

IN THE
SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 1058 WDA 2019

COMMONWEALTH OF PENNSYLVANIA,
Appellee

v.

MARCIA DINARDO,
Appellant

BRIEF FOR APPELLANT

Appeal from the Order of Sentence entered on January 14, 2019, at CC 2018-4090, by the Honorable Alexander Bicket, Court of Common Pleas of the Fifth Judicial District of Pennsylvania.

Counsel of Record:

MELISSA R. RUGGIERO, ESQUIRE
Attorney At Law
State I.D.# 94710

Allegheny County Office of Conflict Counsel
564 Forbes Avenue
Manor Building, Suite 600
Pittsburgh, PA 15219
(412) 350-4850

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STATEMENT OF JURISDICTION

The Superior Court has jurisdiction over this matter pursuant to 42 Pa.C.S. § 742 as an appeal from the Judgment of Sentence imposed by the Court of Common Pleas of the Fifth Judicial District of Pennsylvania. The Judgment of Sentence is a final order under Pa.R.A.P. 341(b).

ORDER IN QUESTION

This is an appeal from the Order of Sentence entered on January 14, 2019, at CP-02-CR-0004090-2018, by the Honorable Alexander Bicket of the Court of Common Pleas of the Fifth Judicial District of Pennsylvania. The order in question follows.

Commonwealth of Pennsylvania
v.
Marcia Martha Dinardo

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

DOCKET NO: CP-02-CR-0004090-2018
DATE OF ARREST:
OTN: G 780569-6
SID: [REDACTED]
DOB: 10/12/1949

CORRECTED - ORDER OF SENTENCE

AND NOW, this 14th day of January, 2019, the defendant having been convicted in the above-captioned case is hereby sentenced by this Court as follows. The defendant is to pay all applicable fees and costs unless otherwise noted below:

Count 1 - 18 § 5511 §§ A2.11A - Cruelty To Animals (M1)
Offense Disposition: Withdrawn

Count 2 - 18 § 5511 §§ A2.11A - Cruelty To Animals (M1)
Offense Disposition: Withdrawn

Count 3 - 18 § 5511 §§ A2.11A - Cruelty To Animals (M1)
Offense Disposition: Withdrawn

Count 4 - 18 § 5511 §§ A2.11A - Cruelty To Animals (M1)
Offense Disposition: Withdrawn

Count 5 - 18 § 5511 §§ A2.11A - Cruelty To Animals (M1)
Offense Disposition: Withdrawn

Count 6 - 18 § 5511 §§ A2.11A - Cruelty To Animals (M1)
Offense Disposition: Withdrawn

Count 7 - 18 § 5511 §§ A2.11A - Cruelty To Animals (M1)
Offense Disposition: Withdrawn

Count 8 - 18 § 5511 §§ A2.11A - Cruelty To Animals (M1)
Offense Disposition: Withdrawn

Count 9 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Additional Counts: Same conditions as count(s) 10-42 apply.

Probation - Non-Reporting: Probation is non-reporting.

v.

Marcia Martha Dinardo

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Fines: Defendant is to pay a \$300.00 fine.

This sentence shall commence on 01/14/2019.

Count 10 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Costs - Costs waived: Costs are waived.

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,625.50 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim: Humane Animal Rescue

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the probation.

Other: Defendant is not permitted to own and/or be around any animals (no hair, no face, no pulse) while on probation.

Probation - Non-Reporting: Probation is non-reporting.

Fines: Defendant is to pay a \$300.00 fine.

Count 11 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 12 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

v.

Marcia Martha Dinardo

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Count 13 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 14 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 15 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Other: Defendant is not permitted to own any cats while on probation.

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Costs - Costs waived: Costs are waived.

Count 16 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

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Marcia Martha Dinardo

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Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 17 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 18 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Other: Defendant is not permitted to own any cats while on probation.

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Costs - Costs waived: Costs are waived.

Count 19 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This

v.

Marcia Martha Dinardo

Docket No: CP-02-CR-0004090-2018

Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 20 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 21 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 22 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 23 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

v.

Marcia Martha Dinardo

Docket No: CP-02-CR-0004090-2018

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Other: Defendant is not permitted to own any cats while on probation.

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Costs - Costs waived: Costs are waived.

Count 24 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 25 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 26 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

v.

Marcia Martha Dinardo

Docket No: CP-02-CR-0004090-2018

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 27 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 28 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 29 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

v.

Marcia Martha Dinardo

Docket No: CP-02-CR-0004090-2018

Costs - Costs waived: Costs are waived.

Count 30 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 31 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 32 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Other: Defendant is not permitted to own any cats while on probation.

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Costs - Costs waived: Costs are waived.

Count 33 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

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The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 34 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 35 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 36 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will

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begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 37 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 38 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 39 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

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Count 40 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

Count 41 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Other: Defendant is not permitted to own any cats while on probation.

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Costs - Costs waived: Costs are waived.

Count 42 - 18 § 5511 §§ C1 - Cruelty to Animals (S)

To be placed on Probation - County Regular Probation - for a minimum period of 90 Day(s) and a maximum period of 90 Day(s) to be supervised by ALLEGHENY COUNTY PROBATION.

The following conditions are imposed:

Restitution Ordered - Restitution owed: Amount of restitution owed: \$10,000.00 ; joint and several with Thomas Crory: (18-4091).

Restitution will be disbursed to victim:

Restitution Ordered - Restitution payment 30 days: The responsible party shall make payment to: Department of Court Records - Allegheny County. The court has established a payment plan in which the case payments will begin 30 days from the date of this order with first payment due on the first day of the following month. This Restitution is imposed as a part of the sentence.

Other: Defendant is not permitted to own any cats while on probation.

Costs - Costs waived: Costs are waived.

v.

Marcia Martha Dinardo

Docket No: CP-02-CR-0004090-2018

LINKED SENTENCES:

Link 1

CP-02-CR-0004090-2018 - Seq. No. 42 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 41 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 40 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 39 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 38 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 37 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 36 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 35 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 34 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 33 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 32 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 31 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 30 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 29 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 28 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 27 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 26 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 25 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 24 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 23 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 22 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 21 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 20 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 19 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 18 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 17 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 16 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 15 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 14 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 13 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 12 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 11 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 10 (18§ 5511 §§ C1) - Probation

Link 2

CP-02-CR-0004090-2018 - Seq. No. 10 (18§ 5511 §§ C1) - Probation is Consecutive to
 CP-02-CR-0004090-2018 - Seq. No. 9 (18§ 5511 §§ C1) - Probation

The following Judge Ordered Conditions are imposed:

Condition

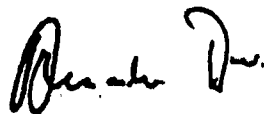
Start Date

End Date

Condition Text

Other

COURT COSTS WAIVED.



JUDGE ALEXANDER P. BICKET

STATEMENT OF QUESTIONS INVOLVED

1. Was the trial court's sentence illegal because it imposed a fine on the defendant without making the mandated determination of her ability to pay those fines pursuant to 42 Pa.C.S. § 9726(c) and (d), which prohibit a court from imposing any mandatory or discretionary fine without considering the defendant's ability to pay?

