COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ASHISH KUMAR VERMA	:	
Appellant	:	No. 1905 EDA 2024

Appeal from the Judgment of Sentence Entered June 12, 2024
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0006127-2022

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

OPINION BY NICHOLS, J.: **FILED APRIL 15, 2025**

Appellant Ashish Kumar Verma appeals from the judgment of sentence imposed after he pled guilty to one count of unlawful contact with a minor and one count of attempt to commit involuntary deviate sexual intercourse of a person less than sixteen years of age (attempt to commit IDSI).[1] On appeal, Appellant challenges the discretionary aspects of his sentence. After careful review, we affirm Appellant's convictions, affirm in part and vacate in part the judgment of sentence for unlawful contact with a minor, and affirm in its entirety the judgment of sentence for attempt to commit IDSI.

The trial court summarized the relevant facts of this matter as follows:

> Between September 13, 2022, and September 15, 2022, in Conshohocken, Montgomery County, [Appellant] began chatting online with someone he thought was a fourteen (14) year old girl

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[1] 18 Pa.C.S. §§ 6318(a)(1), and 901(a) respectively. Additionally, the crimes of IDSI of a person less than sixteen years of age is codified at 18 Pa.C.S. § 3123(a)(7).

> over the course of two (2) days on a social media app called "Whisper." [Appellant] then took that conversation to text messaging. In point of fact, the individual with whom [Appellant] was conversing was an undercover police officer. [Appellant] confirmed his age and the age of the "child" in the text exchange. In fact, the undercover officer even offered to stop texting [Appellant] so that [Appellant] did not get into trouble to which [Appellant] responded "I never said that." Furthermore, these text messages were very sexual. [Appellant] talked about sexual positions, performing oral sex on each other. [Appellant] sent a picture of his erect penis to this person, discussing meeting with her, and discussing what would happen once they met, including oral sex either being performed on [Appellant] or performed on the fourteen (14) year old. All of this led to [Appellant] meeting at a location in Conshohocken, where he met with undercover detectives.

Am. Trial Ct. Op., 8/27/24, at 2-3 (some formatting altered and citations omitted).

On November 13, 2023, Appellant entered an open guilty plea, which the trial court accepted. On June 12, 2024, the trial court sentenced Appellant to a term of three and one-half to seven years of incarceration followed by three years of probation for unlawful contact with a minor, and a concurrent term of three and one-half to seven years of incarceration followed by three years of probation for attempt to commit IDSI.[2] ***See*** N.T., 6/12/24, at 47. This resulted in an aggregate sentence of three and one-half to seven years of incarceration followed by three years of probation. ***See id.***

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[2] The trial court added the three-year probationary tails to each sentence pursuant to 42 Pa.C.S. §§ 9718.5, 9799.14(d). ***See*** Am. Trial Ct. Op., 8/27/24, at 10; N.T., 6/12/24, at 11.

On June 19, 2024, Appellant filed a timely post-sentence motion to modify his sentence, which the trial court denied. ***See*** Order, 7/2/24.[3] On July 17, 2024, Appellant filed a timely notice of appeal. Both the trial court and Appellant complied with Pa.R.A.P. 1925.

On appeal, Appellant presents the following issues:

> 1. [D]id the [trial] court err and abuse its discretion in sentencing Appellant above the standard guideline range of sentencing for someone with the same clear record and offense gravity score?
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> 2. [D]id the [trial] court err in failing to account for Appellant's numerous mitigating factors and letters of support presented during the sentencing hearing?

Appellant's Brief at 8 (some formatting altered).

Initially, we note that although Appellant included two issues in his statement of questions, he argues these claims as a single issue in his brief. ***See*** Appellant's Brief at 12-21.[4] Appellant contends that the trial court failed

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[3] Appellant was represented during his plea and in his timely post-sentence motion by W. Chris Montoya, Esq. However, on June 24, 2024, five days after Attorney Montoya filed Appellant's timely post-sentence motion, Richard Hark, Esq., entered his appearance on behalf of Appellant, and he filed a second post-sentence motion. On July 2, 2024, the trial court denied the timely post-sentence motion filed by Attorney Montoya. In a separate order filed that same date, the trial court denied the second post-sentence motion, which was filed by Attorney Hark, as untimely.

