as surveillance video collected from numerous security cameras in the area. One surveillance video showed Clark, Rainey, and Walls chasing the victim and shooting him on Kelly Street. Another video depicted Clark in a shooting stance with a rising plume of smoke coming from his hands, consistent with gunfire.

Clark did not testify in his defense or present any evidence. At the conclusion of trial, the jury found Clark guilty of aggravated assault, conspiracy to commit aggravated assault, and firearms not to be carried without a license. The trial court subsequently found Clark guilty of persons not to possess firearms.

On November 26, 2024, after receipt of the presentence investigation report ("PSI"), the trial court held a sentencing hearing. Clark acknowledged that his prior record score ("PRS") was four. However, he averred that the court should consider him to have a PRS of two "on an equitable basis" because the trial judge who sentenced him on his prior case "resigned amidst allegations of judicial misconduct" and "racial animus," and had unjustly constructed his sentence such that his PRS would have extra points. N.T., 11/26/24, at 9-10, 13. In the alternative, Clark argued that the court should exclude his prior conviction for aggravated assault when calculating his PRS,

which would decrease his PRS to two, because that conviction served as the basis for his ineligibility to possess a firearm. ***See id.*** at 12.

After hearing argument from both counsel, the trial court imposed: six to twelve years' incarceration on aggravated assault; five to ten years' incarceration on conspiracy; and three to six years' incarceration on persons not to possess firearms, all to run consecutively to one another. The court further imposed a sentence of two to four years' incarceration on firearms not to be carried without a license, to run concurrently, and no further penalty on recklessly endangering another person. The aggregate term was nine to eighteen years' incarceration.

The trial court explained its reasons for the sentence imposed:

[T]he nature of the [prior] act that makes up [Clark's PRS] is another violent offense with a firearm where a juvenile was shot, both in the groin and the hand as reflected in the [PSI].

. . . Clark served a substantial sentence for that. And within a fairly short period of time after serving that sentence, this incident occurs.

* * * *

The circumstances here are problematic to say the least. They are reflective of violent behavior with a firearm. It is now the second time . . . Clark has been convicted of this type of behavior. And that warrants real pause in terms of the length of the sentence that the court should impose in this matter.

I've also considered [Clark's] rehabilitative needs. Despite all of this, he is still a relatively young man [at twenty-six years old]. I have considered the background . . . in the [PSI], and I've considered some of the circumstances here that would weigh towards rehabilitation.

They do not outweigh the gravity and the seriousness of the offense, the impact that this would've had on the victim and the family in this case, and also the fact that's he's in possession of a firearm that he's not allowed to have because of the prior conviction.

All of that I think warrants, at least on two of these counts, the court to impose consecutive sentences. . . .

And I believe they are reflective of the seriousness of this offense and the court's determination that a lengthy period of state incarceration is the only way to address this type of offense with . . . Clark's prior background, and notwithstanding the fact that I do believe he has rehabilitative needs that I hope can be addressed in the state prison system, so that when he is ultimately paroled, he is able to avoid this type of behavior in the future, which makes him candidly dangerous if he's going to carry firearms that he's not allowed to have an use them on individuals. This is now the second time that this has happened.

Id. at 24-26 (unnecessary capitalization omitted). Clark filed a timely post-sentence motion, which the trial court denied. He then filed a timely notice of appeal and both he and the trial court complied with Pa.R.A.P. 1925.

Clark raises the following issues for our review:

1. Did the trial court abuse its discretion in denying suppression when Officer Carter initiated a warrantless seizure of . . . Clark without reasonable suspicion of criminal activity?
2. Did the trial court abuse its discretion . . . when it justified the excessive, consecutive sentences for § 2702(a)(1) and § 6105 by double counting the fact that . . . Clark used a gun in both this and his earlier case even though his guidelines were already enhanced by his use of a deadly weapon and the circumstances of the earlier assault?
3. Did the trial court abuse its discretion in sentencing . . . Clark at 18 Pa.C.S.[A.] § 6105 under incorrect guidelines that improperly included a prior conviction for 18 Pa.C.S.[A.] § 2702(a)(4) in the [PRS] when that conviction as also an element of § 6105?

Clark's Brief at 7 (unnecessary capitalization omitted and issues reordered for ease of review).