Answered in the negative by the trial court.

2. Was the trial court's sentence illegal because it imposed a fine on the defendant without determining if it would prevent the defendant from making restitution or reparation to the victim of the crime pursuant to 42 Pa.C.S. § 9726(c)?

Answered in the negative by the trial court.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

The issues raised in Ms. DiNardo's appeal address whether the trial court acted unlawfully when it imposed fines upon conviction without considering Ms. DiNardo's ability to pay. "The determination as to whether the trial court imposed an illegal sentence is a question of law; our standard of review is plenary." Commonwealth v. Garzone, 993 A.2d 1245, 1255 (Pa. Super. 2010) (citing Commonwealth v. Nuse, 976 A.2d 1191, 1193 (Pa. Super. 2009)). Questions of law are reviewed de novo. See Commonwealth v. Moody, 125 A.3d 1, 6 (Pa. 2015) (whether the trial court followed the right procedures is a question of law reviewed de novo); Commonwealth v. Boyd, 73 A.3d 1269, 1273-74 (Pa. Super. Ct. 2013) (en banc) (trial court's failure to follow statutory requirements in imposing financial obligations is a question of law).

The question of whether the specific dollar amount of the fines that the trial court imposed are subject to review for an abuse of discretion. Commonwealth v. Allen, 24 A.3d 1058, 1064 (Pa. Super. Ct. 2011). "An appellate court cannot find an abuse of discretion merely for an error of judgment unless, in reaching a conclusion, the trial court overrides or misapplies the law, or its judgment is manifestly unreasonable, or the evidence of record shows that the court's judgment exercised is manifestly unreasonable or lacking in reason." Commonwealth v.

Baker, 766 A.2d 328, 331 (Pa. 2001) *citing* In re Rose Hill Cemetery Ass'n, 590 A.2d 1, 3 (Pa. 1991).

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

On January 14, 2019 Ms. DiNardo pled to thirty-four counts of cruelty to animals under 18 Pa.C.S.A. §5511(c)(1) and sentenced to ninety days probation at each count to run consecutively or an aggregate sentence of eight years' and three months' probation. (Sentencing Order hereinafter "Docket Entry 11").

Ms. DiNardo was ordered to pay \$10,625.50 in restitution to the Humane Animal Rescue joint and several with co-defendant Thomas Croy. (Restitution Order hereinafter "Docket Entry 12"). Ms. DiNardo was also ordered to pay \$300 fine at thirty-four counts of cruelty to animals under 18 Pa.C.S.A. §5511(c)(1) totaling \$10,200.00 and Ms. DiNardo was also ordered to pay court costs. Docket Entry 11.

A timely post-sentencing motion was filed on January 25, 2019. Docket Entry 14. On February 25, 2019 an Amended Motion to Modify Sentence was filed because in preparing for the hearing on February 27, 2019 for the post-sentence motion defense counsel identified for the first-time issues with the financial aspects of defendant's case that were not apparent on the docket that was available at the time of sentencing. Docket Entry 16.

On February 27, 2019 the Commonwealth filed its Response to Defendant's Motion to Modify Sentence. Docket Entry 17. The trial court rolled the Post-

Sentence Motion hearing set for February 27, 2019 to March 26, 2019.¹ The trial court then rolled again the hearing on March 26, 2019 to May 24, 2019. Due to the trial court's unavailability on May 24, 2019 the hearing date was moved to June 3, 2019.

On May 22, 2019 defense counsel filed the Motion to Extend Time Limit on Post-Sentence Motion Decision. Docket Entry 20. The trial court granted this motion on May 28, 2019 granting a thirty-day extension. Docket Entry 21. At the hearing on June 3, 2019 the trial court waived court costs. Transcript of Proceedings June 3, 2019 (Docket Entry 2) (hereinafter "June 3, 2019 TT") at 5.

On June 7, 2019 Ms. DiNardo filed Supplemental Amended Motion to Modify Sentence. Docket Entry 25. On June 18, 2019 and July 11, 2019, the trial court held post-sentencing motion hearings. Transcript of Proceedings June 18, 2019 (Docket Entry 3) (hereinafter "June 18, 2019 TT") and Transcript of Proceedings July 11, 2019 (Docket Entry 4) hereinafter ("July 11, 2019 TT"). On July 11, 2019 the trial court denied modifying the sentence regarding the order to pay a \$300 fine at each of the thirty-four counts totaling \$10,200 and to pay \$10,625.50 in restitution to the Humane Animal Rescue joint and several with co-defendant Thomas Crory. Docket Entry 26.

¹ On March 18, 2019, defense counsel prematurely filed a PCRA Petition. Docket Entry 18. On June 3, 2019 the trial court dismissed the PCRA Petition as prematurely filed. Docket Entry 23. There is no dispute that this appeal is a direct appeal from the Order of Sentence.

On July 17, 2019, Ms. DiNardo filed a timely Notice of Appeal. Docket Entry 27. The Honorable Alexander Bicket entered an order on July 23, 2019 directing counsel to file a concise statement of errors to be complained of on appeal pursuant to Pa.R.A.P. 1925(b) by August 13, 2019. Docket Entry 29. The Concise Statement of Errors Complained on Appeal was filed by Ms. DiNardo on August 12, 2019. Docket Entry 30. The Opinion was filed by the Honorable Alexander Bicket on September 12, 2019. Docket Entry 1 Opinion.

II. FACTUAL HISTORY

Ms. DiNardo is a hoarder, and she also loves cats. This unfortunately led to a tragic outcome, where animal welfare officers and police removed forty-one cats from the residence of Ms. DiNardo and her partner Mr. Croy. Eight were ultimately euthanized. Ms. DiNardo pled guilty and admitted her responsibility.

The record regarding Ms. DiNardo's financial resources is well developed and reflects her very limited financial resources and dire situation. At sixty-nine years old she suffers from several disabilities that have rendered her permanently disabled and unable to work: cellulitis (a type of painful skin infection), venous stasis (a blood flow problem), and she has a bar and pins in her left leg up to her hip. June 18, 2019 TT at 7. These disabilities prevent her from sitting for long periods of time, and she also cannot stand unassisted. Id. at 41. At the hearings she either was in a wheelchair or needed the use of a walker. June 3, 2019 TT at 7. Ms. DiNardo is unable to work

and collects Supplemental Security Income (SSI) from the Social Security Administration. She receives Medicaid, food stamps, and \$265 per year in cash assistance from Pennsylvania, which is the state supplement to her SSI. June 18, 2019 TT at 7, 8. She has no source of income other than SSI and the small amount of the state cash assistance SSI supplement, which gives her a total of \$9,756 per year.² June 18, 2019 TT at 11-12.

Ms. DiNardo lives with her daughter and her partner Mr. Crory. Id. at 7, 13, 14, 36. Mr. Crory also suffers from ill health and was hospitalized when he had court dates for his case. Commonwealth v. Crory, 2019 Pa. Super. Unpub. LEXIS 4770 (642 WDA 2019). Ms. DiNardo pays all the bills because her daughter and Mr. Crory are unemployed. June 18, 2019 TT at 7, 13, 14, 23, 36.

