

IN THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PHILADELPHIA

EDA 2019

NO. 611

COMMONWEALTH OF PENNSYLVANIA

VS.

MAURICE HUDSON,
Appellant

BRIEF FOR APPELLANT

Appeal From The Judgment Of Sentence Of The Court Of
Common Pleas Of Philadelphia County, Trial Division, Criminal
Section, Order Entered February 12, 2019, Imposed On Information CP-
51-CR-0009201-2009.

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I. STATEMENT OF JURISDICTION

This Court's jurisdiction to hear an appeal from the judgment of sentence of the Philadelphia 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.A. §742.

II. STATEMENT OF SCOPE AND STANDARD OF REVIEW

The standard of review following revocation of probation is limited to the validity of the proceedings and the legality of the sentence. *Commonwealth v. Gilmore*, 348 A.2d 425 (Pa. 1975); *Commonwealth v. Jordan*, 634 A.2d 637, 639 (Pa. Super. 1993); *Commonwealth v. Beasley*, 570 A.2d 1336, 1337 (Pa. Super. 1990).

A claim that the revocation court imposed an illegal sentence is a question of law and, as such, this Court's scope of review is plenary and its standard of review is de novo. *Commonwealth v. Childs*, 63 A.3d 323 (Pa. Super. 2013).

In determining whether there was sufficient evidence that a probationer committed a technical violation, the standard of review is plenary and the scope of review is all the evidence presented at the revocation hearing. *Commonwealth v. Lipton*, 352 A.2d 521 (Pa. Super. 1975).

The standard of review for questions involving discretionary aspects of sentencing is abuse of discretion. Imposing a sentence of total confinement following a technical probation violation is an abuse of discretion when the requisite statutory factors of 42 Pa.C.S. § 9771(c) are absent. *Commonwealth v. Cottle*, 426 A.2d 598, 601-602 (Pa. 1981).

III. STATEMENT OF THE QUESTIONS INVOLVED

1. Did not the lower court err and impose an illegal sentence, violating Rule 706 of the Pennsylvania Rules of Criminal Procedure and Appellant's due process rights, by committing Appellant to prison for failure to pay court costs without making adequate inquiry into Appellant's ability to pay?

(answered in the negative by the court below)

2. Did not the lower court impose an illegal sentence when it revoked Appellant's probation and imposed 1½ to 3 years incarceration for his failure to pay court costs, where the condition that a probationer pay court costs is not a valid condition of probation under 42 Pa.C.S.A. §9754?

(not answered by the court below)

3. Did not the lower court abuse its discretion in imposing a sentence of 1½ to 3 years confinement because Appellant failed to pay court costs and obtain "above the table" employment, where the sentence imposed was inconsistent with the Sentencing Code and fundamental norms underlying the sentencing process, contrary to Appellant's rehabilitative needs, and not necessary to vindicate the authority of the court?

(answered in the negative by the court below)

IV. STATEMENT OF THE CASE

Procedural History

On February 12, 2019, the Honorable Genece Brinkley of the Philadelphia Court of Common Pleas, the revocation court, found Maurice Hudson, the Appellant, in technical violation of his probation¹ because he was unable to make monthly payments of court costs, even though he was clearly indigent. For this purported technical violation, Judge Brinkley revoked probation and sentenced Mr. Hudson to 1½ to 3 years of confinement.

Mr. Hudson, through counsel, filed a timely post-sentence motion to reconsider his sentence on February 14, 2019, which the lower court never acted upon. On February 15, 2019, Mr. Hudson filed a notice of appeal.

The lower court's Opinion is attached as Exhibit "A". Counsel's Statement of Errors is attached as Exhibit "B". Appellant's post-sentence motion is attached as Exhibit "C". The electronic docket is attached as Exhibit "D". The Gagnon II Summary is attached as Exhibit "E".

Revocation Hearing

The revocation court recounts in her Opinion:

¹ Mr. Hudson entered a guilty plea on Docket No. CP-51-CR-0009201-2009 on April 21, 2011, to robbery, conspiracy, carrying a firearm without a license, and possession of an instrument of crime in the Philadelphia Court of Common Pleas. The court imposed a negotiated sentence of 2 to 4 years followed by 3 years of probation. Prior to the instant case, Judge Brinkley had revoked Mr. Hudson's probation and re-sentenced him twice before for failure to pay court costs. On June 25, 2015, the Judge Brinkley found Appellant in technical violation of probation for failing to obtain employment and to pay court costs and sentenced him to 1½ to 23 months followed by 3 years of probation. On May 7, 2018, the court again found Appellant in technical violation of probation for failing to get a job and to make payments towards court costs. The court sentenced Appellant to 1 year of probation. At the time of his revocation in the instant case, Mr. Hudson's probation was set to expire in May of 2019.

