

IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

EDA 2022

NO. 1966

COMMONWEALTH OF PENNSYLVANIA

VS.

BRUCE BATES,
Appellant

BRIEF FOR APPELLANT

Appeal From the Judgment Of Sentence Of The Court Of Common Pleas Of Delaware County, Order Entered June 28, 2022, Imposed On Information No. CP-23-CR-0006975-2011.

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I. STATEMENT OF JURISDICTION

This Court's jurisdiction to hear an appeal from the judgment of sentence of the Delaware Court of Common Pleas is established by Section 2 of the Judiciary Act of 1976, P.L. 586, No. 142, §2, 42 Pa.C.S. §742.

II. ORDER IN QUESTION

On June 22, 2022, in the Delaware County Court of Common Pleas, Judge George A. Pagano imposed the judgment of sentence in question:

Count one: Theft By Unlawful Taking – Full back time of 498 days.

Requirements/Restrictions:

- Immediate parole
- Pay restitution; all monies collected to be applied to restitution first. Supervision may be terminated once restitution is paid in full.

See Sentencing Order dated June 22, 2022.

III. STATEMENT OF SCOPE AND STANDARD OF REVIEW

Review of an appellant's new sentence imposed after the *Gagnon II* hearing is “limited to determining the validity of the ... revocation proceedings and the authority of the sentencing court to consider the same sentencing alternatives that it had at the time of the initial proceeding.” *Commonwealth v. Cooper*, 277 A.3d 1190, 1193 (Pa. Super. 2022) (quotation omitted). An appellate court may only vacate a sentence for an error of law or an abuse of discretion. *Id.* at 1193. “Generally, in reviewing an appeal from a judgment of sentence imposed after the revocation of probation, this Court's scope of review includes the validity of the hearing, the legality of the final sentence, and, if properly raised, the discretionary aspects of the appellant's sentence.” *Commonwealth v. Kuykendall*, 2 A.3d 559, 563 (Pa. Super. 2010) (quotation omitted).

IV. STATEMENT OF QUESTIONS INVOLVED

1. Whether this Court should adopt the holding of *Commonwealth v. Bolds*, 272 A.3d 463, 2022 WL 71879 (Pa. Super. Jan. 7, 2022) (unpublished), and terminate appellant's supervision because the restitution is enforceable and payable pursuant to 42 Pa.C.S. §9728?

(Not addressed by the court below. Suggested Answer: Yes.)

2. Did the trial court lack statutory authority to revoke appellant's parole for failure to pay restitution?

(Answered in the negative by the court below).

3. Did the trial court lack authority to revoke appellant's parole where the court never made any finding at any of his revocation hearings that any nonpayment was willful, which was a required finding because the restitution is a condition of parole?

(Not addressed by the court below. Suggested answer: Yes.)

4. Did appellant's latest revocation sentence, which continued to extend criminal court supervision beyond the statutory maximum sentence for the underlying offense and failed to give credit for ten years of "street time" spent on parole, deprive him of his state and federal due process rights and constitute an illegal sentence?

(Not addressed by the court below. Suggested answer: Yes.)

5. Whether appellant was denied his state and federal due process rights when an uncounseled *Gagnon II* hearing was allowed to proceed on January 29, 2019 in the absence of a knowing and intelligent waiver, such that the resultant revocation sentence constituted an illegal sentence?

(Answered in the negative by the court below.)

V. STATEMENT OF THE CASE

On May 7, 2012, appellant, Bruce Bates, entered into a negotiated guilty plea on docket number CP-23-CR-0006975-2011 and was convicted of theft by unlawful taking, a first-degree misdemeanor. At the time of the plea, Mr. Bates was sentenced to time served to 23 months of incarceration with immediate parole and was ordered to pay restitution in the amount of \$5,600.00 to Teresa Carbone. No payment plan was established.

The statutory maximum sentence allowable by law for this offense is five (5) years of supervision. 18 Pa.C.S. § 106 (b)(5). Mr. Bates has repeatedly had his parole revoked, with the trial court each time imposing a new sentence of incarceration, with immediate parole. The result is that Mr. Bates has been on parole for over eleven (11) years, far exceeding the statutory maximum sentence, solely for failure to repay the entire amount of restitution.

a. Revocation No. 1 – July 25, 2014

On July 25, 2014, almost three months after his original sentence was due to expire, Mr. Bates appeared for a revocation hearing before a hearing officer, not a judge. Neither the Commonwealth nor the probation department placed any alleged violations of parole on the record, nor was any information provided regarding any failure to make restitution payments, and no *Gagnon II* report was entered into evidence (*see* N.T. 7/25/14, at 3-5). The result is that nothing in the record shows

why he was brought in for a hearing after his sentence concluded. Mr. Bates agreed that he was in violation of his parole (*id.* at 3). He was found in violation of parole and sentenced to his back time of 618 days with immediate parole. As conditions of his parole, he was ordered to complete anger management classes and pay restitution. No payment plan was established. A civil judgment was entered on July 31, 2014. *See* CPCMS docket, at 10, attached as Exhibit “C.”

b. Revocation No. 2 – September 14, 2016

On September 14, 2016, five (5) months after his sentence was due to expire, Mr. Bates appeared for a revocation hearing. The trial court referred to a “Rule 3” and “Rule 10A” violation (*see* N.T. 9/14/16, at 3), but neither the Commonwealth nor the probation department provided any information on the record regarding the basis for the alleged violations, nor did they provide any information regarding any failure to make restitution payments, and no *Gagnon II* report was entered into evidence (*see id.* at 3-6). Mr. Bates stipulated that he was in violation of his parole (*id.* at 3). He was found in violation of parole and sentenced to his back time of 598 days with immediate parole. He was ordered to pay restitution as a condition of his parole. No payment plan was established.

c. Revocation No. 3 – July 19, 2017

On July 19, 2017, Mr. Bates appeared for a revocation hearing. Neither the Commonwealth nor the probation department placed any alleged violations of parole

on the record, nor did they provide any information regarding any failure to make restitution payments. Though no party introduced any *Gagnon II* report into evidence, the trial court made a *Gagnon II* report dated July 5, 2017 “part of the record” (N.T. 7/19/17, at 7).¹ According to the report, the alleged violations were that Mr. Bates failed to report to the probation/parole officer as directed; admitted that he smoked marijuana on January 23, 2017 (which was confirmed via a drug test); and failed to make payments towards fines, costs and restitution.² *See Gagnon II* report, dated April 6, 2017. Mr. Bates stipulated that he was in violation of his parole (N.T. 7/19/17, at 3). He was found in violation of parole and sentenced to his back time of 517 days with immediate parole to an available bed at an inpatient drug and alcohol facility. He was ordered to complete a course of treatment successfully and follow after-care plans. He was also ordered to pay restitution as a condition of his parole. No payment plan was established.

d. Revocation No. 4 – January 29, 2019

On January 29, 2019, one month after his sentence was due to expire, Mr. Bates appeared for a revocation hearing that was held before a hearing officer and

¹ The trial court states the *Gagnon II* report was dated July 5, 2017 (N.T. 7/19/17, at 7); however, the only report included in the certified record is dated April 6, 2017.

² No fines were ever imposed in this case.

not a Common Pleas Judge, and he was not represented by counsel. He proceeded without counsel after the following colloquy:

THE COURT: Mr. Bates do you understand you have the right to be represented by Counsel at this hearing?

MR. BATES: Yes.

THE COURT: And you understand that if you are found in violation we may resentence you today?

MR. BATES: Yes.

THE COURT: Knowing that is it your desire to proceed without Counsel today?

MR. BATES: Yes.

THE COURT: And are you willing to proceed before myself appointed by the Court instead of a Judge?

MR. BATES: Yes.

(N.T. 1/29/19, at 3). The hearing officer noted that “the simple violation here is all financial. Fines, costs, restitution still outstanding” (*id.*). Mr. Bates agreed (*id.*). The officer explained that if a Judge were to later find “willful non-compliance of restitution then you have bigger problems. This recommendation is just to extend the time to give you a chance to pay it” (*id.* at 4).

The hearing officer did not consider Mr. Bates’s ability to pay or make any findings on the record regarding willfulness (though by the above statement, indicated that nonpayment was not willful). Mr. Bates testified that he also pays supervision fees in York County, that he just made a payment of \$40 towards restitution and that he was employed by Pro Pallet and had been working there for

13 months (*id.* at 4-5). Mr. Bates agreed that he could make monthly payments of \$50.00 towards restitution, but that he also pays York County \$55.00 per month for supervision fees (*id.* at 5). He noted that if his supervision were transferred from York to Delaware County, that would require him to take more time off work and would cost more money (*id.* at 5-6). He is forced to take off two days of work any time he has to travel to Delaware County for these revocation hearings (*id.* at 7).

The hearing officer and Mr. Bates then agreed on the amount of \$40.00 per month towards restitution (*id.* at 6). There was discussion that Mr. Bates also incurs an additional fee of \$7 per month relating to a computer program for monitoring his supervision in Delaware County (*id.* at 7). According to the probation officer:

It is either you pay for the binder or you pay to travel here or you pay for the supervision in York County. Either way all three costs money. I'm sorry you are going to continue to be supervised until all this restitution is paid. So my priority if I were you is making Theresa Carbone whole and then dealing with the court costs and stuff once your victim is whole. I think they are easier to negotiate than the restitution that owed to the individual.

(*id.* at 8).

The hearing officer never stated on the record that he found Mr. Bates in violation of parole, nor did the officer state on the record the sentence for the violation. However, the probation officer recommended a sentence of back time of 517 days with immediate parole and to pay restitution (*id.* at 4). A sentencing order was later entered into the trial court docket and signed by a judge, who did not

preside over the hearing. That sentencing order did not include a payment plan with a specific dollar amount; rather, it stated, “make monthly payments, restitution 1st.” *See* Sentencing Order, dated January 29, 2019.

e. Revocation No. 5 – October 16, 2020

On October 16, 2020, four months after his sentence was due to expire, Mr. Bates again appeared for a revocation hearing before a hearing officer and not a Common Pleas Court Judge. He was represented by counsel (N.T. 10/16/20, at 3). Neither the Commonwealth nor the probation department placed any alleged violations of parole on the record, nor did they provide any information regarding any failure to make restitution payments, and no *Gagnon II* report was entered into evidence (*see* N.T. 10/16/20, at 3-5). Mr. Bates inquired as to how he was still required to be on supervision beyond his maximum date (*id.* at 4). The court noted that his case would be closed once restitution was paid in full (*id.* at 5). The court found him in violation of parole and sentenced him to his back time of 517 days and ordered restitution to be paid as a condition of his parole. The court issued no payment plan and the previous order to make “monthly payments” was not carried over.

f. Revocation No. 6 – The instant revocation

On April 26, 2022, one month after his sentence was due to expire, Mr. Bates again appeared for a revocation hearing. The probation officer testified that Mr.

Bates failed to pay restitution in full (N.T. 4/26/22, at 4). The officer alleged that his last payment was made in October of 2021 (*id.*).

Counsel for Mr. Bates argued that his supervision should be terminated because the amount of restitution was reduced to a civil judgment and that he would still be required to pay without needing to remain under supervision (*id.* at 5, 7). Moreover, counsel explained that Mr. Bates is unable to work as he is receiving disability due to an injury he sustained on December 9, 2021, as demonstrated in paperwork from Keystone Pain and Rehabilitation (*id.* at 5). Counsel for Mr. Bates argued that Mr. Bates has no ability to pay the restitution owed (*id.* at 7).

The Commonwealth argued that “under the case law”, when restitution is owed, the trial court is required to find a violation and order supervision to continue (*id.* at 8). The Commonwealth’s position was that ability to pay only matters before a court sentences a defendant to incarceration: “And it’s not about ability to pay. The only time that would be appropriate is if the Commonwealth and/or probation is asking to incarcerate this individual. We’re not asking to do that.” (*id.* at 6).

The trial court decided to reserve ruling on the issue so that the parties could present case law in support of their respective positions and scheduled another hearing to re-address the issue (*id.* at 9-10). Mr. Bates inquired whether he would need to return yet again as it is very difficult for him to travel because he lives in Cumberland County, is handicapped and has no income (*id.* at 12, 15). He explained

that he had to borrow money to get to court on this date and had to borrow money for his last court appearance, as well (*id.* at 12). He expressed confusion as to why he continued to be violated when his parole should have expired by now (*id.* at 11-13). When he again asked if he needed to attend the next hearing in-person, he reiterated that he is injured, has no income and lives in Carlisle (*id.* at 15). Defense counsel asked if Mr. Bates could phone-in to the next hearing and the Commonwealth objected (*id.* at 16). The trial court agreed that Mr. Bates needed to attend the hearing in-person (*id.* at 16-17). Mr. Bates responded:

. . . I'm -- you know, I'm -- like, I'm on my last limb, like -- it took everything [inaudible] to get me down here. That's why I came down here last time. They told me to come down to this court date. Now I have to come down here again. I do -- have no income. Like, I'm begging people. And I stayed out of trouble like I'm supposed to. I did every -- I kept a job the entire time. I just got injured in December. I cannot financially ask somebody else for help. I just can't.

(*id.* at 17). The court ordered Mr. Bates to appear in person (*id.*).