The trial court took judicial notice that the Federal Poverty Guidelines. Id. at 29. For a family size of one it is \$12,760 and for a family size of three it is \$21,720.³ Since Ms. DiNardo's SSI benefits and cash assistance are only \$9,756 per year, she is at only 76% of the Federal Poverty Guidelines for a family size of one, and 45% for a family size of three. Under either view, she falls well below the poverty line.

To make matters worse, the City of Pittsburgh has condemned Ms. DiNardo's house where the incident of hoarding cats occurred. Mr. Crory and Ms. DiNardo

² Because Ms. DiNardo is elderly, some of her SSI benefit is offset by receiving old-age Social Security benefits. This does not mean that she receives more money than she would receive solely from SSI; it is just that part of her monthly payment comes from SSI and part now comes from old-age Social Security.

³ 85 Fed. Reg. 12 at 3060.

had to then move in with her unemployed daughter to avoid being homeless. Id. at 7, 13-14. Although the house was condemned, she still owes \$1,328.89 in taxes on the house to the City and School District of Pittsburgh. June 18, 2019 TT at 27. Mr. Crory and Ms. DiNardo were also paying utility bills for that house. Id. at 22-26, 36. Ms. DiNardo also owes \$97,798.17 to a lender and the house has a lien. Id. at 27-28. When the house is sold at a sheriff's auction, she will not receive any funds.

The Honorable Alexander Bicket acknowledged during the proceedings that Ms. DiNardo lacked the financial resources to pay. For example, the trial court waived court costs because Ms. DiNardo could not afford to pay them since she only receives SSI. June 3, 2019 TT at 5. The judge also stated on the record that as a "practical matter," she would not be able to pay the fines. July 11, 2019 TT at 17. Despite this, and despite the evidence in the record reflecting Ms. DiNardo's limited financial resources, the trial court nevertheless imposed a fine of \$10,200. This is in addition to a sentence of eight years of probation and \$10,625.50 in restitution to the animal shelter that cared for her cats.

SUMMARY OF ARGUMENT

The sentence is illegal because the trial court failed to make a determination on Ms. DiNardo's ability to pay a fine. The applicable provisions regarding the imposition of fines are 42 Pa.C.S. § 9726(c) and (d). Both the plain language of § 9726 and numerous decisions from this Court and the Supreme Court make it clear that the trial court must make a finding on the record regarding the defendant's financial resources and ability to pay a fine.

Here the trial court turned these requirements on its head. As explained in detail, Ms. DiNardo is a sixty-nine-year-old woman who is permanently disabled and uses a wheelchair. She collects Social Security Insurance and cash assistance SSI supplement from Pennsylvania which gives her annual income of \$9,756 per year. The record clearly shows that there is *not one single fact or finding* to show that Ms. DiNardo can pay any fine, which is what § 9726 and a host of this Court's prior opinions require.

In addition to violating § 9726(c) by imposing any fine despite no evidence to show Ms. DiNardo could pay, the trial court further violated § 9726(d) by imposing \$10,200 in fines. The evidence shows she cannot afford to pay anything, and the trial court did not consider "the financial resources of the defendant and the nature of the burden that its payment will impose" in setting the specific fine amount. 42 Pa.C.S. § 9726(d).

It is clear from § 9726 prohibits the court from imposing any fine whatsoever if the defendant will not be able to pay it. This is made somewhat more complicated, though, by 18 Pa.C.S. § 5511(m.1), which purports to impose a mandatory minimum fine of \$50. Nevertheless, § 9726 creates an exception to this “mandatory” fine such that the fine is mandatory *only if* the defendant cannot afford it. Since Ms. DiNardo cannot afford to pay even \$50 per count fine, the mandatory minimum in § 5511 is not applicable.

The trial court’s sentence is also illegal because it imposed a fine on Ms. DiNardo without determining if it would prevent Ms. DiNardo from making \$10,625.50 in restitution to the Humane Animal Rescue pursuant to 42 Pa.C.S. § 9726. In addition to the trial court focusing on the financial resources of Ms. DiNardo when imposing a fine it should have also considered it would take her twice as long to pay restitution if she has to pay fines. Under the Supreme Court’s current policy, half of every payment goes to restitution, with the other half split between fines and costs. 204 Pa. Code § 29.405. Thus, if Ms. DiNardo pays \$100, only \$50 will go to restitution. The imposition of that restitution further counsels against imposing any fine, let alone \$10,200.

Lastly, Ms. DiNardo has not waived her challenge to the imposition of a fine. The trial court suggested at one of the hearings that Ms. DiNardo waived her challenge to the imposition of a fine based on inability to pay because it was raised

for the first time in a post-sentence motion. Once again, the trial court misunderstood the law. A challenge to the legality of the sentence can certainly be raised for the first time in a post-sentencing motion.

Ms. DiNardo also did not waive a challenge to the discretionary amount of the fine because she specifically raised a violation of § 9726(d) in her 1925(b) statement, which unquestionably put the trial court on notice that she was appealing the trial court's abuse of discretion for imposing \$10,200 in fines. The trial court plainly did not consider her ability to pay at all, let alone her ability to pay that specific dollar amount. For these reasons, this Court should vacate the sentence and remand to the trial court.

**STATEMENT OF REASONS RELIED UPON FOR ALLOWANCE OF
APPEAL PURSUANT TO RULE 2119(f)**

This Honorable Court has stated that challenges to the discretionary aspects of one's sentence may proceed only after one invokes this Honorable Court's jurisdiction by satisfying a four-part test. Commonwealth v. Moury, 992 A.2d 162, 170 (Pa. Super. 2010). The four-part test is as follows: (1) whether the appellant has filed a timely notice of appeal, (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, (3) whether the appellant's brief has a fatal defect, and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code. Id.

In satisfaction of the first requirement, Ms. DiNardo filed a timely Notice of Appeal on July 7, 2019. Docket Entry 27. In satisfaction of the second requirement, Ms. DiNardo's Post-Sentence Motion, which was timely filed on February 25, 2019 contained arguments requesting the trial court reconsider and modify its sentence. Docket Entry 14.

Regarding the third requirement, in accordance with Pa.R.A.P. 2119(f), Ms. DiNardo now sets forth a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of his sentence. Pursuant to 42 Pa.C.S. § 9726(d) the trial court is required to use its discretion to assign a specific dollar amount of a fine based on what the defendant can afford to pay.

Unfortunately, the trial court did not consider her ability to pay at all, let alone her ability to pay that specific dollar amount. It made no findings on the record and pointed to no evidence to show she would be able to pay the \$10,200 fine.

The question of whether the specific dollar amount of the fines that the trial court imposed are subject to review for an abuse of discretion. This Honorable Court's standard of review in considering whether to affirm the discretionary aspects of a trial court's sentence is an abuse of discretion. Allen, 24 A.3d 1058, 1064. "An appellate court cannot find an abuse of discretion merely for an error of judgment unless, in reaching a conclusion, the trial court overrides or misapplies the law, or its judgment is manifestly unreasonable, or the evidence of record shows that the court's judgment exercised is manifestly unreasonable or lacking in reason." Baker, 766 A.2d 328, 331 *citing* In re Rose Hill Cemetery Ass'n, 590 A.2d 1, 3. Here the trial court misapplied the law because it did not consider the evidence on the record regarding Ms. DiNardo's financial resources.