[4] ***See*** Pa.R.A.P. 2119(a) (stating that "[t]he argument shall be divided into as many parts as there are questions to be argued"). We do not condone Appellant's failure to comply with the Rules of Appellate Procedure. However, because Appellant's noncompliance does not impede our review, we decline to find waiver on this basis. ***See, e.g.***, ***Commonwealth v. Levy***, 83 A.3d 457, 461 n.2 (Pa. Super. 2013) (declining to find waiver on the basis of the appellant's failure to comply with the Rules of Appellate Procedure, where the errors did not impede this Court's review).

to properly consider mitigating factors and imposed an unreasonable sentence by sentencing Appellant above the standard range of the sentencing guidelines. ***See id.***

Appellant's issues relate to the discretionary aspects of his sentences. ***See Commonwealth v. Disalvo***, 70 A.3d 900, 903 (Pa. Super. 2013) (explaining that a claim that the trial court failed to consider certain mitigating factors is a challenge to discretionary aspects of the sentence); ***Commonwealth v. Sanchez***, 848 A.2d 977, 986 (Pa. Super. 2004) (providing that challenges to the application of the sentencing guidelines present a challenge to the discretionary aspects of the sentence).

"[C]hallenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right." ***Commonwealth v. Derry***, 150 A.3d 987, 991 (Pa. Super. 2016) (citations omitted). Before reaching the merits of such claims, we must determine:

> (1) whether the appeal is timely; (2) whether Appellant preserved his issues; (3) whether Appellant's brief includes a [Pa.R.A.P. 2119(f)] concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of sentence; and (4) whether the concise statement raises a substantial question that the sentence is inappropriate under the sentencing code.

Commonwealth v. Corley, 31 A.3d 293, 296 (Pa. Super. 2011) (citations omitted).

"To preserve an attack on the discretionary aspects of sentence, an appellant must raise his issues at sentencing or in a post-sentence motion.

Issues not presented to the sentencing court are waived and cannot be raised for the first time on appeal." ***Commonwealth v. Malovich***, 903 A.2d 1247, 1251 (Pa. Super. 2006) (citations omitted); ***see also*** Pa.R.A.P. 302(a) (stating that "[i]ssues not raised in the trial court are waived and cannot be raised for the first time on appeal").

"The determination of what constitutes a substantial question must be evaluated on a case-by-case basis." ***Commonwealth v. Battles***, 169 A.3d 1086, 1090 (Pa. Super. 2017) (citation omitted). "A substantial question exists only when the appellant advances a colorable argument that the sentencing judge's actions were either: (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process." ***Commonwealth v. Grays***, 167 A.3d 793, 816 (Pa. Super. 2017) (citation omitted).

Here, the record reflects that Appellant preserved his issues by raising them in his post-sentence motion, filing a timely notice of appeal and a court-ordered Rule 1925(b) statement, and including a Rule 2119(f) statement in his brief. ***See Corley***, 31 A.3d at 296. Further, Appellant's claims raise a substantial question for our review. ***See Commonwealth v. Jackson***, 585 A.2d 533, 534 (Pa. Super. 1991) (stating that "[w]here [an] appellant avers that the sentencing court failed to properly apply the sentencing guidelines a substantial question as to the appropriateness of the sentence has been raised" (citation omitted)); ***see also Commonwealth v. Miller***, 275 A.3d 530, 534 (Pa. Super. 2022) (providing that a claim that the trial court failed to adequately consider mitigating factors and imposed an excessive sentence, presents a substantial question).

Our well-settled standard of review 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.
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> Additionally, our review of the discretionary aspects of a sentence is confined by the statutory mandates of 42 Pa.C.S. § 9781(c) and (d). Subsection 9781(c) provides:
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>> The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds:
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>>> (1) the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;
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>>> (2) the sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or
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>>> (3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.
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>> In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.
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> 42 Pa.C.S. § 9781(c).
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> In reviewing the record, we consider:
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>> (1) The nature and circumstances of the offense and the history and characteristics of the defendant.
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>> (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation [(PSI)].

(3) The findings upon which the sentence was based.

(4) The guidelines promulgated by the commission.

42 Pa.C.S. § 9781(d).

Commonwealth v. Raven, 97 A.3d 1244, 1253-54 (Pa. Super. 2015) (citation omitted).

