

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ANDRE JEROME SWINTON JR.	:	
	:	
Appellant	:	No. 779 MDA 2026

Appeal from the Judgment of Sentence Entered April 23, 2026
In the Court of Common Pleas of Adams County Criminal Division at
No(s): CP-01-CR-0000539-2025

BEFORE: STABILE, J., MURRAY, J., and KING, J.

MEMORANDUM BY KING, J.:

FILED: OCTOBER 23, 2026

Appellant, Andre Jerome Swinton Jr., appeals from the judgment of sentence entered in the Adams County Court of Common Pleas, following his bench trial conviction for two counts of driving under the influence of a controlled substance (“DUI”), and one count of driving with a suspended license.¹ We affirm.

The relevant facts and procedural history of this matter are as follows. On March 15, 2025, the Commonwealth initiated a criminal complaint against Appellant and charged him with two counts of DUI (controlled substance) and one count of driving with a suspended license.² On July 1, 2025, Appellant

¹ 75 Pa.C.S.A. §§ 3802(d)(1) and 1543, respectively.

² According to the criminal complaint, the incident in question took place on October 24, 2024. (**See** Criminal Complaint, 3/15/25, Affidavit of Probable Cause).

filed a motion to suppress. The court held a suppression hearing on September 22, 2025, and denied the motion on October 1, 2025. On January 6, 2026, the matter proceeded to a stipulated bench trial, after which the court convicted Appellant of the aforementioned charges.

On April 16, 2026, the matter proceeded to sentencing on Count 1 (DUI), Count 2 (DUI), and Count 3 (driving with a suspended license). The original sentencing order provided that Count 2 merged with Count 1 for sentencing purposes. However, the sentencing order went on to state that Appellant was sentenced, on Count 1, to 60 months of probation with 90 days' restrictive DUI conditions and, on Count 2, to probation for 6 months with 30 days' restrictive DUI conditions, with Count 2 to run consecutive to Count 1. Thus, the sentencing order was internally inconsistent. As well, the original sentencing order provided that during Appellant's house arrest he would be subject to electronic monitoring and Secure Continuous Remote Alcohol Monitoring ("SCRAM") at the direction of the Probation Department.

On April 21, 2026, the court issued an amended sentencing order which corrected the inconsistency in the original sentencing order. In this amended sentencing order, the court clarified that Count 2 merged with Count 1 for sentencing purposes, and the sentence for Count 3 was 6 months of probation with 30 days' restrictive DUI conditions, to run consecutive to Count 1. All other sentences and conditions remained in effect. On April 23, 2026, the court again amended the sentencing order to remove the SCRAM requirement, with the rest of the sentencing order to remain in effect.

On May 14, 2026, Appellant timely filed a notice of appeal.³ On May 15, 2026, the court ordered Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. On June 3, 2026, Appellant timely complied.

On appeal, Appellant raises a single issue for our review:

1. Whether the [c]ourt erred in finding that the smell of marijuana and an admission to smoking marijuana two hours earlier was sufficient probable cause to place the defendant under arrest for DUI.

(Appellant's Brief at 6).

Preliminarily, we observe:

The fundamental tool for appellate review is the official record of what happened at trial, and appellate courts are limited to considering only those facts that have been duly certified in the record on appeal. To ensure that the appellate courts have all necessary records, the

³ Appellant's notice of appeal states that it was filed from the April 16, 2026 judgment of sentence. Generally, where the trial court amends the judgment of sentence during the period it maintains jurisdiction, the direct appeal lies from the amended judgment of sentence. **See Commonwealth v. Garzone**, 993 A.2d 1245, 1254 n.6 (Pa.Super. 2010). We recognize that in **Commonwealth v. Mumford**, 353 A.3d 247 (Pa.Super. 2026), this Court recently deemed a sentence illegal where the court amended a sentencing order to add a term that the defendant was subject to mandatory reentry supervision under 61 Pa.C.S.A. § 6137.2, where the defendant was not present at the time the court amended the sentencing order. Notably, **Mumford** involved the court's **addition** of a sentencing term. Here, although there is no indication from the record that the sentence was amended in Appellant's presence, the initial amended sentencing order corrected an obvious clerical error based on the internal inconsistency in the original sentencing order, and the second amended sentencing order **removed** a restrictive condition. Thus, the facts of **Mumford** are distinguishable from this case, and we see no issue implicating the legality of Appellant's sentence on this ground. Further, we have amended the caption to indicate that the appeal properly lies from the April 23, 2026 amended judgment of sentence. **See Garzone, supra.**

Pennsylvania Rules of Appellate Procedure provide for the transmission of certified records from trial courts to appellate courts.

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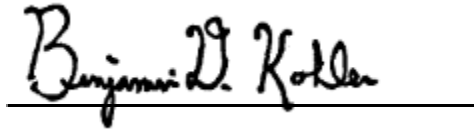
[Pa.R.A.P. 1911] makes it clear that appellants must order all transcripts necessary to decide the appeal, and that the Superior Court may take any action it deems appropriate, including dismissal of the appeal, if the appellant does not order the necessary transcripts.

Commonwealth v. Gillen, 798 A.2d 225, 229 (Pa.Super. 2002) (quoting ***Commonwealth v. Williams***, 552 Pa. 451, 456-457, 715 A.2d 1101, 1103-1104 (1998)). It is the **appellant's** responsibility to order all transcripts necessary for appellate review. ***Commonwealth v. Steward***, 775 A.2d 819, 833-34 (Pa.Super. 2001) (holding that appellant is responsible to order all transcripts necessary for review).

Instantly, no notes of testimony are included in the certified record. Following an inquiry, this Court confirmed that the notes of testimony from the suppression hearing, bench trial, and sentencing hearing were **not** transcribed, nor were they requested. An examination of the record also confirms that Appellant did not include a request for transcripts with his notice of appeal. Under these circumstances, we conclude that Appellant failed to order all transcripts necessary to decide the appeal. ***See Gillen, supra***. As the transcripts are necessary to conduct our appellate review, Appellant's sole issue on appeal is waived. ***See id.*** Accordingly, we affirm.

Judgment of sentence affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/23/2026