In satisfaction of the final requirement, the trial court's misapplication of the law raises a substantial question to be heard on the merits. While "the determination of whether a particular issue raises a substantial question is to be evaluated on a case-by-case basis," case law provides that "[g]enerally...in order to establish a substantial question, the appellant must show actions by the trial court inconsistent with the Sentencing Code or contrary to the fundamental norms underlying the

sentencing process.” Commonwealth v. Marts, 889 A.2d 608, 612 (Pa. Super. 2005). Here, the trial court failed not only to consider her ability to pay, but also failed to consider her ability to pay that specific dollar amount for a fine pursuant to 42 Pa.C.S. § 9726(d). Instead, the trial court fashioned a fine based upon what it viewed as a “compromise” due the Commonwealth withdrawing the misdemeanor charges. June 3, 2019 TT at 25. Using that consideration to set the dollar amount for a fine is illegal and abuse of discretion under § 9726(c) and (d). *See, e.g., Commonwealth v. Ford*, 217 A.3d 824, 829 (Pa. 2019) (holding that a court cannot impose a fine unless the record shows that the defendant is or will be able to pay the fine).

ARGUMENT

I. THE SENTENCE IS ILLEGAL BECAUSE THE TRIAL COURT FAILED TO MAKE A DETERMINATION ON THE ABILITY TO PAY A FINE

A. 42 Pa.C.S. § 9726 requires that the trial court make a finding on the record that the defendant has or will have the ability to pay a fine.

To lawfully impose a fine, the trial court must first determine whether the defendant is or will be able to pay. Without making that determination, and without facts on the record to show that the defendant is able to pay, 42 Pa.C.S. § 9726 prohibits the court from imposing a fine. The Honorable Alexander Bicket failed to make that determination, nor could he have. All the evidence on the record showed that Ms. DiNardo is indigent and unable to pay a fine. In light of this, the trial court lacked the authority to impose a fine, and Ms. DiNardo's sentence must be vacated.

The applicable provisions regarding the imposition of fines is 42 Pa.C.S. §9726(c) and (d). The first applicable provision 42 Pa.C.S. §9726(c) prohibits a court from sentencing a defendant to pay a fine “unless it appears of record that: (1) the defendant is or will be able to pay the fine, and (2) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime.” The second applicable provision 42 Pa.C.S. §9726(d) requires that, in “determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.”

These provisions require that the court: (1) consider the defendant's ability to pay the fine, (2) consider the burden that payments will impose, (3) only impose a fine that the defendant will be able to pay and (4) ensure that the fine will not prevent the defendant from paying restitution.

Both the plain language of § 9726 and numerous decisions from this Court and the Supreme Court make it clear that the *trial court* must make a finding on the record regarding the defendant's financial resources and ability to pay a fine. The Supreme Court so held last year, explaining that "the plain language of the statute is clear: Trial courts are without authority to impose non-mandatory fines absent record evidence that the defendant is or will be able to pay them." Ford, 217 A.3d 824, 829. See also Commonwealth v. Heggenstaller, 699 A.2d 767, 769 (Pa. Super. Ct. 1997) (trial court "must make an on-the-record determination regarding appellant's financial resources and his ability to pay the imposed fine"). Even if the defendant pleads guilty or waives a pre-sentence investigation, the court must still determine whether he can pay a fine before imposing it. Commonwealth v. Gaskin, 472 A.2d 1154, 1157 (Pa. Super. Ct. 1984) and Commonwealth v. Fusco, 593 A.2d 373, 375 n.1 (Pa. Super. Ct. 1991). If the Trial court fails to perform this inquiry, it cannot lawfully impose a fine. Commonwealth v. Schwartz, 418 A.2d 637, 638-39 (Pa. Super. Ct. 1980).

It is true that a court may impose a fine even if the defendant does not have the present ability to pay it, as § 9726 permits a court to impose a fine that the defendant “will” be able to pay. Commonwealth v. Thomas, 879 A.2d 246, 264 (Pa. Super. Ct. 2005) (“Imposition of a fine is not precluded merely because the defendant cannot pay the fine immediately or because he cannot do so without difficulty.”). Still, it cannot be entirely speculative that a defendant will be able to pay, as there must be sufficient facts in the record for the court to find that it is reasonably likely the defendant will be able to pay. Absent such facts, there would be no basis in the record to support imposing a fine. *See* Fusco, 594 A.2d at 375 (mere information that the defendant would be employed after leaving jail was insufficient factual basis to impose a fine).

Here, the trial court turned these requirements on its head. As is explained below, all of the evidence showed that Ms. DiNardo has *no* ability to pay a fine. In its 1925 Opinion, the trial court said simply that it was “unpersuaded by Appellant’s alleged inability to pay the fines and restitution imposed.”⁴ It went on to note that she “can set up a payment plan to pay the fines and restitution over a period of time,” despite acknowledging that she is on a “fixed income.” Noticeably absent, however, is *even one single fact* or finding to show that Ms. DiNardo *can* pay the fine, which is what § 9726, Ford, and a host of this Court’s prior opinions require. Indeed, it is

⁴ Of course, Ms. DiNardo did not challenge imposition of the restitution.

worth noting that the trial court *waived court costs* because of Ms. DiNardo's inability to pay. June 3, 2019 TT at 5, 20. See Commonwealth v. Mulkin, 2020 PA Super 30 (Pa. Super. Ct. 2020) (explaining that the "trial court may also provide that a defendant shall not be liable for costs under Rule 706" if she is unable to pay). It is inconceivable that SSI renders her too poor to pay court costs but not too poor to pay \$10,200 in fines. The trial court even admits this, candidly noting that as a "practical matter" it recognizes that she will not be able to pay the fine. July 11, 2019 TT at 17.

In addition to violating § 9726(c) by imposing any fine despite no evidence showing Ms. DiNardo could pay, the trial court further violated § 9726(d) by imposing \$10,200 in fines. The evidence shows she cannot afford to pay anything, and the trial court certainly did not consider "the financial resources of the defendant and the nature of the burden that its payment will impose" in setting the specific amount of the fine. Id. Instead of considering her financial resources, the trial court arrived at the dollar figure because the "Commonwealth had agreed to drop the misdemeanors" and the Court therefore "compromised [on] the amount" of the fines due to the Commonwealth's compromise. June 3, 2019 TT at 25. This was not a lawful consideration under § 9726(d) and constituted an abuse of discretion.

Where the Trial court most clearly shows its error is where it repeatedly talks

about the possibility that Ms. DiNardo could win the lottery.⁵ June 3, 2019 TT at 26 & July 11, 2019 TT at 18. If the standard is that “well, you never know what might happen sometime before she dies,” then § 9726 has no meaning. This is not the law. The burden is not on Ms. DiNardo to show she is unable to pay; the obligation is on the trial court to point to the record and make a substantiated finding that she *can* pay. The trial court plainly misunderstood the legal framework and must be reversed.