"When imposing a sentence, the sentencing court must consider the factors set out in 42 Pa.C.S. § 9721(b), [including] the protection of the public, [the] gravity of [the] offense in relation to [the] impact on [the] victim and [the] community, and [the] rehabilitative needs of the defendant[.]" ***Commonwealth v. Fullin***, 892 A.2d 843, 847 (Pa. Super. 2006) (citation omitted and formatting altered). "A sentencing court need not undertake a lengthy discourse for its reasons for imposing a sentence or specifically reference the statute in question, but the record as a whole must reflect the sentencing court's consideration of the facts of the crime and character of the offender." ***Commonwealth v. Schutzues***, 54 A.3d 86, 99 (Pa. Super. 2012) (citations omitted).

Additionally, the trial court "must consider the sentencing guidelines." ***Fullin***, 892 A.2d at 848 (citation omitted). However, "where the trial court is informed by a PSI [report], it is presumed that the court is aware of all appropriate sentencing factors and considerations, and that where the court has been so informed, its discretion should not be disturbed." ***Commonwealth v. Edwards***, 194 A.3d 625, 638 (Pa. Super. 2018) (citation omitted and formatting altered). Further, "where a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code." ***Commonwealth v. Moury***, 992 A.2d 162, 171 (Pa. Super. 2010) (citation omitted).

The balancing of the sentencing factors is the sole province of the sentencing court, which has the opportunity to observe the defendant and all witnesses firsthand. ***See Commonwealth v. Kurtz***, 294 A.3d 509, 536 (Pa. Super. 2023), *appeal granted on other grounds*, 306 A.3d 1287 (Pa. 2023). In conducting appellate review, this Court "cannot reweigh sentencing factors and impose judgment in place of sentencing court where lower court was fully aware of all mitigating factors[.]" ***Id.*** (citation omitted).

Mitigating Factors

We first address Appellant's argument that his sentence was unreasonable and that the trial court failed to adequately consider mitigating factors including letters written to the trial court in support of Appellant. ***See*** Appellant's Brief at 14-21.

In its opinion, the trial court explained:

> [At sentencing, the trial court] heard testimony from two (2) Appellant witnesses as well as reviewed in advance of the sentencing hearing no less than thirty-six (36) letters of support and letters conveying to the [trial court] his or her individual understanding of Appellant's character and background. At the sentencing hearing, the [trial court] reviewed an additional package of documents, which included additional letters of support, a document from Methacton School District, and an appointment confirmation email indicating that the Appellant was scheduled to take his State Medical Licensing Examination on June 25, 2024. Both counsel agreed that the [trial court] had reviewed

everything prior to undertaking the sentencing hearing. (N.T., 6/12/24, pp. 5-9).

Despite Appellant's allegations [on appeal], a review of the record clearly establishes that all of these factors were exactly what this [trial court] took into account in fashioning its sentence. The [trial court] began its discussion prior to the imposition of its sentence by stating as follows:

> This case since I started studying it had a series of conflicts in it that I had to resolve to bring me to the point that I am here today. And I think counsel for the defense have pointed out, along with the witnesses, part of that conflict, which is that you had a man who up until this point in time had had no contact with the law and then commits a most heinous offense. You had a person who had strong family support from good people who are high achievers. And he himself was a high achiever who commits—who attempts—who attempts willfully to do things to a child that no child should ever experience.

(N.T., 6/12/24, p. 43, lines 3-15). The [trial court] went on to further state the following:

> I know that everyone in this room has an opinion of you that is high . . . And I don't think they are lying when they tell me how much they think of you as a person. But I am going to bet that most of them—in fact, probably but a few of them, if any, read what I read . . . they didn't see that. Because I am going to bet I wouldn't get—I wouldn't have gotten these letters in the volume that I did and in the words that were used. Because nobody can look at this-page after page after page after page of text messages—and write those letters.

(N.T., 6/12/24, pp. 43-44, lines 16-8). The [trial court] stated that Appellant's act was evil and it was premedi[t]ated. Appellant went out to look for this. Appellant chose a fourteen (14) year old girl. Appellant made a choice. A million people on the Internet that Appellant could seek to have sex with [him] and he chose a fourteen (14) year old girl. (N.T., 6/12/24, p. 44, lines 9-13). The [trial court] stated that Appellant knew it was wrong. Appellant said it was wrong and told the fourteen (14) year old girl that it was wrong. Appellant told her he knew it was illegal and had consequences. The fourteen (14) year old girl offered

Appellant the opportunity to stop, and he "blew right through that stop sign." (N.T., 6/12/24, p. 44, lines 14-19).