On May 12, 2022, the trial court heard legal argument on the issue of whether the court has discretion to terminate supervision when a person fails to pay the full amount of restitution owed (N.T. 5/12/22, at 3-13). The Commonwealth agreed that even if the court did not terminate supervision, that a payment plan should be put in place based upon Mr. Bates' ability to pay (*id.* at 11-12). Defense counsel argued that Mr. Bates intends to and wants to pay the restitution but need not remain under

criminal court supervision in order to satisfy that obligation (*id.* at 13). Further, Mr. Bates has no ability to pay as he is disabled and must undergo surgery (*id.*). He has no funds and had to borrow \$70 for a train ticket to appear at the court hearing, which he now has to figure out how to repay (*id.*).

The Court acknowledged Mr. Bates's financial hardships: "I recognize it's a hardship from him to come here for two reasons. It's a physical hardship, and it's a financial hardship. I get that, okay?" (*id.* at 23).

Mr. Bates again expressed confusion as to how the probation department is able to schedule a violation hearing three months after his parole was due to expire (*id.* at 13-16). The Commonwealth argued that there was a timely notice of violation, that Mr. Bates waived a *Gagnon I* hearing and, because of COVID, things were shut down and thus the *Gagnon II* could not be scheduled until March (*id.* at 15). Defense counsel responded that the waiver of the *Gagnon I* was not signed by Mr. Bates (*id.*).

The court indicated that it did not believe it had the authority to terminate supervision where restitution has not been paid and that the better argument is that Mr. Bates was violated past his maximum; but the court needed the probation officer to testify regarding the timing and so it continued the hearing again (*id.* at 23). The court allowed Mr. Bates to phone-in for the next hearing (*id.*).

On May 27, 2022, the court ruled that it was not going to terminate Mr. Bates' supervision (N.T. 5/27/22, at 5). The probation officer testified that, though Mr.

Bates did not sign the waiver of his *Gagnon I* hearing, that she spoke with him over the phone and explained what was going on and he had been through the process on prior occasions (*id.* at 7-10)). She testified that she emailed the forms after the conversation and told him to contact her if he had concerns or questions (*id.* at 7). Further, his maximum date was March 17, 2022 (*id.* at 13). Mr. Bates testified that he did not specifically recall the conversation with the probation officer, but that he did receive an email from her (*id.* at 18). Mr. Bates again expressed his confusion over why he is still on parole when he should have maxed out in 2020 and he was not given a revocation hearing until after he was maxed out (*id.* at 19-20). The probation officer then testified that time on parole does not get reduced unless the time is served incarcerated (*id.* at 22). As to why his October 2020 revocation hearing was held after his max date, she testified that it was due to COVID restrictions and not many hearings being scheduled at that time due to the emergency orders of the President Judge (*id.* at 22-23).

The email and forms from the probation officer were entered into evidence and are part of the certified record to this Court. The Commonwealth entered into evidence Commonwealth Exhibit C-2, a *Gagnon II* report dated April 26, 2022 (*id.* at 15). This report was not entered into the trial court docket and therefore is not part of the certified record.

The court again continued disposition of the matter related to whether Mr. Bates was revoked past his maximum date (*id.* at 36, 38-39).

On June 28, 2022, the parties appeared for a decision on the revocation. Prior to the court's decision, the following exchange occurred with regard to any ability of Mr. Bates to pay restitution:

MR. BATES: . . . I'm getting surgery on my neck which is going to be an extensive recovery August 2, so it's going to be months after that I probably won't be able to work again. And then my next date would be there again and there would be no payment at all again because I'm injured. I physically cannot work. I have disability papers signed by my doctor. So we'll just routine this again at my next max date if I'm decided guilty.

. . .

MR. BATES: It's not that I'm neglecting to pay because I was paying all the way up to October. I was paying \$6 a month but that was in 2011, the average on every month.

. . .

MR. BATES: I started paying almost for a whole year straight every month up until October. I got hurt in December. I moved into a house in October.

. . .

MR. MCCREADY: Your Honor, I echo my client's position. I don't believe he has the ability to make payments on this restitution in order to pay it off. I'll reiterate my argument. I believe if you were to resentence him today it'll be an illegal sentence because there's no finding he has ability to pay. You're also essentially sentencing him to beyond what the maximum sentence could be because he's not going to be able to pay off his \$5,000 by the end of the term of supervision, and, therefore, he's going to keep getting resentenced past his max date ad infinitum. We already made all these arguments previously, and I'll reiterate my position that supervision should be terminated.

(N.T. 6/28/22, at 6-7). The Commonwealth, apparently conflating the enforcement of restitution as a condition of parole with the initial imposition of restitution, argued that ability to pay is not a required inquiry under the restitution statute (*id.* at 8) (even though it had previously agreed at the hearing in May that, even if the court did not terminate supervision, a payment plan should be put in place based upon Mr. Bates' ability to pay (N.T. 5/27/22, at 11-12)).

The court did not put any findings on the record regarding the restitution issue or the issue of the timing of the violation. The court found Mr. Bates in violation of "Rule 10A," revoked his parole and sentenced him to his back time of 498 days with immediate parole (N.T. 6/28/22, at 9). As a condition of parole, he ordered Mr. Bates to pay restitution (*id.*). No payment plan was established. The court noted that it was making the *Gagnon II* hearing report dated April 14, 2022, part of the record (*id.*). It is not, however, part of the record of the trial court, nor of the record certified to this Court.

On July 6, 2022, Mr. Bates filed a timely post-sentence motion. On July 12, the trial court scheduled a hearing on the motion for August 19, 2022, which was beyond the 30-day time period for Mr. Bates to file a notice of appeal. *See* Pa.R.C.P. 708(E). On July 28, 2022, Mr. Bates filed a timely appeal from imposition of sentence. On August 19, 2022, the post-sentence motion was denied as moot. On September 27, 2022, a timely Statement of Matters Complained of on Appeal was

filed, a copy of which is attached as Exhibit “A.” On November 4, 2022, this Court issued a Notice to the Lower Court Regarding Delinquent Record. On January 10, 2023, this Court issued a Second Notice to the Lower Court Regarding Delinquent Record. On March 2, 2023, the trial court filed a Rule 1925(a) Opinion, which is attached as Exhibit “B.”

VI. SUMMARY OF ARGUMENT

Mr. Bates has been on parole for eleven years for a first-degree misdemeanor. The statutory maximum sentence for this offense is five years of supervision. 18 Pa.C.S. §106 (b)(5). Since 2017, the only alleged non-compliance with parole has been his inability to repay \$5,600 in restitution in full. The restitution is the sole reason he remains on criminal court supervision. He has been found in violation six times for failure to repay the entire amount of restitution. Over the years, he made payments when he was able (although a number of those payments were applied by the court to costs, rather than restitution). He is currently disabled, unable to work for the foreseeable future, has no income, and has been borrowing money to travel from his home in Cumberland County to revocation hearings in Delaware County. In the most recent revocation proceeding, the sentencing judge acknowledged that even the expenses associated with traveling to court constituted a “financial hardship” for Mr. Bates. (N.T. 5/12/22, at 23).

Mr. Bates is not arguing and has not argued that his obligation to pay restitution should be removed. To the contrary, because his restitution was reduced to a civil judgment in 2014, his supervision should be terminated and his restitution paid off pursuant to 42 Pa.C.S. § 9728 (relating to collection of restitution pursuant to civil judgments). Thus, there is no concern about the Commonwealth not receiving the benefit of the plea agreement—the agreement was that he pay

restitution, and Mr. Bates does not contest this. Instead, the issue is that the trial court cannot effectively keep him on an indefinite period of parole for nonpayment of restitution.

The precise issues raised herein were litigated only one year ago before a panel of this Court in *Commonwealth v. Bolds*, 272 A.3d 463, 2022 WL 71879 (Pa. Super. Jan. 7, 2022) (unpublished). That case presented identical facts: a defendant was repeatedly subject to parole revocations for nonpayment of restitution without a determination that she ever willfully failed to pay and where the amount of restitution had been reduced to a civil judgment. As the facts and legal issues are identical and it was also a case out of Delaware County (as is the instant one), this Court should adopt the reasoning of *Bolds* and hold that because a civil judgment was entered in 2014, there was no legal authority for the trial court to keep Mr. Bates on parole solely due to a failure to repay the entire amount of restitution owed. The issue of revocation as it relates to restitution is, in essence, moot, as the restitution is payable and enforceable pursuant to 42 Pa.C.S. § 9728. *See Bolds*, 2022 WL 71879, at *1.

The trial court here did not address *Bolds*, instead only concluding that the restitution was imposed as a condition of the direct sentence under 18 Pa.C.S. § 1106(a). *See Trial Court Opinion*, at 5. However, in addition to the reasoning set forth in *Bolds*, the trial court was without authority to revoke parole because pursuant

to 18 Pa.C.S. § 1106(f), restitution is only enforceable through the contempt powers of the trial courts triggered by non-compliance. *See* 18 Pa.C.S. § 1106(f). Yet rather than seeking to proceed via contempt, the Commonwealth sought an unlawful enforcement of the restitution order through parole revocation. Because the trial court was without authority to revoke his parole for nonpayment of restitution, each of Mr. Bates' revocation sentences constituted illegal sentences.

Further, even if the trial court had the authority to revoke Mr. Bates' parole under Section 1106, because the restitution is a condition of parole, the court could only have found Mr. Bates in violation of parole for nonpayment if it first made a determination on the record that he willfully failed to make payments. The law in this Commonwealth is clear that nonpayment of restitution is a technical violation only if a defendant willfully refuses to pay. No such finding was made here. The record, to the contrary, indicated that Mr. Bates was making every effort to pay what he could based on his financial means.

Additionally, Mr. Bates' revocation sentences have extended his time on supervision beyond the 5-year statutory maximum for his underlying offense and are therefore illegal sentences. Though he has not been incarcerated during the majority of his sentence, the revocation sentences are nonetheless illegal because the trial court failed to give him any credit whatsoever for his ten years of "street time" on parole without providing any reason for doing so and extended his sentence beyond

the statutory maximum where his only “violation” was an inability to pay the entire outstanding balance of his restitution. His revocation sentence must, therefore, be vacated.

Finally, Mr. Bates’ waiver of counsel at his revocation hearing before a hearing officer on January 29, 2019 was not knowing and voluntary. The colloquies conducted did not satisfy the requirements of Pa.R.C.P. 121 and were so deficient as to provide no information regarding his alleged violations or the legal ramifications therefrom. This Court has repeatedly and strictly enforced the requirements of Rule 121, and the 2019 hearing fell far short. Therefore, the resultant revocation sentence constituted an illegal sentence.

The Commonwealth and the trial courts need not keep Mr. Bates on parole in perpetuity to insure payment of restitution. Pursuant to *Bolds, supra*, the restitution was reduced to a civil judgment in 2014, so payment can be enforced through the civil process in 42 Pa.C.S. § 9728 or the court’s contempt authority in 18 Pa.C.S. § 1106(f). *See also Commonwealth ex rel. Powell v. Rosenberry*, 645 A.2d 1328, 1331 (Pa. Super. Ct. 1994) (defendant “need not be on parole to pay his fine, and the Commonwealth need not keep him on parole to insure payment. The Commonwealth could have collected the fine in any manner provided by law, see 42 Pa.C.S. § 9728(a), including holding Powell in contempt for failure to pay his fine”). Mr. Bates respectfully requests that this Court terminate his supervision. Mr. Bates will still

owe the restitution, have an obligation to pay, and the trial court will still be able to enforce payment through lawful means.

VII. ARGUMENT

1. THIS COURT SHOULD ADOPT THE HOLDING OF *COMMONWEALTH V. BOLDS*, 272 A.3D 463, 2022 WL 71879 (PA. SUPER. JAN. 7, 2022) (UNPUBLISHED), AND TERMINATE APPELLANT’S SUPERVISION BECAUSE THE RESTITUTION IS ENFORCEABLE AND PAYABLE PURSUANT TO 42 PA.C.S. §9728.

The precise issues raised herein were litigated only one year ago before a panel of this Court in *Commonwealth v. Bolds*, 272 A.3d 463, 2022 WL 71879 (Pa. Super. Jan. 7, 2022) (unpublished). That case presented identical facts. As the facts and legal issues are identical and it was also a case out of Delaware County (as is the instant one), this Court should adopt the reasoning of *Bolds* and hold that because a civil judgment was entered in 2014, there was no legal authority for the trial court to keep Mr. Bates on parole solely due to a failure to repay the entire amount of restitution owed. The issue of revocation as it relates to restitution is, in essence, moot, as the restitution is payable and enforceable pursuant to 42 Pa.C.S. § 9728. *See Bolds*, 2022 WL 71879, at *1.

In *Bolds*, a Panel of this Court discharged the defendant’s case because the issue of revocation of supervision is “moot” where a civil judgment for restitution has been imposed. *See Bolds*, 272 A.3d at *1 (“The current challenge to Bolds’ restitution sentence is rendered moot where a civil judgment, pursuant to 42 Pa.C.S.

§ 9728, was entered in favor of the Commonwealth against Bolds.”). Thus, pursuant to *Bolds*, a court lacks authority to keep someone under criminal court supervision where a civil judgment has been entered and the sole reason for continued supervision is outstanding restitution. *See id.* Payment of restitution can be made pursuant to the civil judgment. *See id.* (citing 42 Pa.C.S. § 9728(a)(1) (“A sentence ... entered ... for restitution ... fees, costs, fines[,] or penalties shall, together with interest and any additional costs that may accrue, be a judgment in favor of the probation department upon the person or the property of the person sentenced or subject to the order.”)).