In his first issue, Clark argues that the trial court abused its discretion when it denied his motion to suppress. Our standard of review when addressing a challenge to the denial of a motion to suppress is well-established:

An appellate court's standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's factual findings are supported by the record, we are bound by these findings and may reverse only if the court's legal conclusions are erroneous. The suppression court's legal conclusions are not binding on an appellate court, whose duty it is to determine if the suppression court properly applied the law to the facts. Thus, the conclusions of law of the courts below are subject to plenary review.

Commonwealth v. McClellan, 178 A.3d 874, 880-81 (Pa. Super. 2018) (citation omitted). "With respect to a suppression court's factual findings, it is the sole province of the suppression court to weigh the credibility of the witnesses. Further, the suppression court judge is entitled to believe all, part or none of the evidence presented." ***Commonwealth v. Rosendary***, 313 A.3d 236, 241 (Pa. Super. 2024) (citation omitted).

The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures. ***See Commonwealth v. Lewis***, 343 A.3d 1016, 1029 (Pa. 2025). Our Supreme Court has explained:

Not every encounter between a law enforcement officer and a citizen constitutes a seizure warranting constitutional protections. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a “seizure” has occurred. There are three types of interactions between the police and private citizens: mere encounter, investigative detention, and arrest. A mere encounter “does not constitute a seizure . . . and requires no particular suspicion of criminality.” An investigative detention, [or a ***Terry*** stop,] on the other hand, “constitutes a seizure of a person, and to be constitutionally valid police must have a reasonable suspicion that criminal activity is afoot. An arrest is also, of course, a seizure, “and must be supported by probable cause.”

* * * *

Reasonable suspicion justifying an investigative detention must be “based upon specific and articulable facts . . . that criminality is afoot.” The police must have “a particularized and objective basis for suspecting the particular person stopped of criminal activity.” This is not a particular demanding standard. Although a mere ‘hunch’ does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause. The reasonable suspicion inquiry falls considerably short of 51% accuracy. The assessment of whether reasonable suspicion exists requires an evaluation of the totality of the circumstances. The totality is based on all facts, and even a combination of innocent facts, when taken together, may warrant further investigation by the police officer. The investigative detention must be justified at its inception; circumstances arising after the suspect was detained cannot retroactively provide a lawful basis for the stop.

Commonwealth v. Foster, 356 A.3d 747, 758-59 (Pa. 2026) (citations, brackets, and some quotation marks omitted). “Police officers may find reasonable suspicion to suspect criminal activity is afoot in a high crime area where an unprovoked citizen flees upon noticing the police.” ***Commonwealth v. Barnes***, 296 A.3d 52, 57 (Pa. Super. 2023) (citation omitted). Indeed, no additional factors beyond unprovoked flight in a high crime area are necessary to support reasonable suspicion to conduct an investigatory detention. ***Id.*** at 58.

Clark argues that Officer Carter did not have sufficient reasonable suspicion to seize him based on “a ShotSpotter notification, a generalized dispatch of three men in hoodies walking in the area, his belief that Homewood was a ‘high crime area,’ and the fact that . . . Clark and his two companions looked surprised when they saw the policeman.” Clark’s Brief at 40. He avers that “Officer Carter’s actions of yelling at the three men to stop and drawing his firearm constituted a seizure.” ***Id.*** at 42. Clark asserts that Officer Carter “testified that he was ‘hyperfocused on’ Rainey” and “did not recall what . . . Clark was doing when he told the men to stop.” ***Id.*** at 44. Clark further claims that “in his police report, Officer Carter did not include any information about . . . Clark’s mannerisms or any suggestion that he behaved suspiciously prior to the seizure.” ***Id.*** at 44 (unnecessary capitalization omitted). Clark concedes that he “was within a couple block radius of the [ShotSpotter] notifications,” but contends that he was “in a mixed-use neighborhood in

broad daylight, and there was no testimony that other people were not around.” ***Id.*** at 46. Clark also argues that the ShotSpotter system is unreliable and subject to “human bias.” ***Id.*** at 47.

The trial court considered Clark’s issue and found it meritless, reasoning:

In this particular instance, the court finds that there was sufficient particularized circumstances for Officer Carter to attempt to effectuate a stop by drawing his weapon while he was seated in the vehicle, as displayed in the Commonwealth exhibit regarding the dash cam, as well as the foot chase that then ensued and the detention of . . . Rainey and . . . Clark.