On February 12, 2019, Defendant appeared before this Court for his fourth violation hearing. Defendant was represented by Elisa Downey-Zayas, Esquire, of the Defender Association of Philadelphia. First, this Court reviewed Defendant's conduct and criminal history since his first appearance in 2011. The probation officer's summary was incorporated into the record by reference. This Court noted that the probation officer had no specific recommendation and left the sentence to the Court's discretion. (N.T. 2/12/19, p. 3-6).

Next, defense counsel Ms. Downey-Zayas stated that Defendant failed to appear at his August 2018 status hearing because he was incarcerated from July 12, 2018–November 1, 2018 in Delaware County for not paying child support. She stated that she did not know why Defendant did not turn himself in after he was released from Delaware County. Defense counsel stated that Defendant currently was employed part-time at a daycare making \$150/week, but she did not have documentation to support this as he was paid in cash. Ms. Downey-Zayas argued that Defendant did not make enough money to pay his child support payment of \$350/month and make ends meet. She recommended that this Court impose a period of probation. *Id.* at 8-11.

Erilda Livingston, Esquire, on behalf of the Commonwealth, stated that Defendant had been appearing before this Court since 2009 and was unable to "get it together." She argued that it appeared Defendant did not know what to do with probation and that it did not work for him. She recommended one year of incarceration with no probation tail. *Id.* at 11-12.

Next, Defendant spoke on his own behalf. He stated that his attorney did not sound like she was "for me." He stated that it was not true that he wasn't trying; he argued that he always had a job but can't pay his court costs and fines because he was "struggling out there on the street." He stated that he was not a criminal and he regretted his 2009 robbery case. *Id.* at 12-14.

Trial Court Opinion, Exhibit "A," at 3-5.

At the revocation hearing, Mr. Hudson's counsel argued, "[Appellant] was in custody for a few months and that obviously sets people back when they are in custody" (N.T. 2/12/19 at 10). She asked the court to impose a new period of probation to allow Appellant to get back on his feet and earn some money in order to start making payments again. "I do think he's trying. I think the child support is a big

issue. They keep taking him into custody for it. It's just really hard to make any progress when you're constantly doing two to three months in custody in Delaware County" (N.T. 2/12/19 at 11).²

Mr. Hudson, for his part, told Judge Brinkley:

I just don't even know what to say. I feel like my attorney for one doesn't sound like an attorney to me, like she doesn't sound like she's for me. The court keeps continuously saying I'm not trying. Like every time I come in front of you I have a job. I understand I'm not paying court fines but I'm struggling out there on the streets. I know I can't tell you nothing you didn't hear before. I just don't understand why people keep telling me I'm not trying. I keep hearing it every time I come in front of you, I'm not trying. How is it I'm not trying? I caught one case in my entire life. I come in front of you for this stuff, this technical violation for not paying court fines and costs. I understand it's something I'm supposed to do, but what I don't understand is people keep telling me I'm not trying. I'm out there working, I'm taking care of my kids and I keep getting arrested because I'm missing over money. I'm getting taken away from my kids. I have three daughters and I'm being taken away from them because I can't afford to make a payment, to pay money to the courts, for whatever reason I can't afford to pay that money or I can't afford to make a payment to this other court for my daughter and I'm being penalized and going to jail and coming back and forth to jail.

I just don't understand. I'm not a criminal period. I'm not a criminal. I got one case in my whole life that I pled guilty to and I wish I never did. I got one case that I been convicted of. I don't get arrested. I don't come back and forth. I'm not no criminal. I work out there and I take care of my kids. I just don't understand why people keep telling me I'm not trying. I don't understand that. Then I'm in custody for six months and I come home in November and I had just come from being shackled up incarcerated in jail and you want -- I understand I'm supposed to turn myself in, okay, but I just been released from jail. I was sitting in there for six months. I had just come home. Can I get some

² Essentially, Mr. Hudson's repeated incarcerations by Judge Brinkley resulted in him missing child support payments for his eldest daughter, which would then lead to incarceration in Delaware County for non-payment of child support. His incarceration in Delaware County would, in turn, result in him getting behind in earning money to support his wife and two younger daughters, as well as making payments towards court costs assessed in Philadelphia. Due to his current incarceration, Mr. Hudson's family has lost their apartment and are staying in a homeless shelter.

time to enjoy my family, to play with my kids? Can I get some time like before I turn back around and say cuff me, take me back to jail away from my family once again and I just was –

THE COURT: Well, are you finished?