B. The evidence on the record indicates Ms. DiNardo had no ability to pay the fine.

To be clear: a court cannot impose a fine unless the evidence shows that the defendant *can* pay the fine. Here, the evidence on the record unquestionably demonstrates that Ms. DiNardo had no ability to pay the fine of \$10,200. Ms. DiNardo is destitute, which makes this an easy case under this Court’s precedents. This Court has explained that “where a defendant was unemployed, had “neither financial assets nor liabilities,” and had been “living from hand to mouth,” evidence on the record was “clearly insufficient” to support imposition of a fine at sentencing. Gaskin, 472 A.2d 1154, 1157-58. In other contexts, the Court has explained that receiving the service of the public defender and the receipt of public assistance (as here) “invite[s] the presumption of indigence.” Commonwealth v. Eggers, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999). *See also* Commonwealth v. Diaz, 191 A.3d 850,

⁵ There is certainly no evidence to suggest she even plays the lottery.

866 n.24 (Pa. Super. Ct. 2018) (in the context of a contempt hearing for nonpayment, “[a] finding of indigency would appear to preclude any determination that [a defendant’s] failure to pay the court-ordered fines and costs was willful.”). Ultimately, the question of whether a defendant is able to pay is a question only of that defendant’s finances, not those of friends or family. See Commonwealth v. Smetana, 191 A.3d 867, 873 (Pa. Super. Ct. 2018).

Most of the Superior Court’s case law governing indigence and whether a defendant is able to pay come from the civil *in forma pauperis* (“IFP”) cases, which the Superior Court has repeatedly incorporated into the criminal case law.⁶ Therefore, in the same way that many legal aid programs look to the Federal Poverty Guidelines to determine ability to pay, this Court recently recommended doing the same in a pair of criminal cases, citing to a national bench card on ability to pay, which uses 125% of the Federal Poverty Guidelines as a guide. See Smetana, 191 A.3d at 873 n.10; Diaz, 191 A.3d 850, 866 n.23.

Under these IFP cases, the question of what a defendant is able to pay becomes somewhat clearer. The basic question is “whether he is able to obtain the necessities of life.” Gerlitzki v. Feldser, 307 A.2d 307, 308 (Pa. Super. Ct. 1973) (en banc). If a defendant cannot, then he or she is in poverty, and “it follows that they are unable

⁶ As this Court has explained, the IFP cases serve as the “established processes for assessing indigency,” Commonwealth v. Cannon, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008), because of the “dearth of case law” in criminal cases, compared with the “well-established principles governing indigency in civil cases.” Commonwealth v. Lepre, 18 A.3d 1225, 1226 (Pa. Super. Ct. 2011).

to pay.” Id. This is also the standard adopted by our Supreme Court, which explained that, “if the individual can afford to pay court costs only by sacrificing some of the items and services which are necessary for his day-to-day existence, he may not be forced to prepay costs in order to gain access to the courts, despite the fact that he may have some ‘excess’ income or unencumbered assets.” Stein Enterprises, Inc. v. Golla, 426 A.2d 1129, 1132 (Pa. 1981).

The IFP cases also answer the question of whether a defendant must sell her house to cover her court financial obligations (although, as is noted, Ms. DiNardo’s significant loans attached to her house shows that she will not receive any funds from the Sheriff’s sale). In the Superior Court’s en banc decision in Gerlitzki, it noted that the petitioner made installment payments on a station wagon, a truck, and a television set. 307 A.2d at 308. It did not require that he stop making those payments or liquidate them in order to cover his court costs, particularly since the petitioner had a legal obligation to pay them. The court reaffirmed that decision in Schoepple v. Schoepple, 361 A.2d 665, 667 (Pa. Super. Ct. 1976) (en banc) explaining that a petitioner who owned a car and had recently purchased a color television set nevertheless was not able to pay, as the dispositive question is whether the individual is impoverished. Finally, our Supreme Court in Stein Enterprises adopted the same basic standard, rebuffing the trial court’s determination that the petitioner should sell his automobile in order to pay. As the Court noted, the

petitioner “uses his automobile for legitimate, necessary purposes and that he is not attempting to subvert the purpose of [the IFP statute] by refusing to sell his automobile in order to generate funds for the payment of court costs,” as he needed the automobile to commute and run errands. Stein Enterprises, 426 A.2d at 1129. Instead, as in the Superior Court cases, the dispositive question of whether an individual is able to pay is whether the individual can meet his basic life needs and day-to-day expenses.

Returning to this case, Ms. DiNardo owns a house that has been condemned because it is unlivable and is being sold at a sheriff’s sale to satisfy the mortgage. However, as a result of that condemnation, she now lives with her daughter. Her SSI benefits are not enough to live on and are well below the Federal Poverty Guidelines. Shall her daughter be forever forced to allow her mother to live with her—a proposition that seems to violate the intent of the Superior Court’s decision in Smetana, or shall Ms. DiNardo be free to use whatever proceeds she may one day receive from that sale (if any) to try to find her own place to live? These are the questions that the Court must grapple with. But ultimately the answer is a clear one: Ms. DiNardo is impoverished and unable to meet her basic life needs without means-based public assistance such as Social Security benefits, food stamps, and Medicaid, so she is too poor to pay a fine.

Ms. DiNardo at the time of her plea and sentencing was sixty-nine years old. Although she is a strong-willed woman in spirit, she is physically frail. January 14, 2019 TT at 4 and June 18, 2019 TT at 7. She suffers from permanent disabilities and illnesses such as cellulitis, venous stasis, and has a bar and pins in her left leg up to her hip, which prevent her from working. June 18, 2019 TT at 7. Although not noted on the record at each of Ms. DiNardo's hearings, when she appeared in court she was in a wheelchair or used a walker. June 3, 2019 TT at 7. She receives food stamps, Medicaid, Social Security and cash assistance SSI supplement from Pennsylvania. June 18, 2019 TT at 8. The trial court took judicial notice that Ms. DiNardo has an annual income of \$9,756. Id. at 12. As mentioned previously, Ms. DiNardo lives with her daughter and her partner Mr. Crory. Id. at 7. Whether calculated based on a household size of one or three, Ms. DiNardo's annual receipt of \$9,756 per year in SSI funds places her at either 76% of the Federal Poverty Guidelines or 45%; either way, she is well below those Guidelines and unquestionably in poverty.⁷

Another clear indication that she has no ability to pay her fines is that she is unable to pay her utility and tax bills. Ms. DiNardo received shut off notices for her water and gas for the house she was living in with her daughter and Mr. Crory because \$1,350.84 was owed to the water company and \$2,374.85 was owed to the

⁷ 85 Fed. Reg. 12 at 3060.

gas company. Id. at 18, 19, 21. Additionally, she has an outstanding balance of \$232.51 for her electric bill. Id. at 24.

Ms. DiNardo's home where the incident of hoarding cats occurred was condemned. Although the house was condemned, she still owes \$1,328.89 in taxes on the house to the City and School District of Pittsburgh. Id. at 26. Mr. Crory and Ms. DiNardo were also paying utility bills for that house. Id. at 22-26. Ms. DiNardo also owes \$97,798.17 to a lender and the house has a lien. Id. at 27-28.