The court points to the totality of the circumstances here and not any one particular item. However, the totality here is that there was a ShotSpotter notification for shots being fired in that location where the officers were present. [Officer Carter] had the generalized description from Officer Schrock of three individual males, each with a different color hoodie on. Perhaps, most importantly, he was able to testify that he observed . . . Rainey wearing body armor over the top of the hoodie. And in an attempt to try and detain them, they fled the area and were detained a short distance away. As well as he observed the discarding of the body armor and later a magazine that was recovered from an area surrounding a police vehicle.

The location; the nature of the call that they had received; the generalized description of those individuals; observing somebody at 10 a.m., in broad daylight, wearing body armor; and the actions of the individuals in attempting to leave at the time that he pulled his firearm, the court believes that there were sufficient particularized circumstances that would warrant a further investigative detention.

Trial Court’s Findings of Fact and Conclusions of Law, 12/14/23, at 12-14 (unnecessary capitalization omitted).

After careful review, we conclude that record supports the trial court's factual findings and suppression ruling. **See McClellan**, 178 A.3d at 880. The record shows that police officers responded to two ShotSpotter alerts in the Homewood neighborhood, an extremely high crime area. Officer Schrock observed Clark, Rainey, and Walls walking quickly down Fleury Way away from the area of the second ShotSpotter alert and relayed their descriptions over police radio. Moments later, Officer Carter, inside his marked police vehicle, turned down Fleury Way and observed the three men Officer Schrock had described. Officer Carter testified, "As we saw each other, they started looking, dispersing. And then I [told] them to stop. As I'm drawing my firearm and telling them to stop, they're already — they're running at that point." N.T., 11/2/23, at 55. This evidence demonstrates that Clark, in a high crime area, immediately fled without provocation as soon as he noticed Officer Carter's presence. We thus conclude that Clark's unprovoked flight in a high crime area was sufficient to create reasonable suspicion to justify an investigative detention.⁶ **See Barnes**, 296 A.3d at 58 (holding that

⁶ The trial court cited several additional facts that, under the totality of the circumstances, supported a finding of reasonable suspicion. **See** Trial Court's Findings of Fact and Conclusions of Law, 12/14/23, at 12-14 (reasoning that factors such as: the proximity of the two ShotSpotter notifications, Officer Schrock's description of the three men walking quickly away from the area of gunfire, and Rainey's body armor worn over his hoodie, supported Officer Carter's reasonable suspicion to detain Clark). However, we need not engage in any further analysis as **no additional factors beyond unprovoked flight in a high crime area** are necessary to support reasonable suspicion to conduct an investigatory detention. **See Barnes**, 296 A.3d at 58

“unprovoked flight in a high crime area is sufficient to create a reasonable suspicion to justify a **Terry** stop under the Fourth Amendment,” and that “no additional facts [are required] to establish reasonable suspicion”). We thus determine that the trial court did not err when it denied Clark’s motion to suppress as Officer Carter had the requisite reasonable suspicion to detain Clark. Accordingly, no relief is due on Clark’s first issue.

Clark’s second and third issues both challenge the discretionary aspects of his sentence. In his second issue, Clark challenges the trial court’s imposition of “excessive, consecutive sentences,” arguing that the court “double count[ed] the fact that [he] used a gun in both this and his earlier case.” Clark’s Brief at 33 (unnecessary capitalization omitted). In his third issue, Clark argues that the court engaged in “impermissible double counting when it sentenced [him] at [section] 6105 under incorrect guidelines that improperly included in his PRS a prior conviction for [section] 2702(a)(4) even though the latter conviction was an element of the former.” **Id.** at 21. “[A] challenge to the calculation of the Sentencing Guidelines raises a question of the discretionary aspects of a defendant’s sentence.” **Commonwealth v. Keiper**, 887 A.2d 317, 319 (Pa. Super. 2005).

To invoke this Court’s jurisdiction, an appellant challenging the discretionary aspects of his sentence must satisfy a four-part test:

[W]e conduct a four-part analysis to determine (1) whether appellant has filed a timely notice of appeal, **see** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, **see**

Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

Commonwealth v. Maury, 992 A.2d 162, 170 (Pa. Super. 2010) (some citations omitted).