In *Bolds*, this Court also noted “with displeasure,”

that this case has languished for seven years since the civil judgment was entered on Bolds’ underlying criminal restitution sentence. During that time, Bolds has been subjected to multiple revocation hearings . . . Finally, even though Bolds was not sentenced to incarceration each time she was found to be in violation of her parole, by sentencing her to back time Bolds has effectively been constrained by her parole agents where she is unable to move on with her life . . . living on limited income. . . .

Id. at *1 n.2. This Court also expressed concern over the fact that Ms. Bolds had been found in violation twice by a hearing officer (and not a Common Pleas Judge) when she was unrepresented, despite evidence that she had been making regular payments. *Id.*

Bolds applies to Mr. Bates’ case. As in *Bolds*, Mr. Bates’ case has

“languished” for almost nine years since the civil judgment was entered on his criminal restitution sentence. Like Ms. Bolds, he has been subjected to numerous revocation hearings; and even though he was not sentenced to incarceration, he continues to be constrained by his probation officer who continues to schedule violation hearings preventing him from being able to move on with his life, and where he is disabled, living on limited income. *See id.* Just as in *Bolds*, Mr. Bates has been found in violation of his parole numerous times for failing to pay back the entire amount of his restitution, even though he had been making small payments throughout the duration of his supervision when he had the ability to do so.

Instantly, a civil judgment was entered almost nine years ago and the issue of continued supervision resulting from six parole revocations is moot based upon that civil judgment. *See id.* at *1. Because there is a civil judgment, the trial court did not have the legal authority to keep Mr. Bates under supervision. As in *Bolds*, Mr. Bates’ supervision should therefore be terminated and his case discharged. The restitution will remain and payment will be made pursuant to 42 Pa.C.S. § 9728.

2. THE TRIAL COURT HAD NO STATUTORY AUTHORITY TO REVOKE APPELLANT’S PAROLE .

The trial court concluded that the restitution here is a condition of the direct sentence under 18 Pa.C.S. § 1106(a). *See* Trial Court Opinion, at 5. Yet, under Section 1106(f), the trial court was without the authority to revoke parole because

the proper enforcement mechanism for nonpayment of restitution is to hold contempt proceedings.

The relevant portions of the version of §1106 applicable to Mr. Bates' case provide as follows:

§ 1106. Restitution for injuries to person or property

(a) General rule.--Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

(b) Condition of probation or parole.--Whenever restitution has been ordered pursuant to subsection (a) and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation or parole.

...

(f) Noncompliance with restitution order.--Whenever the offender shall fail to make restitution as provided in the order of a judge, the probation section or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution shall notify the court within 20 days of such failure. Whenever the offender shall fail to make restitution within 20 days to a magisterial district judge, as ordered, the magisterial district judge shall declare the offender in contempt and forward the case to the court of common pleas. Upon such notice of failure to make restitution, or upon receipt of the contempt decision from a magisterial district judge, the court shall order a hearing to determine if the offender is in contempt of court or has violated his probation or parole.

18 Pa.C.S. §1106 (Effective: January 31, 2005 to October 23, 2018).

Though the trial court could not find Mr. Bates in violation of his parole and keep him under criminal court supervision, pursuant to Section 1106, the restitution *is* enforceable until paid, separate from any criminal sentence. *Commonwealth v. Griffiths*, 15 A.3d 73, 75 (Pa. Super. 2010). Thus, the proper method for enforcement of payment is not through recurrent revocation hearings and indefinite court supervision, but rather through the contempt powers triggered by non-compliance under Section 1106. *See* §1106(f); *Griffiths*, 15 A.3d at 75 (holding court retains authority to enforce Section 1106(a) restitution order through contempt powers triggered by non-compliance, even after expiration of defendant’s sentence).

In *Commonwealth v. James*, 771 A.2d 33 (Pa. Super. 2001), this Court held that monitoring of appellant's restitution payments under Section 1106 did not make him eligible for relief under the PCRA because he had completed his sentence and thus he was not currently serving a sentence of imprisonment, probation, or parole even though he had outstanding restitution. *James*, 771 A.2d at 36. This Court held that, while the restitution was ordered as part of the appellant’s direct sentence, and the trial court had the “continuing power to monitor and enforce that sentence,” that monitoring did not entitle appellant to PCRA relief. *Id.*

Significantly, in the direct appeal that preceded the PCRA in *James*, this Court had explained that because the restitution there was imposed as part of the direct

sentence, *the trial court had no basis upon which to find a violation of probation for nonpayment*. *Id.* (emphasis added). This Court had explained in the direct appeal:

Appellant remains subject to the restitution sentence that was originally imposed, which was the total amount of the victim's losses cited in the information to which he pled guilty, ***and that sentence is to be considered independently of his now expired probation***. However, the trial court has the continuing authority to enforce the sentence of restitution, and ***may utilize its full contempt power as a means to enforce that sentence***.

Id. (emphasis added).

In light of *James* and *Griffiths, supra*, the trial court here had no authority to revoke Mr. Bates' parole;⁴ but rather, the court could (and can) use its contempt power as a means to enforce payment. *See* 18 Pa.C.S. § 1106(c)(2)(ii); 18 Pa.C.S. § 1106(f); *Griffiths, James, supra*; . Thus, the trial court had no basis to sentence him to his back time, and each of his revocation sentences must be vacated.

This rationale coincides with the rationale in *Bolds, supra*, because once a sentence has expired and the only alleged "violation" is failure to repay the full

⁴ Despite the fact that Mr. Bates stipulated at most of his revocation hearings (except for the most recent) with regard to his resentences, a criminal defendant cannot agree to an illegal sentence. *Commonwealth v. Gentry*, 101 A.3d 813, 819 (Pa. Super. 2014) (finding sentencing order which imposed \$1.00 of restitution "as an interim value for Probation to determine at a later date" was illegal under 18 Pa.C.S. § 1106; defendant's agreement to term as part of negotiated plea was of "no legal significance.").

amount of restitution, the restitution is enforceable pursuant either to 42 Pa.C.S. §9728 as noted in *Bolds*, or the contempt procedures prescribed in Section 1106(f). 42 Pa.C.S. §9728, in fact, provides that “[t]his section shall not affect contempt proceedings mandated by 18 Pa.C.S. §1106(f).” It should be noted, however, that Mr. Bates was ordered merely to make “payments” towards his restitution – which he did when he was able. Therefore, it is questionable whether any contempt proceedings could properly be sought as he has testified that he is currently disabled and has no income.

In concluding that the restitution here is a condition of the direct sentence, the trial court engaged in no analysis of 18 Pa.C.S. § 1106. Rather, it held that the restitution was imposed as part of the sentence in a negotiated guilty plea, and that “[n]ot requiring the Defendant to pay the restitution in full runs contra to Pennsylvania law regarding restitution and principles of negotiated plea bargaining.” *See* Trial Court Opinion, at 5. Moreover, “the court cannot unilaterally alter the agreed upon terms of sentencing” and “[t]he Commonwealth is entitled to receive the benefit of the agreed upon bargain which includes restitution.” *See id.* at 5-6.

In finding that the court has no discretion to terminate supervision where a negotiated plea has been entered, the trial court misapprehends the claim Mr. Bates raises, as well as the law surrounding imposition of revocation sentences. First, as stated, Mr. Bates is not asking the court to vacate the order of restitution. Rather, he

argues that the trial court lacked the authority to revoke his parole and sentence him to his back time. He asks for this Court to vacate his sentence and terminate his supervision. He recognizes that the restitution remains and will need to be paid. Therefore, the Commonwealth will still be receiving the benefit of the bargain originally agreed upon as Mr. Bates has served his sentence and the restitution will remain as a civil judgment which is enforceable pursuant to 42 Pa.C.S. §9728 or 18 Pa.C.S. §1106(f).

Second, at a revocation hearing, the trial court is “not restricted by the bounds of a negotiated plea agreement between a defendant and a prosecutor.” *Commonwealth v. Wallace*, 870 A. 2d 838, 843 (Pa. 2005); *see also Commonwealth v. Parsons*, 969 A.2d 1259, 1270 n. 6 (Pa. Super. 2009) (*en banc*) (“At re-sentencing following revocation of parole/probation, the court is no longer bound by the terms of the original plea bargain; so breached, the sentencing aspect of the original plea bargain is no longer binding on the court, which then has the full panoply of sentencing options available upon re-sentencing following revocation.”); *Commonwealth v. Higgs*, 268 A.3d 415, at *7 (Table) (Pa. Super. Nov. 9, 2021) (unpublished) (explaining that after revocation hearings, the Commonwealth is no longer deprived of any benefit for which it bargained, because the initial bargain is no longer in place). Therefore, the trial court’s conclusion that it cannot terminate supervision as it would alter the negotiated sentence, is erroneous.

The trial court was without authority to revoke Mr. Bates' parole at each of his revocation hearings. This Court should vacate his latest judgment of sentence and terminate his supervision.

3. THE TRIAL COURT LACKED AUTHORITY TO REVOKE APPELLANT'S PAROLE BECAUSE IT NEVER MADE ANY FINDING AT ANY REVOCATION HEARING THAT ANY NONPAYMENT WAS WILLFUL, A FINDING REQUIRED FOR REVOCATION WHERE RESTITUTION IS A CONDITION OF PAROLE.

Even if restitution was originally imposed as a condition of Mr. Bates' direct sentence under 18 Pa.C.S. § 1106(a), the trial court ignored the fact that each time he was revoked, it became a condition of his parole. After each revocation hearing, each sentencing order reflected under "B. List Specific Conditions" that a condition of parole was to make restitution payments. *See* Sentencing Orders dated 7/25/14, 9/14/16, 7/19/17, 1/29/19, 10/16/20, 6/28/22. Therefore, even if the trial court had authority to revoke parole under 18 Pa.C.S. §§1106(b) and (f) because restitution was a condition of parole, the trial court could only do so if it first made a determination on the record that he willfully failed to make payments.

The law in this Commonwealth is clear that nonpayment of restitution is a technical violation only if a defendant willfully refuses to pay. In *Commonwealth v. Dorsey*, 476 A.2d 1308 (Pa. Super. 1984), this Court vacated a revocation sentence

where the trial court made no findings that the appellant had willfully failed to pay prior to revoking his parole. *Dorsey*, 476 A.2d at 1312. *Dorsey* held that because “the lower court did not inquire into the reasons for appellant's failure to pay or did it make any findings pertaining to the willfulness of appellant's omission,” the appellant’s revocation sentence could not stand. *Id.* See also *Commonwealth ex rel. Powell v. Rosenberry*, 645 A.2d 1328, 1331 (Pa. Super. 1994) (holding that if the court determines the defendant has not willfully refused to pay, the court should “work out a payment schedule or some other alternative” to revocation). *Id.*

In the decades since *Dorsey*, this Court has required a showing of willfulness for every type of technical violation of parole or probation. See, e.g., *Commonwealth v. Heilman*, 876 A.2d 1021, 1027 (Pa. Super. 2005) (court could not revoke probation for failure to attend treatment where there was no evidence of willful noncompliance); *Commonwealth v. Carver*, 923 A.2d 495, 499 (Pa. Super. 2007) (probation cannot be revoked for a failed drug test “based solely upon technical violations because there was no willful or flagrant disrespect for probationary terms evidenced by defendant”); *Commonwealth v. Allshouse*, 969 A.2d 1236, 1242 (Pa. Super. 2009) (reversing revocation based on no-contact order when there “was no basis for the trial court's finding that the Commonwealth demonstrated by a preponderance of the evidence that Appellant willfully violated the no-contact

order”). This case law is clear and consistent, and this Court has only affirmed revocations where the trial court found willful conduct.

Further, no case in any Court of this Commonwealth holds that a willfulness inquiry is relevant only when the court is considering incarceration for nonpayment. *See, e.g., Dorsey, supra*. An “examination of fault must be made before probation is revoked” because “the Board must show that the petitioner was somewhat at fault in order to prove a violation.” *Hudak v. Board of Probation and Parole*, 757 A.2d 439, 441 (Pa. Commw. 2000). *See also Miller v. Board of Probation and Parole*, 784 A.2d 246, 248 (Pa. Commw. 2001) (that the Commonwealth must prove that a parolee failed to take sufficient bona fide efforts is the fault element necessary to prove a violation for nonpayment); *Lawson v. Board of Probation and Parole*, 524 A.2d 1053, 1056 (Pa. Commw. 1987) (“In determining whether a parolee or probationer may have parole or probation revoked for failure to pay court imposed fines, costs and restitution, the court or Board, as the case may be, must take into consideration and make a reasonable allowance for the parolee's or probationer's individual economic situation.”).

The court’s obligation to inquire into the defendant’s ability to pay is triggered by the revocation proceedings, not the contemplated sentence. This Court has never suggested otherwise. *Rosenberry* is instructive. Although the Court stated that only the “willful refusal to pay a fine may be considered a technical parole violation for

which a parolee may be re-incarcerated,” 645 A.2d at 1331, in fact, the defendant in *Rosenberry* was *not* incarcerated for nonpayment. Instead, as here, that court gave the defendant an additional period of supervision (there parole), and he was later incarcerated for an unrelated violation that occurred while he was on that illegal parole. *Id.* at 1329. This Court vacated that additional sentence of parole and “discharged [him] from all obligations arising subsequent to the expiration of his original parole period.” *Id.* at 1331. While it was the later incarceration that motivated his habeas petition, this Court’s holding was that the precedent parole revocation and extension of parole were illegal.