Ms. DiNardo's situation is dire. Clearly due to her annual income being well below the Federal Poverty guidelines and being unable to pay for her basic needs or maintain her home, Ms. DiNardo has no ability to pay any fine.

C. 42 Pa.C.S. § 9726 creates an exception to an otherwise mandatory fine.

Ms. DiNardo is indigent and cannot afford to pay any fine. That is clear from 42 Pa.C.S. § 9726, which prohibits the court from imposing any fine whatsoever if the defendant will not be able to pay it. This is made somewhat more complicated, though, by 18 Pa.C.S. § 5511(m.1), which purports to impose a mandatory minimum fine of \$50 (which would be \$1,700 at \$50 per count). Nevertheless, § 9726 creates an exception to this "mandatory" fine such that the fine is mandatory *only if* the defendant cannot afford it. Since Ms. DiNardo cannot afford to pay even the \$50-per-count fine, the mandatory minimum in § 5511 is not applicable.⁸

⁸ Out of an abundance of caution, counsel would like to make it clear that this argument was preserved because counsel specifically raised Commonwealth v. Cherpes, 520 A.2d 439 (Pa. Super. Ct. 1987) in the post-sentence motion, and

Both § 9726 and § 5511 address the same topic - the imposition of fines. Statutes addressing the same topic, such as fines, must be read in *pari materia*, and “a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both.” 1 P.C.S. §§ 1932, 1933. The specific prevails over general not if there is a mere conflict—but only if the conflict is “irreconcilable.” *Id.* at § 1933. It is an extremely high bar to find that two statutes are irreconcilable. Thus, the court’s obligation is to read the two statutes in a way that gives simultaneous effect to each of their provisions. *See, e.g., Commonwealth v. Smith*, 544 A.2d 991, 996 (Pa. Super. Ct. 1988) (en banc). And given that § 5511 is a penal statute, while § 9726 (at least in (c) and (d)) must be construed to “promote justice” under 1 Pa.C.S. § 1928, this Court must interpret them with the “the narrower construction favoring” Ms. DiNardo, even if it concludes the two views are “equivocal (at best).” *Commonwealth v. Garzone*, 34 A.3d 67, 77-78 (Pa. 2012) (strictly interpreting statutes in favor of defendants that impose court costs).

Here, the statutory language in 18 Pa.C.S.A. § 5511(m.1) can easily be read together with § 9726 without being irreconcilable: The Court must impose that statutory fine *unless the defendant cannot afford it* under § 9726. If § 5551 contained some language akin to “notwithstanding §9726,” or “regardless of the financial

counsel’s 1925(b) Statement explicitly stated that § 9726 does not allow a discretionary or mandatory fine on someone who cannot pay. Docket Entry 14 & Docket Entry 30.

resources of the defendant,” then the provisions would be irreconcilable. Therefore, that is not the case and § 9726 creates an indigence exception to § 5511.

There is another good reason why it would be inappropriate to find that § 9726 does not apply to a fine imposed under § 5511: The Excessive Fines Clauses of the U.S. and Pennsylvania Constitutions. As is explained in more detail in the brief of Amici Curiae, our Supreme Court has been explicit that the Excessive Fines clause enforces the goal of “saving defendants from persistent impoverishment” and ensuring that a fine “not be so large as to deprive [an offender] of his livelihood.” Commonwealth v. 1997 Chevrolet and Contents Seized from Young, 160 A.3d 153, 188 (Pa. 2017). In other words, it requires that trial courts consider a defendant’s ability to pay. To disregard the role of § 9726 in this case would be to require that the trial court impose a fine without any consideration of Ms. DiNardo’s ability to pay, which would interpret § 5511 in an unconstitutional manner. That would violate the rule that, “Courts endeavor to give statutes a constitutional interpretation if that is reasonably possible.” Zauflick v. Pennsbury School Dist., 104 A.3d 1096, 1103 (Pa. 2014).

However, without engaging fully with these arguments, this Court apparently reached a different conclusion in Commonwealth v. Cherpes, 520 A.2d 439, 449 (Pa. Super. Ct. 1987) when it addressed a different sentencing statute. In interpreting a provision imposing a “mandatory” fine under the State Ethics Act, it ruled that the

“specific penalty provisions prevail over more general penalty provisions” as a matter of statutory construction. The court reasoned that § 9726 is general, but a statute imposing a specific fine is specific and thus the specific governs as a matter of statutory authority. This conclusion is plainly wrong because it completely disregards—and the opinion and does not discuss—the legal requirement that the specific controls *only if* the statutes are “irreconcilable.” It was in error then, and it is certainly still wrong today. Indeed, Cherpes was decided decades before the Supreme Court’s decision in 1997 Chevrolet about the floor set by the Excessive Fines Clause. This Court should overrule Cherpes, or in the alternative, consider it cabined to the interpretation of since-repealed provisions of the State Ethics Act and not apply it here. Instead, this Court should rule that in light of Ms. DiNardo’s indigence and limited financial resources, the Trial court is prohibited from imposing any fine pursuant to 42 Pa.C.S. § 9726.

II. THE TRIAL COURT’S SENTENCE IS ILLEGAL BECAUSE IT IMPOSED A FINE ON THE DEFENDANT WITHOUT DETERMINING IF IT WOULD PREVENT THE DEFENDANT FROM MAKING RESTITUTION OR REPARATION TO THE VICTIM OF THE CRIME PURSUANT TO 42 PA.C.S. § 9726(c)

Ms. DiNardo was ordered to pay \$10,625 to the Humane Animal Rescue Pursuant to 18 Pa.C.S.A. §5511(l). Pursuant to 42 Pa.C.S. § 9726, the only relevant factors to determine what, if any, fine to impose are: (1) the financial resources of the defendant and the burden that the fine will impose, and (2) whether the fine will

“prevent the defendant from making restitution or reparation to the victim of the crime.”

Although the trial court at the June 3, 2019 hearing suggested that it imposed the \$10,200 fine because the “Commonwealth had agreed to drop the misdemeanors” and the Court therefore “compromised [on] the amount” of the fines due to the Commonwealth’s compromise, such a consideration is unlawful. June 3, 2019 TT at 24-25. Indeed, what the trial court should have focused on in addition to Ms. DiNardo’s financial resources is that it would take her twice as long to pay any restitution if she has to pay these fines.

Under the Supreme Court’s current policy, half of every payment goes to restitution, with the other half split between fines and costs. 204 Pa. Code § 29.405 Thus, if Ms. DiNardo pays \$100, only \$50 will go to restitution. The imposition of that restitution further counsels against imposing any fine, let alone \$10,200. In order to pay full restitution, it means that Ms. DiNardo will have to come up with more than \$20,000. Given that paying a \$10,200 fine is impossible for Ms. DiNardo, paying *both* is even more impossible.