Here, Clark filed a timely notice of appeal and preserved his issues in a post-sentence motion. He also included in his brief a Rule 2119(f) statement. This Court has held that "a defendant may raise a substantial question where he receives consecutive sentences within the guideline ranges if the case involves circumstances where the application of the guidelines would be clearly unreasonable, resulting in an excessive sentence"

Commonwealth v. Dodge, 77 A.3d 1263, 1270 (Pa. Super. 2013) (citation omitted). We have also held that a claim that the sentencing court miscalculated the PRS and "misapplied the Sentencing Guidelines presents a substantial question." ***Commonwealth v. Cook***, 941 A.2d 7, 11 (Pa. Super. 2007) (citation omitted). As such, we conclude that Clark's challenges to the consecutive nature of his sentence and the trial court's application of the sentencing guidelines raise substantial questions. Accordingly, we will review the merits of his claims.

Our standard of review of a discretionary sentencing claim is as follows:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the

sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Clemat, 218 A.3d 944, 959 (Pa. Super. 2019) (citation omitted). “[W]hen reviewing sentencing matters, this Court must accord the sentencing court great weight as it is in the best position to view the defendant’s character, displays of remorse, defiance or indifference, and the overall effect and nature of the crime.” **Commonwealth v. Brown**, 249 A.3d 1206, 1217 (Pa. Super. 2021) (citation omitted). We bear in mind:

When imposing sentence, the trial court is required to consider the particular circumstances of the offense and the character of the defendant. The trial court should refer to the defendant’s prior criminal record, age, personal characteristics, and potential for rehabilitation. However, where the sentencing judge had the benefit of a [PSI], it will be presumed that he or she was aware of the relevant information regarding the defendant’s character and weighed those considerations along with mitigating statutory factors.

Clemat, 218 A.3d at 959-60 (citation omitted).

It is well-settled that it is within the sound discretion of the trial court to impose consecutive sentences. **Commonwealth v. Bankes**, 286 A.3d 1302, 1310 (Pa. Super. 2022). “Defendants convicted of multiple offenses are not entitled to a ‘volume discount’ on their aggregate sentence. Further, we will not disturb consecutive sentences unless the aggregate sentence is ‘grossly disparate’ to the defendant’s conduct, or “viscerally appears as patently unreasonable.”” **Id.** (citations omitted).

We further observe that at sentencing, the trial court is required to consider the sentencing guidelines adopted by the Pennsylvania Commission on Sentencing,” and “may not ‘double count’ factors already taken into account in the sentencing guidelines.” **Commonwealth v. Myers**, 324 A.3d 528, 537 (Pa. Super. 2024) (*en banc*) (citation omitted), *appeal granted*, 336 A.3d 256 (Pa. 2025) (discussed *infra*).⁷ Importantly, while “[i]t is impermissible for a court to consider factors already included within the sentencing guidelines as the **sole** reason for increasing or decreasing a sentence to the aggravated or mitigated range,” the court may “use information included in the guidelines to supplement other peripheral sentencing information.” **Commonwealth v. Watson**, 228 A.3d 928, 937 (Pa. Super. 2020) (citations omitted and emphasis in original). This includes consideration of “prior convictions in conjunction with past unsuccessful attempts to rehabilitate, or the fact that the new crimes violated parole.” **Id.** A sentencing court may also consider “that the defendant’s ongoing criminal record demonstrated a threat to public safety or a general disregard for private

⁷ We note that on April 7, 2025, our Supreme Court granted the defendant/appellant’s petition for allowance of appeal in **Myers** to review the following issue: “Whether the *en banc* Superior Court’s Opinion in Support of Affirmance is inconsistent with this Court’s holding in . . . **Jemison**, 98 A.3d 1254[,], by defining one of [the defendant’s] prior disqualifying convictions as a pre-condition rather than an element of the offense for purposes of sentencing of a conviction for Persons not to Possess Firearm under 18 Pa.C.S.A. § 6105, thereby double counting the prior disqualifying convictions in [his] prior record score and his offense gravity score under the Pennsylvania Sentencing Guidelines.” **Myers**, 336 A.3d 256.

property, even though the guidelines take into account those prior convictions.” ***Id.***