The recent case of *Commonwealth v. Reed*, 285 A.3d 334 (Pa. Super. 2022), is not to the contrary. In that case, this Court vacated a trial court order revoking a defendant’s parole and sentencing him to incarceration for the remainder of his sentence term because he failed to pay fines and costs on the grounds that the trial court had failed to inquire into the defendant’s ability to pay the debt. *Reed*, 285 A.3d at 338-339. In a footnote, this Court rejected the defendant’s argument, raised for the first time on appeal, that the trial court had erred by revoking his parole without an ability to pay hearing. It seems that *Reed* had only cited cases dealing with imprisonment for inability to pay and had not set forth an argument for why the revocation was itself flawed:

We note that Appellant argues on appeal that the VOP court erred by *revoking his parole* before conducting an

ability to pay hearing. Appellant's Br. at 14-15. Appellant has provided no support for this argument. *See id.* Rather, Appellant cites case law requiring a VOP court to hold an ability to pay hearing before imposing a sentence of incarceration. *See id.* at 14 (citing *Commonwealth v. Diaz*, 191 A.3d 850 (Pa. Super. 2018)). The latter issue raises a question of sentencing legality, which we address here sua sponte. *See Commonwealth v. Prinkey*, 277 A.3d 554, 562 (Pa. 2022) (recognizing legality of sentence claim where court “imposed [sentence] without the fulfillment of statutory preconditions to the court's sentencing authority”).

Id. at 338 n.6 (italics in original). Mr. Bates, by contrast, has cited precedent from this Court establishing that a sentencing court cannot revoke parole for nonpayment of restitution unless the trial court first makes a finding of willful nonpayment.

Notably, when a person is alleged to have violated parole, the only legal revocation sentence is imposition of back time, *Commonwealth v. Fair*, 497 A.2d 643, 645 (Pa. Super. 1985) – an incarceration sentence. Thus, even though a willfulness inquiry is not required solely when incarceration is contemplated, incarceration is always the sentence required when parole is revoked. As such, a trial court must inquire into willfulness at any parole revocation hearing.

It is clear that, instantly, Mr. Bates’ nonpayment of the entire outstanding balance of restitution was not due to deliberate disregard of the court’s order, but rather, stemmed from circumstances beyond his control due to his financial situation. In the most recent revocation proceeding, the sentencing judge acknowledged that even the expenses associated with traveling to court constituted a “financial

hardship” for Mr. Bates. (N.T. 5/12/22, at 23). The trial court made no finding that any failure to pay was willful. In fact, at no time at any of his six revocation hearings did the trial court make any willfulness inquiry – or any inquiry at all into what, if any, payments had been made– prior to perfunctorily finding him in violation of parole. Mr. Bates, however, testified repeatedly at the most recent revocation hearing that he had no income due to his injury and inability to work, and therefore had no ability to pay the entire amount of restitution owed (*see* N.T. 6/13/22, at 6-7; 4/26/22, at 5, 7, 12, 15, 17). He and his counsel argued that he wanted to repay the restitution, but simply could not (*see* N.T. 5/12/22, at 13). Courts cannot treat nonpayment as a strict liability offense merely because the person did not pay. When a defendant is “penniless and unable, through no fault of his own, to pay any sum on the delinquencies,” the defendant is not in “willful noncompliance.” *Commonwealth ex rel. Wright v. Hendrick*, 312 A.2d 402, 404 (Pa. 1973).

Therefore, the revocation sentence imposed on June 28, 2022 was illegal, as were all of his prior revocation sentences. His supervision should be terminated and the restitution repaid pursuant to 42 Pa.C.S. § 9728 and/or 18 Pa.C.S. § 1106(f).

4. APPELLANT’S LATEST REVOCATION SENTENCE, WHICH CONTINUED TO EXTEND CRIMINAL COURT SUPERVISION BEYOND THE STATUTORY MAXIMUM SENTENCE FOR THE UNDERLYING OFFENSE AND FAILED TO GIVE CREDIT FOR TEN YEARS OF “STREET TIME” ON PAROLE, DEPRIVED HIM OF HIS STATE AND FEDERAL DUE PROCESS RIGHTS AND CONSTITUTED AN ILLEGAL SENTENCE.

Mr. Bates initially pled guilty on May 7, 2012 to the underlying offense of theft by unlawful taking, graded a first-degree misdemeanor, which carries a maximum statutory penalty of five years of supervision. 18 Pa.C.S. § 106 (b)(5). Therefore, Mr. Bates’ sentence of criminal court supervision could not extend beyond May 7, 2017. Yet, since his revocation hearing on July 19, 2017, his sentences of back time have extended well beyond the five-year statutory maximum. Though he has not been incarcerated during the majority his sentence, his last revocation sentence is nonetheless illegal because the trial court failed to give him any credit whatsoever for his ten (10) years of “street time” on parole without providing any reason for doing so, and extended his sentence beyond the statutory maximum where his only “violation” was an inability to pay the entire outstanding balance of his restitution. As the amount of restitution had already been reduced to civil judgment and there was never any finding of a willful failure to pay, extending his parole beyond the statutory maximum without giving him credit for any of his

ten years spent on parole was unlawful.

The trial court has discretion to award credit for time spent at liberty on parole. *Commonwealth v. Michenfelder*, 408 A.2d 860, 862 (Pa. Super. 1979) (where appellant was not statutorily entitled to credit for time spent on parole in good standing because he was not within the jurisdiction of the Board of Parole, appellate court must determine whether trial court abused its discretion in failing to award credit for street time). In *Michenfelder*, this Court held that there was no abuse of discretion by the trial court because the reinstated 23 month sentence did not exceed the statutory maximum nor was it manifestly excessive in view of the trial judge's conclusion that appellant's two arrests while on parole indicated that he was not rehabilitated. *Id.*

Instantly, however, the reinstatement of Mr. Bates' 23 month sentence *did* exceed the statutory maximum and he had no arrests while on parole or any other violations other than failing to pay \$5,600 in restitution – which he does not have the financial ability to pay. As the amount of restitution had previously been reduced to civil judgment, there was never a finding that he willfully failed to pay, and there were no other violations noted, the trial court's failure to give credit for almost ten years of street time was not only an abuse of discretion but recommitment to his back time constituted an illegal sentence as his parole was extended beyond the statutory maximum.

Moreover, though the trial court ordered recommits of Mr. Bates' sentence in the form of his back time at each revocation hearing, in practicality, Mr. Bates' revocation sentences were not recommits, but were illegal extensions of his parole for the sole purpose of paying off restitution (*see, e.g.*, N.T. 1/29/19, at 4 (“This recommendation is just to extend the time to give you a chance to pay it.”)). *See Commonwealth ex rel. Powell v. Rosenberry*, 645 A.2d 1328, 1331 (Pa. Super. 1994) (holding that because it did not act within 30 days of date of its original sentencing order as set forth in 42 Pa.C.S. § 5505, trial court lacked jurisdiction to extend petitioner's parole, even though petitioner petitioned for extension of his parole to afford him opportunity to pay his fines). In *Rosenberry*, this Court held that not only does a trial court lack jurisdiction to modify an order beyond the 30 day time limit set forth in 42 Pa.C.S. § 5505, but that only a willful failure to pay a fine may be considered a technical parole violation. *Id.*

Just as in *Rosenberry*, instantly, instead of devising a payment schedule, the trial court effectively modified Mr. Bates' sentence to extend his parole period beyond the statutory maximum for his underlying offense solely so that he could pay off the full amount of his restitution. The Commonwealth does not need to keep Mr. Bates on parole in perpetuity to insure payment. *See id.* Rather, as the restitution had already been reduced to a civil judgment, restitution can be collected through 42 Pa.C.S. § 9728. *See id;* *see also* 42 Pa.C.S. § 9728 (“Collection of restitution,

reparation, fees, costs, fines and penalties.”). Thus, Mr. Bates’ June 28, 2022 revocation sentence constituted an illegal sentence. As such, the judgment of sentence should be vacated and Mr. Bates’ supervision terminated.

5. APPELLANT WAS DENIED HIS STATE AND FEDERAL DUE PROCESS RIGHTS WHEN AN UNCOUNSELED *GAGNON II* HEARING WAS ALLOWED TO PROCEED ON JANUARY 29, 2019 IN THE ABSENCE OF A KNOWING AND INTELLIGENT WAIVER, SUCH THAT THE RESULTANT REVOCATION SENTENCES CONSTITUTED ILLEGAL SENTENCES.

Mr. Bates did not knowingly and intelligently waive representation by counsel at his revocation hearing on January 29, 2019. Therefore, the resultant revocation sentence was illegal. This Court should vacate the June 28, 2022 order revoking Mr. Bates’ parole, based on the prior January 29, 2019 illegal revocation sentence. *See Commonwealth v. Milhomme*, 35 A.3d 1219, 1222 (Pa. Super. 2011) (where a preceding sentence was illegal, any subsequent probation revocation sentence is also illegal).

Pa.R.C.P. 708(B)(1) provides that the trial court will not revoke parole unless a violation is found following a hearing “at which the defendant is present and represented by counsel.” Pa.R.C.P. 708(B)(1). In order to make a knowing and intelligent waiver under Pa.R.C.P. 121⁶, “the individual must be aware of both the

⁶ Pa.R.C.P. 121 provides, in relevant part:

nature of the right and risks and consequences of forfeiting it.” *Commonwealth v. Houtz*, 856 A.2d 119, 123 (Pa. Super. 2004). Without a proper Pa.R.Crim.P. 121 colloquy, a court cannot “ascertain that the defendant fully understands the ramifications of a decision to proceed pro se and the pitfalls associated with the lack of legal training.” *Commonwealth v. Robinson*, 970 A.2d 455, 460 (Pa. Super. 2009) (*en banc*).

(2) To ensure that the defendant's waiver of the right to counsel is knowing, voluntary, and intelligent, the judge or issuing authority, at a minimum, shall elicit the following information from the defendant:

(a) that the defendant understands that he or she has the right to be represented by counsel, and the right to have free counsel appointed if the defendant is indigent;

(b) that the defendant understands the nature of the charges against the defendant and the elements of each of those charges;

(c) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;

(d) that the defendant understands that if he or she waives the right to counsel, the defendant will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;

(e) that the defendant understands that there are possible defenses to these charges that counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently; and

(f) that the defendant understands that, in addition to defenses, the defendant has many rights that, if not timely asserted, may be lost permanently; and that if errors occur and are not timely objected to, or otherwise timely raised by the defendant, these errors may be lost permanently.

Pa.R.C.P. 121(2).

In *Commonwealth v. Murphy*, 214 A.3d 675 (Pa. Super. 2019), this Court held that the defendant did not knowingly and intelligently waive representation by counsel where the lower court merely asked the defendant if he understood that he had a right to have an attorney present at the proceedings, and then confirmed that the defendant did not retain counsel or apply for the Public Defender's Office. *Murphy*, 214 A.3d at 679. This Court found that the discussion regarding the defendant's right to counsel was "truncated and fell well short of a colloquy memorializing a knowing and voluntarily waiver of counsel" *Id.*

Just as in *Murphy*, Mr. Bates did not knowingly and intelligently waive representation by counsel on January 29, 2019 before proceeding with a revocation hearing. Notably, the hearing on this date was held before a hearing officer, not a Common Pleas Court Judge, and it was the hearing officer who conducted the waiver colloquy.⁷ The following exchange occurred between Mr. Bates and the hearing officer on January 29, 2019 regarding Mr. Bates' appearance without counsel:

THE COURT: Mr. Bates do you understand you have the right to be represented by Counsel at this hearing?

MR. BATES: Yes.

THE COURT: And you understand that if you are found in violation we may resentence you today?

MR. BATES: Yes.

THE COURT: Knowing that is it your desire to

⁷ This fact, in itself, appears problematic under Rule 121's requirement that a judge must conduct the waiver colloquy. *See* Pa.R.C.P. 121(2).

proceed without Counsel today?

MR. BATES: Yes.

THE COURT: And are you willing to proceed before myself appointed by the Court instead of a Judge?

MR. BATES: Yes.

(N.T. 1/29/19, at 3).

The hearing officer asked if Mr. Bates could pay \$50 per month in restitution and then after discussion about other supervision fees and travel expenses for getting to Delaware County from York County, the officer asked if he could pay \$40 (*see* N.T. 1/29/19, at 4-7). The probation officer testified that Mr. Bates was going to have to pay restitution and supervision fees of some sort no matter what (*see id.* at 8). The hearing officer never put on the record that it was finding Mr. Bates in violation of parole, but a sentencing order was subsequently signed by a Common Pleas Judge (who had not presided over the hearing) and entered into the trial court docket. *See* Sentencing Order, dated January 29, 2019. The sentencing order also ordered “monthly payments” of restitution. *See id.*

As in *Murphy*, the exchange between Mr. Bates and the hearing officer was insufficient to constitute an adequate waiver of counsel. The discussion was “truncated and fell well short of a colloquy memorializing a knowing and voluntar[y] wavier of counsel.” *See Murphy*, 214 A.3d at 679. Therefore, this Court should vacate the June 28, 2022 order revoking Mr. Bates’ parole, based on the prior January 29, 2019 illegal revocation sentence. *See Milhomme*, 35 A.3d at 1222 (where

a preceding sentence was illegal, any subsequent probation revocation sentence is also illegal).