III. MS. DINARDO HAS NOT WAIVED HER CHALLENGE TO THE IMPOSITION OF A FINE

Out of an abundance of caution, counsel addresses this issue because the trial court suggested that Ms. DiNardo waived her challenge to the imposition of a fine based on inability to pay because it was raised for the first time in a post-sentencing

motion. July 11, 2019 TT at 7-9, 11, 19-20. Once again, the trial court misunderstands the law. A challenge to the legality of the sentence can certainly be raised for the first time in a post-sentencing motion. Commonwealth v. Middleton, 467 A.2d 841, 846 fn. 5 (Pa. Super. Ct 1983) (The legality of the sentence “normally must be addressed in the first instance to the trial court by means of a motion for modification of sentence.”) Moreover, the challenge is to the failure of the trial court to comply with 42 Pa.C.S. § 9726 by imposing a fine without making any findings on the record regarding her ability to pay, the challenge implicates the legality of the sentence and can be raised for the first time on appeal. Boyd, 73 A.3d 1269, 1272.

Nor, to the extent that the trial court did consider her ability to pay, has Ms. DiNardo somehow waived a challenge to the discretionary amount of the fine. As is explained above, § 9726(d) requires that the trial court use its discretion to assign a specific dollar amount of a fine based on what the defendant can afford to pay. Ms. DiNardo’s 1925(b) statement specifically raised a violation of § 9726(d) in her statement of errors, which unquestionably put the trial court on notice that she was appealing the trial court’s abuse of discretion for imposing \$10,200 in fines. The trial court plainly did not consider her ability to pay at all, let alone her ability to pay that specific dollar amount. It stated, on the record in open court, that it assigned the specific fine that it did *not because* of her financial resources, but instead because the court viewed it as a “compromise” position because the Commonwealth dropped

the misdemeanor charges. June 3, 2019 TT at 25. Using that consideration to set the dollar amount for a fine is illegal under § 9726(c) and (d), and Ms. DiNardo certainly preserved that issue in her 1925 statement of errors, so it has not been waived. *See, e.g., Commonwealth v. Kitchen*, 814 A.2d 209, 214 (Pa. Super. Ct. 2002) (discretionary challenge to sentence waived only if the issue is not raised in a 1925 statement or by failing to comply with Pa.R.A.P. 2119(f)). While the Trial court’s 1925 opinion attempts to provide a *post hoc* rationale that it did consider her ability to pay and found that she had not met her burden,⁹ that is of course no substitute for failing to make the proper findings on the record. *See, e.g., Commonwealth v. Stewart*, 84 A.3d 701, 710 n. 3 (Pa. Super. Ct. 2013) (explaining that “where the evidentiary record is in opposition or does not support a statement made by a Trial court in its opinion, the evidentiary record controls” because “a Trial court opinion is not part of the evidentiary record and cannot be used to add to or contradict evidence in the case”).

REQUEST FOR PUBLICATION

Pursuant to Pa.R.A.P. 3519(a), Ms. DiNardo respectfully requests that this Court publish its disposition in this matter because of the substantial public importance of the issues raised in this appeal. As is described in this Brief and in the Brief of Amici Curiae, sentencing courts continue to struggle with what 42 Pa.C.S.

⁹ As is explained above, the it was *not* Ms. DiNardo’s burden to prove she was *unable* to pay. Per Ford, the sentencing court must instead find that she *is* able to pay.

§ 9726 requires and how courts should determine whether a defendant is able to pay a fine. This Court and the Supreme Court have issued numerous published opinions on this topic, but trial courts are struggling and need clear and specific guidance on how to implement § 9726 in practice. Ms. DiNardo’s case should be an easy one: she is disabled and receives SSI, so she plainly has no ability to pay a fine. Yet the sentencing court’s disregard for the requirements of § 9726 suggests that a simple order vacating and remanding will not be enough to prevent these cases from continuing to come before this Court. Ms. DiNardo—joined by Amici—urge this Court to provide guidance in a published opinion. Neither the Commonwealth, nor a defendant, nor a court benefits when an indigent person is saddled with an unaffordable fine.

CONCLUSION

For the above reasons, this Court should vacate the sentence and remand to the trial court.

Respectfully submitted:

/s/ Melissa R. Ruggiero, Esq.

APPELLANT'S
1925 (B) STATEMENT

IN THE COURT OF COMMON PLEAS FOR
THE FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,

vs.

MARCIA DINARDO,

Defendant.

CP-02-CR-0004090-2018

**CONCISE STATEMENT OF
ERRORS TO BE COMPLAINED
OF ON APPEAL**

JUDGE ALEXANDER P. BICKET

AUG 12 2019

Filed on Behalf of:
Ms. Marcia DiNardo, Defendant

The Honorable Alexander P. Bicket
533 Allegheny County Courthouse
Pittsburgh, PA 15219

Counsel of record for this party:
Melissa R. Ruggiero, Esq.
State I.D. # 94710

Office of Conflict Counsel
429 Forbes Avenue, Suite 1405
Pittsburgh, Pennsylvania 15219
Phone: 412 - 350 - 4850
Fax: 412 - 350 - 3127

2019 AUG 12 PM 2:50

CLERK OF COURT
ALLEGHENY COUNTY, PA

IN THE COURT OF COMMON PLEAS FOR
THE FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,

vs.

CP-02-CR-0004090-2018

MARCIA DINARDO,

Defendant.

CONCISE STATEMENT OF ERRORS TO BE COMPLAINED OF ON APPEAL

AND NOW comes the defendant, Marcia DiNardo, through her counsel, Melissa Ruggiero of the Office of Conflict Counsel, and respectfully files the following Concise Statement of Errors to be Complained of on Appeal:

1. On January 14, 2019 the defendant at the above captioned criminal information pled to 34 counts of cruelty to animals under 18 Pa.C.S.A. §5511(c)(1) stemming from an incident on or about April 21, 2017.
2. On January 14, 2019 the defendant was ordered to pay a \$300.00 fine at each of the 34 counts totaling \$10,200. The Court also imposed restitution in the amount of \$10,625, which is to be paid to Humane Animal Rescue. This Honorable Court later waived court costs.
3. A Post-Sentence Motion and an Amended Post-Sentence Motion were filed on January 25 and February 25, 2019.

4. On May 22, 2019 Motion to Extend Time Limit on Post-Sentence Motion Decision was filed and this Honorable Court granted this motion on May 23, 2019 to extend the time limit for 30 days.
5. On June 3, 2019 this Honorable Court dismissed the defendant's Post Conviction Relief Act petition as prematurely filed.
6. This Honorable Court dismissed the Post Sentence Motion on July 11, 2019.
7. On July 17, 2019 defendant filed a Notice of Appeal to Superior Court.
8. The defendant contends that the Honorable Court's imposition of fines was illegal.

The defendant plans to raise the following:

- a. The sentencing court imposed a fine on the defendant without making the mandated determination of her ability to pay those fines pursuant to 42 Pa.C.S. § 9726(c) and (d), which prohibit a court from imposing any mandatory or discretionary fine without considering the defendant's ability to pay;
- b. The sentencing court imposed a fine on the defendant without determining if it would prevent the defendant from making restitution or reparation to the victim of the crime pursuant to 42 Pa.C.S. § 9726(c).

WHEREFORE, Ms. DiNardo respectfully requests that this Honorable Court to consider the defendant's ability to pay; consider the burden that payments will impose; only impose a fine that the defendant will be able to pay, if any; and ensure that the fine will not prevent the defendant from paying restitution.