Clark argues that the trial court imposed an excessive sentence when it ordered his sentences for aggravated assault and persons not to possess firearms to run consecutively, resulting in an aggregate term of nine to eighteen years’ incarceration. He avers that the trial court engaged in “impermissible double counting” because it “justified these excessive sentences, and its decision to run them consecutively, with the facts that . . . Clark used a firearm in both the instant case and his earlier case.” Clark’s Brief at 33. He contends that this “amounted to double counting, as . . . Clark was subject to the deadly weapon enhancement at [section] 2702(a)(1); his earlier aggravated assault [conviction] was already accounted for in his PRS; and his [offense gravity score (“OGS”)] at [section] 6105 already accounted for the fact that he was a person not to possess.” ***Id.*** He concedes that “it was concerning that his two cases involved similar gun crimes,” but maintains that “those facts were already embedded in the PRS and OGS,” and “there was no suggestion that [he] was an ‘incurable recidivist.’” ***Id.*** at 39.

The trial court considered Clark’s second issue and found it meritless, reasoning:

Individualized sentences do not require courts to impose the minimum possible confinement. Pursuant to 42 Pa.C.S.A. § 9721, the court has discretion to impose sentences consecutively or concurrently. The court exercised that discretion after considering the violent nature of his present and past conduct. The court has the weighty responsibility of crafting a sentence that not only

balances the serious nature of the crime, any rehabilitative needs of a defendant, impact on a victim(s), and no less important, the protection of the public. [Clark] has demonstrated a propensity for gun violence that cannot be ignored and adequately addressed by assigning a numerical value to it through a PRS score. [Clark's] argument seeks to tie the court's hands in a way that would not permit it to fully consider all of the factors of [section] 9271(b), which is clearly not the intention of the statute nor does it advance the purpose behind prohibiting double counting.

* * * *

Here, [Clark] stood before the court having been convicted by a jury of chasing down and shooting multiple rounds at [the victim. This crime was] preceded by another non-fatal shooting of a juvenile, to which [Clark] pled guilty in 2019. As highlighted at sentencing, what was and remains troubling to the court[] was the short duration between the commission of the offense and [Clark's] release from having served that sentence.

Trial Court Opinion, 11/24/25, at 22-23 (unnecessary capitalization omitted).

After review, we conclude that the trial court did not abuse its discretion when it considered Clark's past convictions and his use of a firearm in both matters. The record shows that at sentencing, the court considered not only factors already included in the sentencing guidelines such as Clark's PRS and criminal history, but also weighed the impact of Clark's crimes on the victim and his family, the safety of the community, and Clark's lack of successful rehabilitation thus far. Because the court did not use factors already embodied in the sentencing guidelines as the **sole** reason for the sentence imposed, we discern no abuse of discretion. **See Watson**, 228 A.3d at 927; **see also Commonwealth v. Simpson**, 829 A.2d 334, 339 (Pa. Super. 2003) (holding that "[t]rial courts are permitted to use prior conviction history and

other factors already included in the guidelines if[] they are used to supplement other extraneous sentencing information”).

We further conclude that the imposition of an aggregate sentence of nine to eighteen years’ incarceration was not “grossly disparate” to Clark’s act of chasing and shooting the victim multiple times in broad daylight, nor does it “viscerally appear as patently unreasonable.” **Bankes**, 286 A.3d at 1310. We reiterate that Clark is “not entitled to a volume discount” in his sentencing and it is “within the sound discretion of the trial court to impose consecutive sentences.” **Id.** Accordingly, no relief is due on Clark’s second issue.

In his final issue, Clark argues that the trial court abused its discretion by sentencing him for carrying a firearm as a person prohibited “under incorrect guidelines that improperly included a prior conviction for [aggravated assault] in the [PRS] when that conviction was also an element of section 6105.” Clark’s Brief at 23 (unnecessary capitalization omitted). In order to determine the applicable guideline ranges to apply at sentencing, the court is required to determine the OGS of each conviction as well as the defendant’s PRS. **See Commonwealth v. Spenny**, 128 A.3d 234, 242 (Pa. Super. 2015) (citations omitted). This Court has explained:⁸

The [PRS] is based on the number and type of prior convictions the defendant has on his or her criminal record. 204 Pa. Code §

⁸ We note the current version of the Sentencing Guidelines, the Eighth Edition, went into effect on January 1, 2024. Clark’s instant offenses, committed in October 2022, are governed by the prior version of the Sentencing Guidelines, the Seventh Edition.