VIII. CONCLUSION

The Commonwealth need not keep Mr. Bates on parole in perpetuity to insure payment of restitution.⁸ 18 Pa.C.S. § 1106 ensures that restitution is enforceable until paid and provides the mechanism to ensure payment compliance through contempt proceedings. *See* §1106(f). Because the restitution is a condition of parole, however, the trial court is without authority to find him in technical violation absent a finding that he willfully failed to pay. There was no such finding here, nor could there have been. Additionally, pursuant to *Bolds, supra*, the restitution was reduced to a civil judgment in 2014, so payment is enforceable through 42 Pa.C.S. § 9728. *See* 42 Pa.C.S. § 9728; *Bolds, supra*. Therefore, it is respectfully requested that this Court terminate Mr. Bates' supervision and allow enforcement of restitution payments pursuant to 42 Pa.C.S. § 9728 and/or the Section 1106(f) contempt proceedings.

⁸ *See* <https://www.delcotimes.com/2023/06/13/philly-woman-has-delaware-county-restitution-paid-by-kim-kardashian-and-reform-alliance-video/?share=lariahyluni0kvnmotot> (last visited June 15, 2023).

WHEREFORE, for the reasons stated above, appellant requests that this Court reverse the order of the trial court finding him in violation of parole, dismiss the violation, vacate the judgment of sentence, and discharge him from supervision.

Respectfully submitted,

/S/

EMILY MIRSKY, Assistant Defender

Chief, Appeals Division

CHRISTOPHER WELSH, Chief, Public Defender

EXHIBIT A

OFFICE OF THE PUBLIC DEFENDER
COUNTY OF DELAWARE
BY: Emily Mirsky, Assistant Defender
Chief, Appeals Division and
Christopher Welsh, Chief, Public Defender

Identification No. 89661
220 N. Jackson St.
Media, PA 19063
(610) 891-4106

Attorney for Bruce Bates

FILED
2022 SEP 27 PM 2:38
OFFICE OF THE PUBLIC DEFENDER
JUDICIAL BRANCH
DELAWARE COUNTY, PA

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA – CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA :

VS. : CP-23-CR-0006975-2011

BRUCE BATES, : 1966 EDA 2022
Appellant :

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

TO THE HONORABLE GEORGE A. PAGANO, PRESIDING IN THE COURT OF
COMMON PLEAS, CRIMINAL TRIAL DIVISION, FOR THE COUNTY OF DELAWARE:

The above-named defendant by his attorneys, Emily Mirsky, Assistant Defender, Chief, Appeals Division, and Christopher Welsh, Chief, Public Defender, files the following Statement of Matters Complained of on Appeal:

1. On May 7, 2012, appellant appeared for a negotiated guilty plea and was convicted of theft by unlawful taking, graded as a first-degree misdemeanor. On that same date, he was sentenced to time served to 23 months of incarceration with immediate parole plus restitution in the amount of \$5,600.
2. On July 25, 2014, appellant was found in violation of parole and sentenced to his

back time with immediate parole. As a condition of parole, he was ordered to pay restitution.

3. On July 31, 2014, a civil judgment was entered.

4. On September 14, 2016, appellant was found in violation of parole and sentenced to his back time with immediate parole. As a condition of parole, he was ordered to pay restitution.

5. On July 19, 2017, appellant was found in violation of parole and sentenced to his back time with immediate parole. As a condition of parole, he was ordered to pay restitution.

6. On January 29, 2019, appellant was found in violation of parole and sentenced to his back time with immediate parole. As a condition of parole, he was ordered to make monthly payments of restitution.

7. On October 16, 2020, appellant was found in violation of parole and sentenced to his back time with immediate parole. As a condition of parole, he was ordered to pay restitution.

8. On June 28, 2022, following hearings on April 26, May 12 and May 27 of 2022, appellant was found in violation of parole and sentenced to his back time with immediate parole. As a condition of parole, he was ordered to pay restitution. On July 1, 2022, another civil judgment was entered.

9. On July 6, 2022, appellant filed a timely post-sentence motion. The trial court scheduled a hearing on the post-sentence motion for August 19, 2022, which is beyond the 30-day time period for appellant to file a notice of appeal.

10. On July 28, 2022, appellant filed a timely appeal from imposition of sentence.

11. On August 5, 2022, this Court issued an Order directing appellant to file a Statement of Matters Complained of on Appeal within twenty-one (21) days from the date of the Order.

12. August 19, 2022, the post-sentence motion was denied as moot. On that same date,

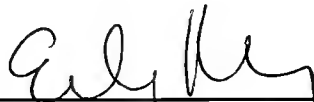
appellant filed a petition for extension of time to file his Statement of Errors because he had not yet received all relevant transcripts. This Court granted the request for an extension on August 23, 2022. On September 8, 2022, appellant received a complete set of the notes of testimony.

13. Appellant plans to raise the following issues on appeal:

- a. The trial court lacked legal authority to revoke parole and sentence appellant to his back time solely due to failure to pay the entire amount of restitution.
 - i. On June 28, 2022, the trial court had no legal authority to revoke parole or keep appellant under supervision for failure to pay restitution where a civil judgment had been entered in 2014, pursuant to *Commonwealth v. Bolds*, 272 A.3d 463 (Pa. Super. Jan. 7, 2022).
 - ii. The trial court abused its discretion and imposed illegal revocation sentences where the court had no legal authority to revoke appellant's parole at any of his six revocation hearings, including the most recent on June 28, 2022, inasmuch as restitution was a condition of parole and there was no finding at any hearing that appellant willfully failed to pay restitution.
 - iii. The trial court abused its discretion and imposed an illegal revocation sentence on June 28, 2022 (and in 2017, 2019 and 2020), by sentencing him to a term of supervision beyond the statutory maximum sentence for the underlying offense solely for failure to pay the entire amount of restitution owed and failing to give credit for now over ten years of "street time" on parole, in violation of his state and federal due process rights.
 - iv. The trial court abused its discretion and imposed illegal revocation sentences where his six revocation sentences were not recommits, but were illegal extensions of his parole for the sole purpose of paying off restitution.
- b. Appellant was denied his state and federal due process rights when an uncounseled *Gagnon II* hearing was allowed to proceed on January 29, 2019 in the absence of a knowing and intelligent waiver, such that the resultant revocation sentence constituted an illegal sentence.

OFFICE OF THE PUBLIC DEFENDER
DELAWARE COUNTY
220 N. Jackson St.
Media, PA 19063
(610) 891- 4106
Mirskye@co.delaware.pa.us

Respectfully Submitted,



Emily Mirsky, Assistant Defender
Chief, Appeals Division
Christopher Welsh, Chief, Public Defender

OFFICE OF THE PUBLIC DEFENDER
COUNTY OF DELAWARE
BY: Emily Mirsky, Assistant Defender
Chief, Appeals Division and
Christopher Welsh, Chief, Public Defender

Identification No. 89661
220 N. Jackson St.
Media, PA 19063
(610) 891-4106

Attorney for Bruce Bates

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA – CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA :

CP-23-CR-0006975-2011

VS. :

1966 EDA 2022

BRUCE BATES,
Appellant :

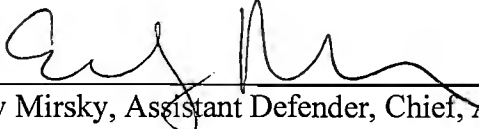
PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Statement of Matters Complained of on Appeal upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 122:

The Honorable George A. Pagano
Delaware County Courthouse
201 West Front St.
Media, PA 19063
via hand delivery

Catherine Kiefer, Esq.
District Attorney's Office; Appellate Division
201 West Front St.
Media, PA 19063
via hand delivery

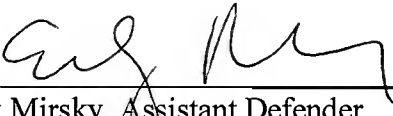
Dated: September 26, 2022



Emily Mirsky, Assistant Defender, Chief, Appeals Division
OFFICE OF THE PUBLIC DEFENDER

VERIFICATION

The facts set forth in the foregoing are true and correct to the best of the undersigned's knowledge, information and belief and are verified subject to the penalties for unsworn falsification to authorities under Pennsylvania Crimes Code section 4904 (18 Pa.C.S. § 4904).




Emily Mirsky, Assistant Defender
Chief, Appeals Division

Date: September 26, 2022

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



Emily Mirsky, Assistant Defender
Chief, Appeals Division
Attorney ID No. 89661

Date: September 26, 2022

EXHIBIT B

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

Commonwealth of Pennsylvania

No. CR-6975-2011

V.

Bruce Bates

Cassandra Marchesani, Esq., Attorney for the Commonwealth

Benjamin McCreedy, Esq., Attorney for the Defendant

OPINION

PAGANO, J.

March 2, 2023

INTRODUCTION

The Defendant has timely filed a Statement of Matters Complained of On Appeal. For the reasons set forth below, this court respectfully recommends that its decision be affirmed.

BACKGROUND

On May 7, 2012, Defendant Bruce Bates entered a negotiated guilty plea for theft by unlawful taking, graded as a misdemeanor of the first degree. The court sentenced the Defendant to time-served to 23 months with \$5,600 in restitution. At the time of the guilty plea, no payment plan for the restitution was put into place. Order dated 5/07/12.

On July 25, 2014, the court found the Defendant in violation of his parole. The court re-sentenced the Defendant to the full back time of 618 days with immediate parole. As a condition of parole, the Defendant was required to successfully complete anger management and pay restitution. The Defendant was required to report to Adult Probation and Parole within 72 hours

and all monies collected was to be credited to restitution first. No payment plan was put in place. Order dated 7/25/14. On July 31, 2014, a civil judgement was entered.

On September 14, 2016, the court found the Defendant in violation of parole. The court sentenced the Defendant to full back time of 598 days with immediate parole. As a condition of parole, the Defendant was required to successfully complete anger management and pay restitution. The Defendant was required to report to Adult Probation and Parole within 72 hours and all monies collected was to be credited to restitution first. Order dated 9/14/16.

On July 19, 2017, the court found the Defendant in violation of parole. The court sentenced the Defendant to full back time of 517 days with immediate parole. The Defendant was immediately paroled upon an available bed at an inpatient drug/alcohol treatment facility. The defendant was required to complete course of treatment successfully and follow after care plans prescribed. Additionally, the Defendant was required to pay restitution and all monies collected were to go to restitution first. Order dated 7/19/17.

On January 29, 2019, the court found the Defendant in violation of parole. The court sentenced the Defendant to full back time of 517 days with immediate parole. The court ordered the Defendant to make monthly payments, restitution first, with no other conditions. Order dated 1/29/19. The Defendant was not represented by counsel and appeared before a master appointed by the court instead of a judge.

On October 16, 2020, the court found the Defendant in violation of parole. The court sentenced the Defendant to full back time of 517 days with immediate parole. The court ordered the Defendant to “make payments towards outstanding court financial obligations with

restitution to be paid first”. The case could close upon payment of restitution in full. Order dated 10/16/20.

On June 28, 2022, the court found the Defendant in violation of parole. The court sentenced the Defendant to full back time with immediate parole. The court ordered the Defendant to pay restitution. On July 1, 2022, another civil judgement was entered.

On July 6, 2022, the Defendant filed a timely post-sentence motion. The court scheduled a hearing on the post-sentence motion for August 19, 2022. On August 19, 2022, the court denied the post-sentence motion as moot.

ISSUES ON APPEAL

On July 28, 2022, the Defendant timely filed a Notice of Appeal with the court. On August 19, 2022, the Defendant filed a petition for extension of time to file their Statement of Errors because he had not received all relevant transcripts. The court granted the request for an extension on August 23, 2022. On September 8, 2022, the Defendant received a complete set of the notes of testimony. Defendant filed a Concise Statement of Matters Complained of on Appeal pursuant to Pa. R. App. P. § 1925(b), raising the following issues for appeal:

- 1) Whether the trial court lacked authority to revoke parole and sentence appellant to his back time solely due to failure to pay the entire amount of restitution.
- 2) Whether appellant was denied their state and federal due process rights when an uncounseled Gagnon II hearing was allowed to proceed on January 29, 2019, in the absence of a knowing and intelligent waiver, such that the resultant revocation sentence constituted an illegal sentence.

DISCUSSION

A. Restitution

Under Pennsylvania law in the context of criminal proceedings, an order of restitution is not simply an award of damages, but rather, a sentence. *Commonwealth v. Holmes*, 155 A.3d 69, 78 (Pa. Super. Ct. 2017). Restitution is a creature of statute, and the court cannot direct a defendant to make restitution as part of their sentence without express legislative direction. *Id.*

Pennsylvania law provides that “upon conviction for any crime . . . wherein the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed. 18 Pa.C.S.A. § 1106(a). The statute requires that victims be compensated for losses sustained as a direct result of the actions of a criminal offender. *Id.*

If restitution is issued, a sentencing court is required to order full restitution irrespective of the financial resources of the defendant. 18 Pa.C.S.A. § 1106(c)(1)(i). A sentence for restitution is enforceable until paid. 18 Pa.C.S.A. § 1106(c)(2)(ii). If restitution is ordered and required to be paid in full under the statute, it cannot also be a condition of a probation that can be discharged upon completion of probation. *Holmes*, 155 A.3d at 87.

Criminal plea bargaining is an integral part of the criminal justice system. During plea bargaining, a defendant is permitted to waive valuable rights in exchange for important concessions by the Commonwealth when the defendant is facing a small chance of acquittal. *Commonwealth v Melendez-Negron*, 123 A.3d 1087 (Pa. Super. Ct. 2015). A defendant who is unhappy with their sentence, is free to move to withdraw a negotiated plea but to withdraw a guilty plea, the defendant must show a prejudice amounting to manifest injustice.