The [trial court] found that no one who examined the Appellant blamed his conduct on a misdiagnosis of his mental health, except him. Until the sentencing hearing, the words "it was wrong" never came out of his mouth until his allocution. The [trial court] asked if Appellant took responsibility for what he said in the [PSI] report. (N.T., 6/12/24, pp. 44-45, lines 20-2). The [trial court] stated that there was a reason it asked that question or in any of the other reports:

> Because as you went through each of these stages with the psychosexual exam and the [PSI] report, what you said was not that I did something wrong and I am taking responsibility for my action, but you blamed a concussion. You blamed a concussion. You blamed a misdiagnosis of your mental health. You blamed hyper sexuality and inability to control impulse. None of those issues, misdiagnosis of your mental condition, kept you from achieving great things, making good decisions along the way. You got a college degree, a postgraduate degree, and a medical degree. You were not impaired by your mental health. And you can't now blame your mental health.

(N.T., 6/12/24, p. 45, lines 4-16). The [trial court] stated that if it made Appellant feel better about himself and if that is what people who know him want to blame—but the doctors aren't doing that. Appellant's history tells us that he can make good decisions. The [trial court] shudders to think if this girl was real, Appellant was ashamed, and he should be. (N.T., 6/12/24, pp. 45-46, lines 17-3).

Despite all of that and to support its sentence, the [trial court] stated that Appellant pled guilty and that was important to it. Appellant came into the courtroom and entered a guilty plea. It was also important to the [trial court] that Appellant had taken some steps, although the [trial court] agreed with the prosecutor that they were not adequate steps in terms of [the] type of treatment that he was receiving, but Appellant was trying to make himself better. Furthermore, the [trial court] acknowledged that everything it read indicated that [Appellant] was at a low rate for recidivism and that was meaningful to it. However, that did not change what happened and that it did not atone for the evil that was in [Appellant's] mind and upon which [he] acted. Appellant's

> lack of prior record was reflected in the guidelines and the [trial court] took that into consideration as well. The [trial court] specifically stated "[p]eople who live a good life up until the point they do commit a crime should receive credit for that portion of their life that was good." (N.T., 6/12/24, p. 46, lines 4-21).
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> The [trial court] then identified each piece of information it took into consideration in fashioning its sentence, and specifically included "the facts of this case as were outlined at the time of the entry of the guilty plea. I have taken into consideration the [PSI] report, the psychosexual examination, the report—reports submitted by defense counsel, the testimony of the witnesses, the letters, the multitude of letters that I have received. And I have measured all of that." (N.T., 6/12/24, pp. 46-47, lines 22-5). For Appellant to allege in his [Rule 1925(b)] concise statement . . . that the [trial court] failed to take all of his mitigation into account prior to issuing its sentence is simply untrue. A review of the record belies such a contention.
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> Additionally, the [trial court] would be remiss if it did not specifically address [Appellant's claim] that the [trial court] disregarded Appellant's letters of support and discounted their value based on the "[the trial court's] predetermined distaste of the crimes to which [Appellant] plead[ed] guilty." To be clear, this [trial court] found it peculiar that [Appellant] would identify as a specific issue in [his] appeal that the [trial court] found [Appellant's] crime distasteful. In fact, the [trial court] would be hard pressed to find anyone who would not have a distaste for [Appellant's] criminal conduct in this case. However, such disdain does not mean that this [trial court] could not be fair when handing down its sentence. Rather, one of the factors that this [trial court] considered was [Appellant's] failure to take responsibility for the aforementioned crimes in the PSI and the psychosexual evaluation, despite his pleading guilty to such an abhorrent behavior in fashioning its sentence.

Am. Trial Ct. Op., 8/27/24, at 10-14 (some formatting altered).