THE DEFENDANT: Yes, Your Honor. I'm finished.

N.T. 2/12/19 at 12-15.

The *Gagnon II* Summary noted that Mr. Hudson had reported as scheduled to office visits and was working with the Rise Program to get his GED. *See* Exhibit "E". When Judge Brinkley asked Mr. Hudson about this, she cut him off as he tried to answer (N.T. 2.12.19 at 17).

When imposing her sentence of 1½ to 3 years confinement, Judge Brinkley scolded Mr. Hudson for only having paid a fraction of the \$2,161.47 in costs that the Commonwealth assessed.³ The court claimed that the low numbers showed "that he has never taken this sentence seriously and he did not even attempt to make a good faith effort to comply with this court's conditions" (N.T. 2/12/10 at 20). The court stated:

This sentence is absolutely necessary to vindicate the authority of the court. This court has been back and forth and around the block numerous times for this defendant trying to give him a chance to do that right thing and get himself together. Now I'm enlightened that he was

³ The court stated that Appellant had paid \$6.37 on 2/9/11; \$5.41 on 2/14/11; \$0.94 on 6/9/11; \$5.00 on 8/26/11; \$2.80 on 9/19/11; \$1.98 on 10/3/11; \$0.63 on 11/18/11; \$2.05 on 11/22/11; \$1.60 on 12/2/11; \$1.44 on 12/9/11; \$1.60 on 1/4/12; \$29.36 on 2/21/12; around \$50.00 within the five years up until 6/13/17 (N.T. 2/12/19 at 19), for a total of \$109.18. (The electronic docket, Exhibit "D", records that Appellant made payments toward his court costs totaling \$188.32.) At a previous violation hearing, on May 17, 2018, Judge Brinkley found Appellant in technical violation of his probation for "failing to get a job, not attending his job/educational training program, and not making any payments towards costs, fines, and fees since June 2017." The court sentenced him to one year of probation and reiterated that Appellant needed to get a job, earn his GED, and "pay costs, fines, and fees at a rate of \$50 per month." Trial Court Opinion, Exhibit "A", at 3.

in Delaware County on child support issues and that truly explains to me why every single time I told him to get a paycheck job over the last – since 2015 I've been telling him to get a paycheck job and he didn't get a paycheck job.

N.T. 2/12/19 at 18.

V. STATEMENT OF REASONS FOR ALLOWANCE OF APPEAL
FROM DISCRETIONARY ASPECTS OF SENTENCE

This case presents a substantial question as to the appropriateness of appellant's sentence under the Sentencing Code. This Court should, therefore, allow an appeal. *See* 42 Pa.C.S. §9781(b); Pa.R.A.P. 2119(f).

By imposing a sentence of total confinement of 1½ to 3 years solely because appellant had violated a purported technical condition of his probation, not making payments toward court costs and not getting a "paycheck job," the Court violated the express requirements of the Sentencing Code, 42 Pa.C.S.A. §9771(c).

Section 9771(c) provides that a sentence of confinement can only be ordered if one of three prerequisites is satisfied: 1) the defendant must have been convicted of a new crime or, 2) the record must indicate that he is likely to commit a new crime unless imprisoned or, 3) a prison sentence must be essential to vindicate the authority of the court. In this case, none of these criteria were satisfied.

As this Court has repeatedly held, a claim that a sentence is disproportionate to the conduct at issue, and was not justified by sufficient reasons to support it, by itself raises a substantial question justifying review. *Commonwealth v. Parlante*, 823 A.2d 927 (Pa. Super. 2003); *Commonwealth v. Wilson*, 946 A.2d 767, 771 (fn.6) (Pa. Super. 2008). The revocation court's explanation that the sentence was necessary to "vindicate the court" was insufficient to make a finding that incarceration was necessary under Section 9771(c).