303.4(a). Each prior conviction is given a point value ranging between one and four points. [Sections] 303.7 and 303.15 [of the Sentencing Guidelines] set forth the point value for every Pennsylvania criminal offense, but generally speaking (with some exceptions not relevant here), first-degree felony ("F1") convictions are either three- or four-point offenses, F2 convictions are two-point offenses and F3 convictions are one-point offenses.

Id. To be included in the calculation of PRS, the following criteria must be met: "(a) the previous offense must have been committed prior to the current offense; (b) the conviction on the prior offense must have occurred prior to the commission of the current offense; and (c) the sentence for the previous offense must have been imposed prior to the sentence for the current offense." Sentencing Guidelines Implementation Manual, at 143 (7th ed. 2012).

Pursuant to 204 Pa.Code § 303.8, certain offenses are excluded from calculation of a PRS. The 7th Edition Sentencing Guideline's Implementation Manual's commentary to this section provides, in relevant part:

Exclusion of prior convictions that are used to elevate the statutory grading of an offense reflects the Commission's general policy against "double counting" of factors against the offender. For a few offenses, such as retail theft, certain prior convictions may increase the grade of the subsequent offense. Because both the OGS and PRS reflect to some degree the grade of offenses, and an increase in the grade of a current or previous offense will generally increase the sentence recommendation, the offenses which contribute to an increase in the grade of a subsequent offense should not be counted again. Under earlier versions of the guidelines, previous offenses were only excluded when the current offense was affected; the policy was changed under the 5th Edition and retained under the 6th, 6th Revised, and 7th Edition to extend this policy so that any previous conviction that increases the grade of an offense, either a current or previous offense, would be excluded from calculation of the PRS. This

change removed the “double counting” of a conviction, which was the premise of the original policy. This policy focuses on increases in the grade rather than the maximum sentence.

Id.

Our Crimes Code defines the offense of possession of a firearm as a person prohibited as follows: “A person who has been convicted of an offense enumerated in subsection (b) . . . shall not possess, use, control, . . . or obtain a license to possess, use, [or] control . . . a firearm in this Commonwealth.” 18 Pa.C.S.A. § 6105(a). Subsection (b) includes the offense of aggravated assault under section 2702. 18 Pa.C.S.A. § 6105(b).

In ***Commonwealth v. Keiper***, 887 A.2d 317 (Pa. Super. 2005), the defendant argued that his “previous conviction of burglary [was] an element of [section] 6105, and therefore, the trial court’s use of the conviction in calculating the [PRS] amounted to double counting.” ***Id.*** at 319. This Court rejected the defendant’s argument and held that “the prior conviction of burglary [was] merely a pre-condition to charging [the defendant] with a violation of section 6015” and “was not part of the illegal conduct in which [the defendant] participated,” *i.e.*, owning firearms in violation of section 6105. ***Id.*** at 321.

In ***Commonwealth v. Jemison***, 98 A.3d 1254 (Pa. 2014), our Supreme Court held that the Commonwealth was permitted to disclose to the fact finder which of the defendant’s prior convictions precipitated the applicability of the section 6105 charge. The Court explained:

[U]nder [section] 6105, one element of persons not to possess firearms is a prior conviction of a specific, enumerated offense and this fact strongly supports [our] view . . . that the prosecution should not be required to accept a stipulation which acknowledges that a prior conviction satisfies the element, but does not name or identify the specific prior offense.

Id. at 1261. While the **Jemison** Court held that a prior conviction for an enumerated offense is an element of section 6105, it did not address whether the prior conviction affected a defendant's subsequent PRS calculation if convicted of another crime.