Commonwealth v. Coles, 365 Pa.Super. 562, 571 (Pa. Super. Ct. 1987).

When a defendant enters a guilty plea, the negotiated sentence cannot be altered in the absence of mistake, misrepresentation, or illegality. *Id.* at 568. If the judge has no basis for permitting withdrawal of the guilty plea, there is no basis for modifications of the sentence. *Id.* at 571. Allowing the negotiated sentence to be altered would discredit the negotiated plea process and allow defendants to have a second chance at sentencing. *Id.* at 568.

Here, the Defendant stole seven gold rings from the victim. The victim in this case suffered a personal injury and is a real person rather than a corporation. The victim suffered a direct loss in the form of seven gold rings because of the crime committed by the defendant. Thus, under Pennsylvania law restitution is required to be paid in full to compensate the victim for their injury.

When the Defendant entered their guilty plea restitution was a part of the sentence. Not requiring the Defendant to pay the restitution in full runs contra to Pennsylvania law regarding restitution and principles of negotiated plea bargaining. Pennsylvania law provides that a sentence for restitution is enforceable until paid. Here, the Defendant has not fully paid off the restitution and therefore the court can still enforce restitution.

The court does not have discretion to unilaterally change the terms of the sentencing agreement unless there is evidence of mistake, illegality, or misrepresentation. Unilaterally changing the terms of the sentencing agreement would deprive the Commonwealth of the benefit of the bargain they agreed to. If the court adjusted the sentencing agreement absent evidence of mistake, illegality, or misrepresentation, the plea-bargaining process would be compromised.

Here, the defendant's plea bargain included restitution. There was no evidence of mistake, misrepresentation, or illegality surrounding the plea-bargaining process. Therefore, the court

cannot unilaterally alter the agreed upon terms of sentencing. The Commonwealth is entitled to receive the benefit of the agreed upon bargain which includes restitution. Disregarding restitution would deprive the Commonwealth of the benefit of the agreed upon bargain and be in opposition to Pennsylvania law which requires that victims be fully compensated. The court did not err by revoking the Defendant's parole because restitution was statutorily required. Additionally, the plea bargain agreed upon by both the Defendant and the Commonwealth required restitution and there was no evidence of mistake, illegality, or misrepresentation therefore the court had no authority to alter the terms of the plea bargain and disregard restitution.

B. Gagnon II

Waiver of a constitutional right, such as right to counsel, is only valid if made with knowledge and intelligence. US. Const. amend. VI, § 9. Regardless of a defendant's prior experience with the justice system, a penetrating and comprehensive colloquy of the defendant's right to counsel is mandated. *Id.* A waiver colloquy regarding right to counsel must always contain a demonstration of the defendant's ability to understand the questions posed during the colloquy. *Id.*

On January 29, 2019, the Defendant appeared before Master Gregg Parker for a Gagnon II hearing. N.T. 1/29/19 at 3. The defendant proceeded pro se. *Id.* Prior to the proceeding, the court asked the Defendant a series of questions. *Id.* The court asked the Defendant if he understood he had a right to be represented by counsel at the hearing. *Id.* The Defendant responded yes. *Id.* The court asked the Defendant if he understood that if he is found in violation the court could resentence him at the hearing. *Id.* The Defendant responded yes. *Id.* The court asked if the Defendant still wished to proceed without counsel knowing that information. *Id.* The Defendant

responded yes. *Id.* The court asked the Defendant if he was willing to proceed before the master appointed by the court instead of a judge. *Id.* The Defendant responded yes. *Id.*

Before proceeding with the Gagnon II hearing, the master asked the Defendant a series of comprehensive questions to ensure that the Defendant was aware of their rights. The Defendant answered all questions and demonstrated an ability to understand the questions posed during the colloquy. Thus, the Defendant's waiver of right to counsel was knowing and voluntary and the subsequent revocation sentence was legal.

CONCLUSION

For the reasons discussed above, this court respectfully recommends the sentence be affirmed by the reviewing court.

BY THE COURT:


George A. Pagano, J.

FILED
2023 MAR -2 PM 3:17
OFFICE OF
JUDICIAL SUPPORT
NEW AWAH

EXHIBIT C

COURT OF COMMON PLEAS OF DELAWARE COUNTY

SECURE DOCKET

LIMITED ACCESS OFFENSES

Docket Number: CP-23-CR-0006975-2011

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Bruce Bates

Page 1 of 22

CASE INFORMATION

Cross Court Docket Nos: CP-67-MD-0001287-2018, 1966 EDA 2022

Judge Assigned: Osborne, Ann

Date Filed: 12/08/2011

Initiation Date: 11/10/2011

OTN: T 111081-5

LOTN:

Originating Docket No: MJ-32131-CR-0000321-2011

Initial Issuing Authority: Phillip S. Turner

Final Issuing Authority: Phillip S. Turner

Arresting Agency: Ridley Twp Police Dept

Arresting Officer: Henderson, William J. Jr.

Complaint/Citation No.: 1112089

Incident Number:

County: Delaware

Township: Ridley Township

Case Local Number Type(s)

Case Local Number(s)

STATUS INFORMATION

<u>Case Status:</u>	<u>Status Date</u>	<u>Processing Status</u>	<u>Complaint Date:</u>
Closed	01/25/2023	Awaiting Appellate Court Decision	11/10/2011
	08/22/2022	Completed	
	07/28/2022	Awaiting Appellate Court Decision	
	07/06/2022	Awaiting Post Sentence Motion Hearing Disposition	
	01/29/2019	Sentenced/Penalty Imposed	
	07/19/2017	Completed	
	07/19/2017	Sentenced/Penalty Imposed	
	04/07/2017	Bench Warrant Probation Violation Issued	
	09/14/2016	Completed	
	09/14/2016	Sentenced/Penalty Imposed	
	03/31/2016	Bench Warrant Probation Violation Issued	
	07/25/2014	Sentenced/Penalty Imposed	
	07/25/2014	Completed	
	06/26/2013	Bench Warrant Probation Violation Issued	
	05/07/2012	Sentenced/Penalty Imposed	
	05/07/2012	Awaiting Sentencing	
	01/25/2012	Awaiting Trial	
	12/28/2011	Awaiting Trial Scheduling	
	12/08/2011	Awaiting Formal Arraignment	
	12/08/2011	Awaiting Filing of Information	

Event Track: Standard Court Case

COURT OF COMMON PLEAS OF DELAWARE COUNTY

SECURE DOCKET

LIMITED ACCESS OFFENSES

Docket Number: CP-23-CR-0006975-2011

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Bruce Bates

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CALENDAR EVENTS

<u>Case Calendar</u> <u>Event Type</u>	<u>Schedule</u> <u>Start Date</u>	<u>Start</u> <u>Time</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule</u> <u>Status</u>
Formal Arraignment	12/22/2011	9:00 am			Scheduled
Formal Arraignment	01/12/2012	8:30 am			Moved
Pre-Trial Conference	01/23/2012	9:00 am	Courtroom 2	Senior Judge Ann Osborne	Scheduled
Trial	02/27/2012	9:00 am	Courtroom 2	Senior Judge Ann Osborne	Scheduled
Trial	04/02/2012	9:00 am	Courtroom 2	Senior Judge Ann Osborne	Scheduled
Trial	05/07/2012	9:00 am	Courtroom 2	Senior Judge Ann Osborne	Scheduled
Gagnon II	09/14/2016	8:00 am		Judge George A. Pagano	Scheduled
Gagnon II	07/19/2017	8:00 am	Courtroom 9	Judge George A. Pagano	Scheduled
Gagnon II	04/26/2022	8:00 am		Judge George A. Pagano	Scheduled
Status Conference	05/12/2022	8:00 am		Judge George A. Pagano	Scheduled
Status Conference	05/12/2022	8:00 am		Judge George A. Pagano	Scheduled
Gagnon II	05/27/2022	8:00 am		Judge George A. Pagano	Scheduled
Status Conference	06/28/2022	8:00 am		Judge George A. Pagano	Scheduled
Criminal Miscellaneous	08/19/2022	8:00 am		Judge George A. Pagano	Scheduled

WARRANT INFORMATION

<u>Date</u>	<u>Control No</u>	<u>Warrant Status</u>	<u>Warrant Type</u>	<u>Judge</u>
07/19/2017	23-BV-0001506-2017	Rescinded	Bench Warrant - Probation Violation	Pagano, George A.
<u>Extradition:</u> Misdemeanor - Limited Extradition See Mis Field				
09/14/2016	23-BV-0001245-2016	Rescinded	Bench Warrant - Probation Violation	Pagano, George A.
<u>Extradition:</u> Misdemeanor - Limited Extradition See Mis Field				
07/25/2014	23-BV-0002324-2013	Rescinded	Bench Warrant - Probation Violation	Brennan, Mary Alice
<u>Extradition:</u> Misdemeanor - Limited Extradition See Mis Field				

CONFINEMENT INFORMATION

<u>Confinement</u> <u>Known As Of</u>	<u>Confinement</u> <u>Type</u>	<u>Destination</u> <u>Location</u>	<u>Confinement</u> <u>Reason</u>	<u>Still in</u> <u>Custody</u>
04/29/2017	County Correctional Facility	Delaware County Prison		No
04/29/2017	County Correctional Facility	Delaware County Prison		No

COURT OF COMMON PLEAS OF DELAWARE COUNTY

SECURE DOCKET

LIMITED ACCESS OFFENSES

Docket Number: CP-23-CR-0006975-2011

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Bruce Bates

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DEFENDANT INFORMATION

<u>Name</u>	Bruce Bates	<u>Hair Color</u>	Black	<u>Eye Color</u>	Brown
<u>Date of Birth</u>	06/20/1988	<u>Address</u>			
<u>SSN</u>	169-27-7185	<u>Address Type Home</u>			
<u>SID</u>	345-02-02-1		909 ATWOOD RD OHILA, PA 19151		
<u>Drivers License No:</u>	28360939				
<u>Drivers License State:</u>	PA				
<u>Fingerprint Status:</u>	Not Fingerprinted				
<u>Alias Name</u>		<u>Alias SID</u>		<u>Alias SSN</u>	
Bates, Bruce Jr.		345-02-02-1		169-27-7185	

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Name</u>
Vehicle Owner/Lessee	Bates, Bruce
Defendant	Bates, Bruce
Prosecution	Commonwealth of Pennsylvania
Affiant	Henderson, William J. Jr.
Surety	Bartlett, Amorett M.
Crime Victim	Carbone, Theresa
Payor	Bates, Beuce

BAIL INFORMATION

Bates, Bruce **Nebbia Status: None**

<u>Bail Action</u>	<u>Date</u>	<u>Bail Type</u>	<u>Originating Court</u>	<u>Percentage</u>	<u>Amount</u>
Set	12/05/2011	Monetary	Common Pleas	10.00%	\$5,000.00
Change Non-Monetary Conditions	12/05/2011	Monetary	Common Pleas	10.00%	\$5,000.00

*Non-Monetary Condition(s):
Court Condition/Not to have any direct or indirect conduct with victim. Not to be within 1000 ft of Leedom Estates*

<u>Surety Type</u>	<u>Surety Name</u>	<u>Posting Status</u>	<u>Posting Date</u>	<u>Security Type</u>	<u>Security Amt</u>
Third Party	Bartlett, Amorett M.	Posted	12/13/2011	Cash	\$500.00

CHARGES

<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
1	1	M1	18 § 3921 §§ A	Theft By Unlaw Taking-Movable Prop	11/06/2011	T 111081-5
99,999	2	M1	18 § 3925 §§ A	Receiving Stolen Property	11/06/2011	T 111081-5

COURT OF COMMON PLEAS OF DELAWARE COUNTY

SECURE DOCKET

LIMITED ACCESS OFFENSES

Docket Number: CP-23-CR-0006975-2011

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

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v.

Bruce Bates

DISPOSITION SENTENCING/PENALTIES

Disposition

<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>	
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade</u>	<u>Section</u>
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>	
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>	
<u>Sentence Conditions</u>			

Waived for Court (Lower Court)

Defendant Was Present

Lower Court Disposition	12/05/2011	Not Final	
1 / Theft By Unlaw Taking-Movable Prop	Waived for Court (Lower Court)	M1	18 § 3921 §§ A
99,999 / Receiving Stolen Property	Withdrawn	M1	18 § 3925 §§ A

Proceed to Court

Information Filed	12/22/2011	Not Final	
1 / Theft By Unlaw Taking-Movable Prop	Proceed to Court	M1	18 § 3921 §§ A
99,999 / Receiving Stolen Property	Disposed at Lower Court	M1	18 § 3925 §§ A

Guilty Plea - Negotiated

Trial	05/07/2012	Final Disposition	
1 / Theft By Unlaw Taking-Movable Prop	Guilty Plea - Negotiated	M1	18 § 3921 §§ A

Osborne, Ann
 Confinement
 05/07/2012
 Max of 23.00 Months
 Other
 32 Days
 Pay restitution in the amount of \$5,600.00 to Theresa Carbone, 624 Stockton Circle, Ridley Park, PA 19078
 Placed on immediate parole.
 Comply with General Rules and Regulations Governing Probation and/or Parole.