Respectfully submitted:


Melissa R. Ruggiero, Esquire

CERTIFICATE 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.

Submitted by: Marvin D. Navro

Signature: Melissa P. Russo

Name: Melissa P. Russo

Attorney No.: 94710

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be delivered a true and correct copy of the within document to the following persons and in the manner indicated below:

The Honorable Alexander P. Bicket
533 Allegheny County Courthouse
Pittsburgh, PA 15219
(via hand delivery)

The Records Department – Criminal Division
114 Allegheny County Courthouse
Pittsburgh, Pennsylvania 15219
(via hand delivery)

Court Administrator
307 Allegheny County Courthouse
Pittsburgh, PA 15219
(via hand delivery)

Office of the District Attorney
401 Allegheny County Courthouse
Pittsburgh, PA 15219-2489
(via hand delivery)

Date: 8-12-19

/s/ Melissa G. Aggio

OPINION
OF THE LOWER COURT

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

THE COMMONWEALTH OF
PENNSYLVANIA,

CP-02-CR-04090-2018

v.

ORDER OF COURT

MARCIA DINARDO

Appeal of:

By:

MARCIA DINARDO,

The Honorable Alexander P. Bicket
Allegheny County Courthouse
533 Grant Street
Pittsburgh, PA 15219

Appellant.

Copies Sent To:

Counsel for the Commonwealth:

Michael Streily, Esquire
District Attorney's Office
401 Allegheny County Courthouse
436 Grant Street
Pittsburgh, PA 15219

Counsel for Defendant:

Melissa Ruggiero, Esquire
Office of Conflict Counsel
564 Forbes Avenue
Suite 600
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

THE COMMONWEALTH OF
PENNSYLVANIA,

CP-02-CR-04090-2018

v.

MARCIA DINARDO

Appeal of:

MARCIA DINARDO,

Appellant.

OPINION

BICKET, J.

September 4, 2019

On January 14, 2019, Marcia Dinardo (hereinafter, “Appellant”) plead guilty to 34 counts of cruelty to animals under 18 Pa.C.S. §5511(c)(1). The facts as summarized by the Commonwealth established that, on several occasions, officers visited the Appellant’s then residence and found over 100 cats, both dead and alive, in deplorable conditions. Of the cats that were alive, 49 were taken by animal rescue and eight had to be euthanized. The residence was ultimately condemned and Appellant has moved in with her daughter and Appellant’s fiancé.

On or about January 14, 2019, Appellant was sentenced to 90 days probation at each count, consecutively, and a \$350.00 fine at each count. Court costs were waived. Appellant was also ordered to pay restitution in the amount of \$10,200.00 to be paid to the Humane Animal Rescue for the care and treatment of the animals. Appellant filed a Post-Sentence Motion on January 25, 2019 and an Amended Post-Sentence Motion on February 25, 2019. On May 23, 2019, this Court granted

Appellant's Motion to Extend Time Limit on Post-Sentence Motion Decision, extending the time for 30 days. On June 3, 2019, June 18, 2019 and July 11, 2019, this Court held a hearing on Appellant's Motion to Amend Sentence. Specifically addressed at the hearing was Appellant's ability to pay the fines imposed. This Court denied Appellant's Post-Sentence Motions on July 11, 2019. On July 17, 2019, Appellant filed a Notice of Appeal, and on August 12, 2019, Appellant filed her Concise Statement of Matters Complained of on Appeal.

MATTER COMPLAINED OF ON APPEAL

Appellant raises the following two (2) issues on appeal¹:

1. **Appellant alleges the Court imposed a fine on the Appellant without making the mandated determination of her ability to pay the fines pursuant to 42 Pa.C.S. §9726(c) and (d).**
2. **Appellant alleges the Court imposed a fine on the Appellant without determining if it would prevent the Appellant from making restitution or reparation to the victim of the crime pursuant to 42 Pa.C.S. §9726(c).**

DISCUSSION

Appellant's issues raised on appeal alleges that this Court imposed a fine on Appellant without making a determination that she would be able to pay the fines and/or restitution. To the contrary, this Court held a hearing over the course of three days on Appellant's post-sentencing motion, specifically addressing Appellant's ability to pay the fines and restitution imposed. At this hearing, while the defense presented evidence of Appellant's limited income, the Court was unpersuaded by the alleged bills introduced at said hearing. Appellant receives \$325 in SSD benefits and \$466.00 per in SSI benefits per month. Appellant resides with her daughter and Appellant's fiancé and presented no evidence of paying rent. Additionally, the alleged utility bills that Appellant claims to pay at her daughter's residence were all in another individual's name. Furthermore, there was no testimony

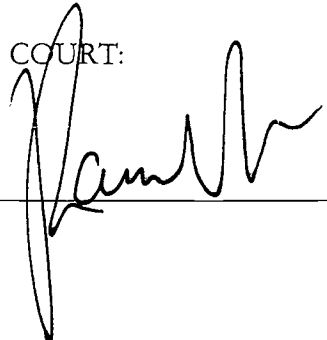
¹ Although Appellant does not appeal this Court's discretion in determining that Appellant is capable of paying the fines and restitution imposed, the Court has included an explanation of same.

regarding how the bills were split, if at all, between the three people residing in the daughter's residence. Finally, Appellant testified that she is currently paying utility bills at her former home, which has since been condemned as unfit for habitation. Accordingly, this Court was unpersuaded by Appellant's alleged inability to pay the fines and restitution imposed. Appellant can set up a payment plan to pay the fines and restitution over a period of time. While this Court acknowledges that Appellant is on a fixed income, this Court believes that she would be able to make payments over a period of time. While it is true that 42 Pa.C.S.A. § 9726 states that the court "shall not sentence a defendant to pay a fine unless it appears of record that: (1) the defendant is or will be able to pay the fine[,]” the Superior Court has stated that in assessing a defendant's ability to pay a fine, the obligation can come at a sacrifice to the defendant. Com. v. Thomas, 879 A.2d 246, 264 (Pa. Super. 2005)(internal citation omitted) (“Imposition of a fine is not precluded merely because the defendant cannot pay the fine immediately or because [s]he cannot do so without difficulty.”). As such, Appellant's appeal is without merit.

CONCLUSION

For all of the above reasons, no reversible error occurred and the sentencing imposed by this Court should be AFFIRMED.

BY THE COURT:



_____ J.

IN FORMA PAUPERIS ORDER

IN THE FIFTH JUDICIAL DISTRICT OF THE COMMONWEALTH OF PENNSYLVANIA
COUNTY OF ALLEGHENY
CRIMINAL DIVISION

ADMINISTRATIVE ORDER, IN RE:) No. AD-19-~~00001~~-CR
INDIGENT DEFENDANTS)

ORDER OF COURT

AND NOW, to-wit, this 2nd day of January, 2019, it is hereby ORDERED,
ADJUDGED and DECREED that all filing fees, subpoenas and cost of transcripts
for the above-captioned individuals are waived as these individuals are indigent.
This Order shall take effect forthwith.

BY THE COURT:



JILL E. RANGOS A.J.

DEPT OF JUDICIAL RECORDS
CIVIL DIVISION
ALLEGHENY COUNTY

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FILED