Subsequently, in **Myers**, the defendant averred that his prior felony drug conviction should not have been included in his PRS because that "conviction was an element of his current offense under [section] 6105 and was double counted for purposes of [his] sentencing guidelines." **Myers**, 324 A.3d at 533. A plurality of an *en banc* panel of this Court again rejected this argument and held that "[s]ection 303.8(g) does not exclude from the calculation of a defendant's [PRS] a conviction that served as the predicate or disqualifying offense for the current conviction." **Id.** at 543. The panel reasoned: "[i]f the Sentencing Commission had intended for a prior conviction that served as a disqualifying or predicate offense for a crime to be excluded from calculation of the PRS, then the Sentencing Commission could have expressly provided this exclusion; it did not." **Id.**

Clark argues that "**Keiper** is no longer good law," as **Jemison** held that "a prior disqualifying conviction is an element of [section] 6105." Clark's Brief at 27. He avers that the trial court improperly relied on **Keiper** and **Myers** in

concluding that the prior conviction was “a mere precondition” and not an essential element of the offense. **Id.** at 28. Clark contends that the trial court “engaged in impermissible double counting when it determined that [his] PRS was four” because the court “used [his] prior conviction for aggravated assault . . . to calculate his PRS even through the aggravated assault conviction was an element of [section] 6105.” **Id.** at 23. Clark argues that he “was previously convicted of aggravated assault, [section] 2702(a)(4), a second-degree felony that is enumerated in subsection” 6105(b) and that this conviction “was valued at two points, [elevating his] PRS from two to four.” **Id.** at 25-26.

The trial court considered Clark’s issue and found it lacked merit. Citing **Myers, Keiper**, and **Commonwealth v. Patterson**, 304 A.3d 782 (Pa. Super. 2023) (unpublished memorandum),⁹ the court reasoned:

Myers echoes established precedent as reflected in . . . **Keiper** and . . . **Patterson**. Both **Keiper** and **Patterson** addressed a challenge that a sentencing court misapplied the sentencing guidelines in double counting a prior conviction in its calculation of the [PRS], arguing that it served as a material element for a section 6105 conviction. Each time, the courts held that the prior conviction did not increase the grading of the section 6105 violation. They reasoned the underlying conviction is not a material element affecting grading, but a precondition to charging an individual. Further explaining, that grading is based on which

⁹ **See Patterson**, 304 A.3d at **3 (holding that “because a prior conviction is a prerequisite and not an element of [s]ection 6105, including it in a prior record score is not ‘double counting’ it”); **see also** Pa.R.A.P. 126(b)(1)-(2) (providing that an unpublished non-precedential memorandum decision of the Superior Court, filed after May 1, 2019, “may be cited for [its] persuasive value”).

of the current prohibited conduct an individual engaged, in this case, the actual possession of the firearm, not because of his prior conviction. . . .

* * * *

Consistent with precedent, the court did not engage in “double counting.” For the reasons discussed above, [Clark] was properly calculated with a PRS of [four] based on the prior conviction for aggravated assault. Here, like **Keiper** and **Patterson**, the grading of [Clark’s] section 6105 offense was because he was found to be in possession of a firearm, not because of his prior aggravated assault conviction.

Trial Court Opinion, 11/24/25, at 20-21.

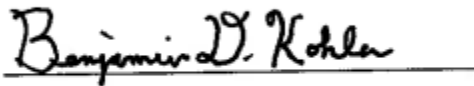
After careful review, we conclude that the trial court did not abuse its discretion when it included Clark’s prior conviction for aggravated assault when calculating his PRS. Consistent with **Myers**, we discern nothing in section 303.8 that instructs a trial court to exclude the prior conviction that precipitated a defendant’s designation as a person not to use or possess firearms pursuant to section 6105. Clark’s prior conviction of aggravated assault only triggered the applicability of section 6105; it did not increase the grading. **See** 204 Pa.Code § 303.8(g) (explaining, in relevant part, that the “following types of offenses, charges and convictions shall not be scored in the [PRS]: (3) [a]ny prior conviction which contributed to an increase in the grade of a subsequent conviction”). Since Clark had a previous conviction of aggravated assault, which did not increase the grading of his current charges, the trial court properly included this conviction when calculating his PRS. **See** 204 Pa.Code § 303.4(a) (providing “[i]f there is a single offense in the prior

judicial proceeding, that offense **shall** be counted in the calculation of the [PRS]" and, in the case of multiple offenses in a single prior judicial proceeding, "the most serious offense of the judicial proceeding **shall** be counted in the calculation of the [PRS]"). Therefore, we conclude that Clark's final claim is without merit and no relief is due.

For the foregoing reasons, we determine that all of Clark's issues are meritless. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

10/13/2026