Brennan, Mary Alice
 Confinement
 07/25/2014
 Max of 618.00 Days
 Other
 Full Backtime DCP: 618 days with immediate parole.
 Placed on immediate parole; this case only.
 Bench Warrant Rescinded
 Comply with rules and regulations governing Probation and or Parole
 Comply with following directive(s) of Court: Deft. needs to successfully complete Anger Management Course and pay restitution. All monies collected need to be credited to restitution first. Report to AP&P within 72 hours.

Pagano, George A.
 Confinement
 09/14/2016
 Max of 598.00 Days
 Other
 Placed on immediate parole; this case only.
 Comply with rules and regulations governing Probation and or Parole

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DISPOSITION SENTENCING/PENALTIES

Disposition

<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>	
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade</u>	<u>Section</u>
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>	
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>	
<u>Sentence Conditions</u>			
<p>Comply with following directive(s) of Court: Full back time of 598 days. Pay restitution with all monies collected need to be credited to restitution first. Report to AP&P within 72 hours of release.</p> <p>Pagano, George A.</p> <p>Confinement</p>	<p>07/19/2017</p> <p>Max of 517.00 Days</p> <p>Other</p>		
<p>Comply with rules and regulations governing Probation and or Parole</p> <p>Comply with following directive(s) of Court: Full back time of 517 days. Immediate parole to an available bed date at an inpatient drug/alcohol treatment facility, complete course of treatment. Successfully and follow aftercare plans. Pay restitution, all monies collected go to restitution first. Report to AP&P within 24 hours of discharge from treatment facility.</p>			
<p>Cappelli, Richard M.</p> <p>Confinement</p>	<p>01/29/2019</p> <p>Max of 517.00 Days</p> <p>Other</p>		
<p>Comply with rules and regulations governing Probation and or Parole, including DUI.</p> <p>Placed on immediate parole; this case only.</p> <p>Comply with following directive(s) of Court: Make monthly payments , all payments applied to restitution first.</p> <p>Full Backtime DCP: 517 days</p>			
<p>Amoroso, Margaret J.</p> <p>Confinement</p>	<p>10/16/2020</p> <p>Max of 517.00 Days</p> <p>Other</p>		
<p>Full Backtime DCP: 517 days</p> <p>Placed on immediate parole; this case only.</p> <p>Comply with rules and regulations governing Probation and or Parole and DUI.</p> <p>Comply with following directive(s) of Court: Make payments towards outstanding court financial obligations with restitution to be paid 1st. Case may close upon payment of restitution in full.</p>			
<p>Pagano, George A.</p> <p>Confinement</p>	<p>06/28/2022</p> <p>Max of 498.00 Days</p> <p>Other</p>		
<p>Placed on immediate parole; this case only.</p> <p>Comply with rules and regulations governing Probation and or Parole</p> <p>Full Backtime DCP: full back time of 498 days</p> <p>Comply with following directive(s) of Court: Pay restitution for all monies collected to be applied to restitution first. Supervision may be terminated once restitution is paid in full.</p>			

99,999 / Receiving Stolen Property	Disposed at Lower Court	M1	18 § 3925 §§ A
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DISPOSITION SENTENCING/PENALTIES

Disposition

Case Event

Disposition Date

Final Disposition

Sequence/Description

Offense Disposition

Grade Section

Sentencing Judge

Sentence Date

Credit For Time Served

Sentence/Diversion Program Type

Incarceration/Diversionary Period

Start Date

Sentence Conditions

Osborne, Ann	05/07/2012
Brennan, Mary Alice	07/25/2014
Pagano, George A.	09/14/2016
Pagano, George A.	07/19/2017
Cappelli, Richard M.	01/29/2019
Amoroso, Margaret J.	10/16/2020
Pagano, George A.	06/28/2022

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COMMONWEALTH INFORMATION

Name: Catherine Banner Kiefer
District Attorney

Supreme Court No: 092737

Phone Number(s):
610-891-4202 (Phone)

Address:
Delaware County Da's Office
201 W Front St
Media, PA 19063

Name: George Michael Green
District Attorney

Supreme Court No: 032170

Address:
Delaware CO Da's Office
201 W Front St
Media, PA 19063

Name: Cassandra Marie Marchesani
District Attorney

Supreme Court No: 323264

Phone Number(s):
610-891-4138 (Phone)

Address:
201 W Front St
Media, PA 19063

ATTORNEY INFORMATION

Name: Emily Lynne Mirsky
Public Defender

Supreme Court No: 089661

Rep. Status: Active

Phone Number(s):
215-906-9124 (Phone)

Address:
Delaware County Office Of The Public Defender
220 N Jackson St
Media, PA 19063

Representing: Bates, Bruce

Name: Adrianna Marie Yanez
Public Defender

Supreme Court No: 309255

Rep. Status: Inactive

Phone Number(s):
996-974-9 (Phone)

Address:
12 Wilson Cir
Chester Heights, PA 19017

Representing: Bates, Bruce

Name: Benjamin Lawrence McCready
Public Defender

Supreme Court No: 322972

Rep. Status: Inactive

Phone Number(s):
610-891-4991 (Phone)

Address:
Delaware County Public Defender
220 N Jackson St
Media, PA 19063

Representing: Bates, Bruce

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1 Bail Set - Bates, Bruce	12/05/2011		Turner, Phillip S.
2 Order Granting Motion for Modification of Bail - Bates, Bruce	12/05/2011		Turner, Phillip S.
1 Original Papers Received from Lower Court	12/08/2011		Court of Common Pleas - Delaware County
2 Formal Arraignment Scheduled 01/12/2012 8:30AM	12/08/2011		Court of Common Pleas - Delaware County
1 Bail Posted - Bates, Bruce	12/13/2011		Bartlett, Amorett M.
1 Formal Arraignment Scheduled 12/22/2011 9:00AM	12/19/2011		Court of Common Pleas - Delaware County
1 Assigned to Judge: Osborne, Ann	12/22/2011		Court of Common Pleas - Delaware County
2 Information Filed	12/22/2011		Commonwealth of Pennsylvania
3 Arraignment Certificate Filed	12/22/2011		Delaware County Court Administration
4 Criminal Notice Form Filed O.C. PTC scheduled for 1/23/12 @ 9:00am in Judge Osborne's Crtrm.	12/22/2011		Delaware County Court Administration
1 Pre-Trial Conference Scheduled 1/23/2012 9:00AM	12/28/2011		Court of Common Pleas - Delaware County
1 Criminal Notice in Open Court/Notice of Trial; 2/27/12 @ 8:30am Crt. Rm. #2 J. Osborne	01/23/2012		Osborne, Ann

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1	01/25/2012		Court of Common Pleas - Delaware County
Trial Scheduled 2/27/2012 9:00AM			
1	02/27/2012		Osborne, Ann
Criminal Notice in Open Court/Notice of Trial; 4/2/12 @ 8:30am Cr. Rm. #2 J. Osborne DF Cont- To understand restitution request			
2	02/27/2012		Bates, Bruce
Waiver of Rule 600 and Speedy Trial Rights Filed			
3	02/27/2012		Court of Common Pleas - Delaware County
Trial Scheduled 4/2/2012 9:00AM			
1	04/05/2012		Osborne, Ann
Criminal Notice in Open Court/Notice of Trial; 5/7/12 @ 8:30am Cr. Rm. #2 J. Osborne DF Cont- For ARD			
1	04/09/2012		Court of Common Pleas - Delaware County
Trial Scheduled 5/7/2012 9:00AM			
1	05/07/2012		Osborne, Ann
Guilty Plea - Negotiated			
2	05/07/2012		Osborne, Ann
Disposition Filed			
3	05/07/2012		Bates, Bruce
Guilty Plea Statement Filed			
4	05/07/2012		Bates, Bruce
Statement of Post-Sentence Rights Filed			
5	05/07/2012		Osborne, Ann
Order - Sentence/Penalty Imposed			

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1	05/08/2012		Court of Common Pleas - Delaware County
Penalty Assessed			
1	05/31/2012		Osborne, Ann
Guideline Sentence Form			
1	06/11/2012		Bates, Bruce
Bail Refund			
1	06/26/2013		Pagano, George A.
Bench Warrant Probation Violation - Issued			
1	07/02/2014		Coll, Michael F.
Gagnon I Hearing Results DEFENDANT TO BE HELD FOR GII BEFORE SENTENCING JUDGE			
1	07/25/2014		Brennan, Mary Alice
Bench Warrant Probation Violation - Rescinded			
2	07/25/2014		Brennan, Mary Alice
Gagnon II Hearing Held			
3	07/25/2014		Brennan, Mary Alice
Gagnon II Scheduled			
4	07/25/2014		Brennan, Mary Alice
Order - Sentence/Penalty Imposed			
1	07/31/2014		Court of Common Pleas - Delaware County
Entry of Civil Judgment			
1	03/31/2016		Capuzzi, John P. Sr.
Bench Warrant Probation Violation - Issued			
1	04/12/2016		Kelly, Kevin F.
Gagnon I Hearing Results			

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1	08/19/2016		Delaware County Judge's Chambers
Gagnon II Scheduled 09/14/2016 8:00AM DCP			
1	09/14/2016		Pagano, George A.
Gagnon II Hearing Held			
2	09/14/2016		Pagano, George A.
Order - Sentence/Penalty Imposed			
3	09/14/2016		Pagano, George A.
Bench Warrant Probation Violation - Rescinded			
1	04/07/2017		Pagano, George A.
Bench Warrant Probation Violation - Issued			
1	06/08/2017		Delaware County Judge's Chambers
Gagnon II Scheduled 07/19/2017 8:00AM dcp			
1	07/19/2017		Pagano, George A.
Gagnon II Hearing Held			
2	07/19/2017		Pagano, George A.
Order - Sentence/Penalty Imposed			
3	07/19/2017		Pagano, George A.
Bench Warrant Probation Violation - Rescinded			
1	04/05/2018		Court of Common Pleas - Delaware County
Transferred to CP-19-67-Crim			
1	04/12/2018		Unknown Filer
Case Transfer Accepted			
1	01/29/2019		Cappelli, Richard M.
Order - Sentence/Penalty Imposed			

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<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1 Gagnon II Hearing Held	10/16/2020		Amoroso, Margaret J.
2 Order - Sentence/Penalty Imposed	10/16/2020		Amoroso, Margaret J.
1 Order for Limited Access - See CP-23-AD-0000012-2021	10/18/2021	10/18/2021	Bradley, James P.
2 Limited Access Order Processed	10/18/2021		Court of Common Pleas - Delaware County
1 Gagnon II Scheduled 04/26/2022 8:00AM 10 am - Street	03/18/2022		Delaware County Judge's Chambers
1 Criminal Notice Form Filed; Status 5/12/22 @9am, CTRM TBA, Judge Pagano	04/26/2022		Pagano, George A.
1 Status Conference Scheduled 05/12/2022 8:00AM 9 am	04/27/2022		Delaware County Judge's Chambers
1 Status Conference Scheduled 05/12/2022 8:00AM 9 am	05/03/2022		Delaware County Judge's Chambers
1 Criminal notice form filed; Status 5/27/22 8:30am, ctrm TBD, Pagano	05/12/2022		Pagano, George A.
1 Gagnon II Scheduled 05/27/2022 8:00AM 8:30 LIVE	05/13/2022		Delaware County Judge's Chambers
1 Status Conference Scheduled 06/28/2022 8:00AM 10 am	05/27/2022		Delaware County Judge's Chambers

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2	05/27/2022		Pagano, George A.
Criminal Notice Form Filed; Status 6/28/22 @10am, CTRM TBA, Judge Pagano			
1	06/22/2022	05/27/2022	Pagano, George A.
Transcript of Proceedings, hearing date 05/27/2022 - Judge Pagano			
1	06/28/2022		Pagano, George A.
Order - Sentence/Penalty Imposed			
1	07/01/2022		Court of Common Pleas - Delaware County
Entry of Civil Judgment			
1	07/06/2022		McCready, Benjamin Lawrence
Post-Sentence Motion			
1	07/12/2022		Delaware County Judge's Chambers
Criminal Miscellaneous Scheduled 08/19/2022 8:00AM 9 am - post sent motion			
1	07/13/2022		Pagano, George A.
Order Scheduling Hearing for Post Sentence Motion on August 19, 2022 at 9:30 AM in CRTRM No.9			
1	07/28/2022		Mirsky, Emily Lynne
Notice of Appeal to the Superior Court gave to appeal clerk			
2	07/28/2022		Mirsky, Emily Lynne
Motion for Leave to Proceed In Forma Pauperis			
3	07/28/2022		Mirsky, Emily Lynne
Motion for Transcripts			
1	08/09/2022		Pagano, George A.
Concise Statement Order Kiefer, Catherine Banner 08/23/2022 Interoffice Mirsky, Emily Lynne			