Our review of the record confirms that the trial court carefully considered mitigating factors, including Appellant's letters of support. ***See id.*** Moreover, the trial court considered the PSI report. ***See id.***; N.T., 6/12/24, at 4, 12, 29. Therefore, the trial court was aware of the mitigating factors and considered them when imposing Appellant's sentence. ***See Edwards***, 194 A.3d at 638; ***see also Kurtz***, 294 A.3d at 536. We note that this Court will not re-weigh the trial court's consideration of those factors on appeal. ***See Kurtz***, 294 A.3d at 536; ***see also Commonwealth v. Macias***, 968 A.2d 773, 778 (Pa. Super. 2009) (explaining that the appellate court cannot reweigh sentencing factors and impose its judgment in place of sentencing court where the lower court was fully aware of all mitigating factors). Further, the record reflects that the trial court considered the applicable sentencing guidelines and relevant sentencing factors in crafting Appellant's sentence. ***See*** N.T., 6/12/24, at 10-12, 43-48. Accordingly, we have no basis to conclude that Appellant's sentence was clearly unreasonable. ***See Raven***, 97 A.3d at 1253-54; ***see also Commonwealth v. Antidormi***, 84 A.3d 736, 760 (Pa. Super. 2014). After review, we conclude that Appellant is not entitled to relief on this claim.

Sentencing Above Guidelines

Appellant further argues that the trial court imposed sentences above the applicable sentencing guidelines and that because the evidence did not warrant such a sentence, that this Court should vacate and remand for re-sentencing. ***See*** Appellant's Brief at 12.

It is well settled that the sentencing guidelines provide the range for an offender's minimum sentence, not the maximum sentence. ***See***

Commonwealth v. Mrozik, 213 A.3d 273, 277 n.6 (Pa. Super. 2019) (citing ***Commonwealth v. Yeomans***, 24 A.3d 1044, 1049 (Pa. Super. 2011)).

Here, the trial court imposed terms of incarceration for three and one-half to seven years, which equates to forty-two (42) to eighty-four (84) months, on each count to be served concurrently. ***See*** N.T., 6/12/24, at 47-48.

In its Rule 1925(a) opinion, the trial court explained:

> At the outset of the sentencing hearing, the court identified that count 1 unlawful contact [with] a minor has an offense gravity score of eleven (11), with a prior record score of zero (0), placed the standard range sentence at thirty-six (36) to fifty-four (54) months, plus or minus twelve (12) months. (N.T., [6/12/24,] p. 10, lines 16-25). The court noted that count 1 matched the guidelines for count 2 [attempt to commit IDSI with] a person less than sixteen (16) years of age, which also carried with it an offense gravity score of eleven (11), with a prior record score of zero, placed the standard range sentence at thirty-six (36) to fifty-four (54) months, with a mitigated range of twenty-four (24) months and an aggravated range of sixty-six (66) months. (N.T., 6/12/24, p. 11, lines 5-13). . . . To be clear and contrary to Appellant's assertions, this court's sentence was well within the standard guideline range, as set forth above.

Am. Trial Ct. Op., 8/27/24, at 10 (some formatting altered).

Following our review of the record, we discern no abuse of discretion. ***See Raven***, 97 A.3d at 1253. Based on Appellant's prior record score, the minimum sentence range for both unlawful contact with a minor and attempt to commit IDSI was thirty-six (36) to fifty-four months (54) months. Accordingly, the imposed minimum sentence of forty-two (42) months for both of these charges is within the minimum standard range of thirty-six (36) to fifty-four (54) months of incarceration, therefore, Appellant was not sentenced within the aggravated minimum sentencing guideline range. ***See*** 204 Pa. Code § 303.16(a); ***see also*** Am. Trial Ct. Op., 8/27/24, at 10; ***Mrozik***, 213 A.3d at 277 n.6. Accordingly, Appellant's claim that the trial court sentenced him above the standard guideline range is meritless, and we conclude that Appellant is not entitled to relief.

Legality of Sentence

Questions regarding the legality of a sentence "are not waivable and may be raised *sua sponte* on direct review by this Court." ***Commonwealth v. Wright***, 276 A.3d 821, 827 (Pa. Super. 2022) (citation omitted and formatting altered). Review of the legality of a sentence "presents a pure question of law. As such, our scope of review is plenary and our standard of review *de novo*." ***Id.*** (citations omitted and formatting altered). "If no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction." ***Commonwealth v. Warunek***, 279 A.3d 52, 54 (Pa. Super. 2022) (citation omitted and some formatting altered); ***see also Commonwealth v. Tucker***, 143 A.3d 955, 960 (Pa. Super. 2016) (stating "[a]n illegal sentence must be vacated" (citation omitted)).