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<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
1	08/15/2022		Superior Court of Pennsylvania - Eastern District
Docketing Statement from Superior Court			
1	08/16/2022	09/14/2016	Court of Common Pleas - Delaware County
Transcript of Proceedings Filed with Judge Pagano on September 14, 2016 in CRTRM #9 , 8 pages			
2	08/16/2022	07/19/2017	Court of Common Pleas - Delaware County
Transcript of Proceedings Filed with Judge Pagano on July 19, 2017 in CRTRM #9 , 9 pages			
3	08/16/2022	06/28/2022	Court of Common Pleas - Delaware County
Transcript of Proceedings Filed with Judge Pagano on June 28, 2022 in CRTRM #14 , 13 pages			
4	08/16/2022	10/16/2020	Court of Common Pleas - Delaware County
Transcript of Proceedings Filed with Judge Ganley on October 16, 2020 in CRTRM #9 , 7 pages			
5	08/16/2022	10/16/2020	Court of Common Pleas - Delaware County
Transcript of Proceedings Filed with Judge Ganley on October 16, 2020 in CRTRM #9 10 pages			
6	08/16/2022	07/25/2014	Court of Common Pleas - Delaware County
Transcript of Proceedings Filed with Judge G. Parker in CRTRM -D on July 25, 2014 6 pages			
1	08/19/2022	05/07/2012	Court of Common Pleas - Delaware County
Transcript of Proceedings Filed Judge Osborne May 7, 2012 in CRTRM # 2 13 pages			
2	08/19/2022		Mirsky, Emily Lynne
Petition for Extension to File Statement of Errors Complained of on Appeal			

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<u>Service To</u>		<u>Service By</u>	
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
1	08/22/2022		Pagano, George A.
Order-Defendant's Post Sentence Motion is Denied as MOOT			
Marchesani, Cassandra Marie			
08/22/2022	Interoffice		
Mirsky, Emily Lynne			
08/22/2022	Interoffice		

1	08/24/2022		Pagano, George A.
Concise Statement Order			

1	09/16/2022		Court of Common Pleas - Delaware County
Transcript of Proceedings Filed Judge Parker's CR D, Hearing 1-29-19, Pages 10			

1	09/27/2022		Kiefer, Catherine Banner
Concise Statement of Matters Complained of on Appeal			
Marchesani, Cassandra Marie			
09/27/2022	Interoffice		

1	11/04/2022	04/26/2022	Pileggi, Dominic F.
Transcript of Proceedings in Judge Pileggi, CRTRM #14, Hearing Date 4-26-22, Pages 19			

2	11/04/2022	05/12/2022	Pileggi, Dominic F.
Transcript of Proceedings in Judge Pileggi, Hearing Date 5-12-22, CRTRM #14, Pages 26			

1	01/25/2023		Superior Court of Pennsylvania - Eastern District
Notice of Overdue Record from Superior Court - 1966 EDA 2022			

1	03/02/2023		Pagano, George A.
Transmittal of Record to Appellate Court			

2	03/02/2023		Pagano, George A.
Opinion			
Kiefer, Catherine Banner			
03/07/2023	Interoffice		

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Service To Service By

Issue Date Service Type Status Date Service Status

McCready, Benjamin Lawrence

03/07/2023

First Class

1

03/08/2023

Superior Court of Pennsylvania -
Eastern District

Trial Court Record Received from Superior Court - 1966 EDA 2022

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PAYMENTS

<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Receipt Amount</u>	<u>Receipt Applied Amount</u>		
<u>Transaction Type/ Payment Method</u>	<u>Assessment Type</u>		<u>Prior Balance</u>	<u>Transaction Amount</u>	<u>Balance</u>
23-2012-R000026901	06/11/2012	\$500.00		\$150.00	
Payment From Escrow/Cash	Bail Handling Percent (Delaware)		\$150.00	\$150.00	\$0.00
23-2012-R000053800	12/04/2012	\$40.00		\$40.00	
Payment/Money Order	Victim Witness Service (Act 111 of 1998)		\$25.00	\$5.00	\$20.00
Payment/Money Order	Crime Victims Compensation (Act 96 of 1984)		\$35.00	\$35.00	\$0.00
23-2014-R000046649	10/31/2014	\$30.00		\$30.00	
Payment/Money Order	Restitution		\$5,600.00	\$5.00	\$5,595.00
Payment/Money Order	Judicial Computer Project		\$8.00	\$5.00	\$3.00
Payment/Money Order	Victim Witness Service (Act 111 of 1998)		\$20.00	\$20.00	\$0.00
Reverse Payment/Money Order	Restitution		\$5,126.50	(\$5.00)	\$5,126.50
23-2018-R000017371	04/02/2018	\$40.00		\$40.00	
Payment/Money Order	ATJ		\$3.00	\$3.00	\$0.00
Payment/Money Order	CJES		\$2.25	\$2.25	\$0.00
Payment/Money Order	JCPS		\$10.25	\$10.25	\$0.00
Payment/Money Order	Restitution		\$5,595.00	\$20.00	\$5,575.00
Payment/Money Order	Judicial Computer Project		\$3.00	\$3.00	\$0.00
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$880.00	\$0.75	\$878.50
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$880.00	\$0.75	\$878.50
Reverse Payment/Money Order	Restitution		\$5,126.50	(\$20.00)	\$5,126.50
23-2018-R000035192	07/02/2018	\$50.00		\$50.00	
Payment/Money Order	Restitution		\$5,575.00	\$25.00	\$5,550.00
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$878.50	\$12.50	\$853.50
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$878.50	\$12.50	\$853.50

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<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Receipt Amount</u>	<u>Receipt Applied Amount</u>		
<u>Transaction Type/ Payment Method</u>	<u>Assessment Type</u>		<u>Prior Balance</u>	<u>Transaction Amount</u>	<u>Balance</u>
Reverse Payment/Money Order	Restitution		\$5,126.50	(\$25.00)	\$5,126.50
23-2018-R000038228	07/23/2018	\$50.00		\$50.00	
Payment/Money Order	Restitution		\$5,550.00	\$25.00	\$5,525.00
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$853.50	\$12.50	\$828.50
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$853.50	\$12.50	\$828.50
Reverse Payment/Money Order	Restitution		\$5,126.50	(\$25.00)	\$5,126.50
23-2018-R000045710	09/04/2018	\$50.00		\$50.00	
Payment/Money Order	Restitution		\$5,525.00	\$25.00	\$5,500.00
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$828.50	\$12.50	\$803.50
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$828.50	\$12.50	\$803.50
Reverse Payment/Money Order	Restitution		\$5,126.50	(\$25.00)	\$5,126.50
23-2018-R000049685	09/25/2018	\$50.00		\$50.00	
Payment/Money Order	Restitution		\$5,500.00	\$25.00	\$5,475.00
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$803.50	\$12.50	\$778.50
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$803.50	\$12.50	\$778.50
Reverse Payment/Money Order	Restitution		\$5,126.50	(\$25.00)	\$5,126.50
23-2019-R000004921	01/29/2019	\$40.00		\$40.00	
Payment/Money Order	Restitution		\$5,475.00	\$20.00	\$5,455.00
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$778.50	\$10.00	\$758.50
Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$778.50	\$10.00	\$758.50
Void Payment/Money Order	Restitution		\$5,455.00	(\$20.00)	\$5,475.00

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PAYMENTS

<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Receipt Amount</u>	<u>Receipt Applied Amount</u>		
<u>TransactionType/ Payment Method</u>	<u>Assessment Type</u>		<u>Prior Balance</u>	<u>Transaction Amount</u>	<u>Balance</u>
Void Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$758.50	(\$10.00)	\$778.50
Void Payment/Money Order	OSP (Delaware/State) (Act 35 of 1991)		\$758.50	(\$10.00)	\$778.50
23-2019-R000004924	01/29/2019	\$40.00		\$40.00	
Payment/Money Order	Restitution		\$5,475.00	\$40.00	\$5,435.00
Reverse Payment/Money Order	Restitution		\$5,126.50	(\$40.00)	\$5,126.50
23-2020-R000042616	10/16/2020	\$20.00		\$20.00	
Payment From Escrow/ePay	Restitution		\$5,435.00	\$20.00	\$5,415.00
Reverse Payment/ePay	Restitution		\$5,126.50	(\$20.00)	\$5,126.50
23-2020-R000042624	10/16/2020	\$70.00		\$70.00	
Payment/Visa	Restitution		\$5,415.00	\$70.00	\$5,345.00
Reverse Payment/Visa	Restitution		\$5,126.50	(\$70.00)	\$5,126.50
23-2020-R000047134	11/23/2020	\$30.00		\$30.00	
Payment From Escrow/ePay	Restitution		\$5,345.00	\$30.00	\$5,315.00
Reverse Payment/ePay	Restitution		\$5,126.50	(\$30.00)	\$5,126.50
23-2021-R000000580	01/04/2021	\$33.50		\$33.50	
Payment From Escrow/ePay	Restitution		\$5,315.00	\$33.50	\$5,281.50
Reverse Payment/ePay	Restitution		\$5,126.50	(\$33.50)	\$5,126.50
23-2021-R000012266	03/26/2021	\$30.00		\$30.00	
Payment From Escrow/ePay	Restitution		\$5,281.50	\$30.00	\$5,251.50
Reverse Payment/ePay	Restitution		\$5,126.50	(\$30.00)	\$5,126.50
23-2021-R000021724	05/21/2021	\$30.00		\$30.00	
Payment From Escrow/ePay	Restitution		\$5,251.50	\$30.00	\$5,221.50
Reverse Payment/ePay	Restitution		\$5,126.50	(\$30.00)	\$5,126.50
23-2021-R000027612	06/30/2021	\$40.00		\$40.00	

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PAYMENTS

<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Receipt Amount</u>	<u>Receipt Applied Amount</u>		
<u>Transaction Type/ Payment Method</u>	<u>Assessment Type</u>		<u>Prior Balance</u>	<u>Transaction Amount</u>	<u>Balance</u>
Payment From Escrow/ePay	Restitution		\$5,221.50	\$40.00	\$5,181.50
Reverse Payment/ePay	Restitution		\$5,126.50	(\$40.00)	\$5,126.50
23-2021-R000032422	08/04/2021	\$35.00		\$35.00	
Payment From Escrow/ePay	Restitution		\$5,181.50	\$35.00	\$5,146.50
Reverse Payment/ePay	Restitution		\$5,126.50	(\$35.00)	\$5,126.50
23-2021-R000040747	10/04/2021	\$20.00		\$20.00	
Payment From Escrow/ePay	Restitution		\$5,146.50	\$20.00	\$5,126.50
Reverse Payment/ePay	Restitution		\$5,126.50	(\$20.00)	\$5,126.50

Case Balance: \$6,945.00

COURT OF COMMON PLEAS OF DELAWARE COUNTY

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CASE FINANCIAL INFORMATION

Last Payment Date: 10/04/2021

Total of Last Payment: \$0.00

Bates, Bruce Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Balance</u>
Costs/Fees					
Constable (Delaware)	\$120.00	\$0.00	\$0.00	\$0.00	\$120.00
Automation OJS Fee (Delaware)	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
District Attorney (Delaware)	\$25.00	\$0.00	\$0.00	\$0.00	\$25.00
OSP (Delaware/State) (Act 35 of 1991)	\$440.00	(\$50.75)	\$0.00	\$0.00	\$389.25
OSP (Delaware/State) (Act 35 of 1991)	\$440.00	(\$50.75)	\$0.00	\$0.00	\$389.25
Sheriff (Delaware)	\$40.00	\$0.00	\$0.00	\$0.00	\$40.00
Restitution Processing Fee (Delaware)	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00
State Court Costs (Act 204 of 1976)	\$11.00	\$0.00	\$0.00	\$0.00	\$11.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$9.40	\$0.00	\$0.00	\$0.00	\$9.40
County Court Cost (Act 204 of 1976)	\$30.60	\$0.00	\$0.00	\$0.00	\$30.60
Crime Victims Compensation (Act 96 of 1984)	\$35.00	(\$35.00)	\$0.00	\$0.00	\$0.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$0.00	\$10.00
Victim Witness Service (Act 111 of 1998)	\$25.00	(\$25.00)	\$0.00	\$0.00	\$0.00
Firearm Education and Training Fund	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
Clerk of Courts - Misdemeanor (Delaware)	\$227.00	\$0.00	\$0.00	\$0.00	\$227.00
Costs of Prosecution - CJEA	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Judicial Computer Project	\$8.00	(\$8.00)	\$0.00	\$0.00	\$0.00
ATJ	\$3.00	(\$3.00)	\$0.00	\$0.00	\$0.00
CJES	\$2.25	(\$2.25)	\$0.00	\$0.00	\$0.00
JCPS	\$10.25	(\$10.25)	\$0.00	\$0.00	\$0.00
Constable Education Training Act	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
Bail Handling Percent (Delaware)	\$150.00	(\$150.00)	\$0.00	\$0.00	\$0.00
Bench Warrant (Delaware)	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00
Sheriff Apprehension (Delaware)	\$59.00	\$0.00	\$0.00	\$0.00	\$59.00
Bench Warrant (Delaware)	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00
Sheriff Apprehension (Delaware)	\$59.00	\$0.00	\$0.00	\$0.00	\$59.00
Bench Warrant (Delaware)	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00
Sheriff Apprehension (Delaware)	\$59.00	\$0.00	\$0.00	\$0.00	\$59.00
Costs/Fees Totals:	\$2,153.50	(\$335.00)	\$0.00	\$0.00	\$1,818.50

COURT OF COMMON PLEAS OF DELAWARE COUNTY

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CASE FINANCIAL INFORMATION

<u>Bates, Bruce</u> Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary</u> <u>Payments</u>	<u>Balance</u>
Restitution					
Carbone, Theresa	\$5,600.00	\$0.00	(\$473.50)	\$0.00	\$5,126.50
Restitution Totals:	\$5,600.00	\$0.00	(\$473.50)	\$0.00	\$5,126.50
Grand Totals:	\$7,753.50	(\$335.00)	(\$473.50)	\$0.00	\$6,945.00

** - Indicates assessment is subrogated