Here, the trial court concluded that both of Appellant's convictions required the imposition of a three-year probationary sentence following any period of incarceration because both of Appellant's crimes were enumerated crimes "that require an additional term of probation." N.T., 6/12/24, at 11; ***see also*** 42 Pa.C.S. § 9718.5 (requiring the imposition of a consecutive three-year term of probation for sentences for Tier III sexual crimes set forth in 42 Pa.C.S. § 9799.14(d)). After careful review, we are constrained to disagree with the trial court that the mandatory three-year probationary sentence applied to Appellant's conviction for unlawful contact with a minor.

Section 9718.5 provides as follows:

> **(a) Mandatory probation supervision after release from confinement.—**A person who is convicted in a court of this Commonwealth of an offense under section 9799.14(d) (relating to sexual offenses and tier system) shall be sentenced to a mandatory period of probation of three years consecutive to and in addition to any other lawful sentence issued by the court.
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> **(b) Imposition.—**The court may impose the term of probation required under subsection (a) in addition to the maximum sentence permitted for the offense for which the defendant was convicted.
>
> **(c) Authority of court in sentencing.—**There shall be no authority in a court to impose on an offender to which this section is applicable a lesser period of probation than provided for under subsection (a). Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory period of probation provided under this section.
>
> **(d) Direct supervision.—**Nothing under this section shall limit the court's authority to direct supervision by the Department of Corrections by special order as provided under 61 Pa.C.S. § 6172(a) (relating to probation services).

42 Pa.C.S. § 9718.5.

Appellant's conviction for attempt to commit IDSI is a Tier III sexual crime enumerated in 42 Pa.C.S. § 9799.14(d), and we discern no error in the trial court imposing the three-year probationary tail for that conviction. ***See*** 42 Pa.C.S. §§ 9718.5, 9799.14(d)(4); 18 Pa.C.S. § 3123(a)(7). However, unlawful contact with a minor is a Tier II offense under 42 Pa.C.S. 9799.14(c)(5), and it is not a crime specifically enumerated in 42 Pa.C.S. § 9799.14(d).

Accordingly, because unlawful contact with a minor is not a crime enumerated in 42 Pa.C.S. § 9799.14(d), we are constrained to vacate the three-year probationary term for unlawful contact with a minor imposed pursuant to 42 Pa.C.S. § 9718.5(a) because that statute does not apply to this offense. ***See, e.g.***, ***Commonwealth v. Neuman***, 1839 EDA 2023, 2024 WL 3949180, at *3 (Pa. Super filed Aug. 27, 2024) (unpublished mem.) (vacating the three-year probationary tail for the appellant's conviction of statutory sexual assault imposed pursuant to 42 Pa.C.S. § 9718.5(a) because statutory sexual assault is not a crime enumerated in 42 Pa.C.S. § 9799.14(d)).[5]

Although we vacate the three-year probation sentence for unlawful contact with a minor because it is an illegal sentence, we do not disturb Appellant's conviction for this offense. ***See Tucker***, 143 A.3d at 958 (affirming conviction but holding that illegal sentence must be vacated). Further, we affirm Appellant's judgment of sentence for unlawful contact with a minor in all other respects, and we affirm Appellant's judgment of sentence for attempt to commit IDSI in its entirety. Moreover, we conclude that we

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[5] ***See*** Pa.R.A.P. 126(b) (noting that unpublished memorandum decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value).

need not remand for re-sentencing because our decision does not upset the trial court's sentencing scheme, which consisted of entirely concurrent sentences. ***See Commonwealth v. Thur***, 906 A.2d 552, 569-70 (Pa. Super. 2006) (explaining that an appellate court need not remand for resentencing when it can vacate illegal sentence without upsetting trial court's overall sentencing scheme).

Accordingly, while we affirm Appellant's convictions, we vacate the three-year term of probation for Appellant's conviction for unlawful contact with a minor, and we affirm Appellant's judgment of sentence for unlawful contact with a minor in all other respects, and we affirm in its entirety the judgment of sentence for attempt to commit IDSI.

Convictions affirmed. Judgment of sentence affirmed in part, and vacated, in part. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 4/15/2025