It is a fundamental norm in this jurisdiction that "each person sentenced must receive a sentence fashioned to his or her individual needs." *Commonwealth v.*

Carter, 485 A.2d 802, 804 (Pa. Super. 1984). The lower court failed to consider the factors as set forth in 42 Pa.C.S.A. §9721(b), namely, the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant when sentencing him to state incarceration. Hence, a substantial question is raised. *Commonwealth v. Mathews*, 486 A.2d 495 (Pa. Super. 1984). Thus, this Court should grant allowance of appeal from the discretionary aspects of Appellant's sentence.

VI. SUMMARY OF ARGUMENT

When Judge Brinkley, the revocation court, sentenced the Appellant, Maurice Hudson, to 1½ to 3 years of confinement solely for failure to pay court costs, she turned a Pennsylvania state correctional institution into a debtors' prison and condemned Mr. Hudson's three young daughters to a Little Dorrit-like existence.

The Pennsylvania Rules of Criminal Procedure, the United States Supreme Court, and a number of opinions by this Court hold that a court may not imprison someone for nonpayment of court costs, unless it can be shown that the person willfully refused to pay and had the ability to pay. Here, the trial court violated both the Pennsylvania Rules and Mr. Hudson's due process rights by imprisoning Mr. Hudson for nonpayment of "costs and fines" when he clearly lacked the means to pay, even as he was struggling to support his family.

Moreover, Judge Brinkley was apparently unaware that Mr. Hudson owed only court costs, not fines. To reach her conclusion that he had willfully failed to pay, she invented from whole cloth the idea that Mr. Hudson was intentionally not earning money so that he could avoid having to pay child support, something that had no basis in the record. Indeed, she gave great weight to the idea that he had no "pay stub" job, despite the fact that he brought documentation of his employment to prior court hearings. The record simply does not support that Mr. Hudson willfully failed to pay court costs.

In addition, the revocation court lacked the statutory authority to order payment of court costs as a condition of probation. Court costs are not part of a criminal

sentence but rather incidental to it, as a collateral consequence. Because court costs are not a valid condition of probation, nonpayment of court costs, by definition, cannot constitute a probation violation. Thus, it was unlawful for Judge Brinkley to find Mr. Hudson in violation of the terms of his probation and then revoke that probation based on her view that he should be complying with an illegal condition of probation.

Finally, the revocation court abused its discretion when it incarcerated Mr. Hudson for 1½ to 3 years for failure to pay court costs and obtain a “paycheck job” in order to “vindicate the authority of the court.” That Pennsylvania taxpayers should now support Mr. Hudson’s high cost of confinement because he failed to repay all of his court costs defies logic and runs contrary to the interests of justice. Judge Brinkley sent a man to state prison who was otherwise complying with the terms of his probation and was supporting three small children because he could not “get it together,” in the court’s estimation. The criminal justice system is meant to rehabilitate people, not punish them for being poor.

VII. ARGUMENT

A. THE REVOCATION COURT VIOLATED PA.R.CRIM.P. RULE 706(A) AND MR. HUDSON'S RIGHT TO DUE PROCESS WHEN IT COMMITTED HIM TO PRISON FOR FAILURE TO PAY "COSTS AND FINES" WITHOUT MAKING ADEQUATE INQUIRY INTO HIS ABILITY TO PAY.

Judge Brinkley's decision to sentence Maurice Hudson to 1½ to 3 years of confinement condemned him to a modern debtors' prison and his three young daughters to a Little Dorrit-like existence.⁴ This violated both the Constitution and this Court's precedents, which plainly hold "that in Pennsylvania, we do not imprison the poor solely for their inability to pay fines." *Commonwealth v. Eggers*, 742 A.2d 174, 176 (Pa. Super. 1999).

Under both Pennsylvania law and the well-developed case law governing due process for individuals who are unable to pay court-imposed financial obligations, a court may not imprison someone for nonpayment of court costs, unless it can be shown that the person willfully refused to pay and had the ability to pay. Indeed, the question of willfulness not only addresses the *sentence*; it is also the fundamental question of whether nonpayment constitutes a technical violation of probation in the first place. *Commonwealth ex rel. Powell v. Rosenberry*, 645 A.2d 1328, 1331 (Pa. Super. 1994); *see also Commonwealth v. Smalls*, CP-46-CR-0005242-2013, 2018 WL 4112648 at *2 (Montgomery Co. Ct. Com. Pleas Aug. 7, 2018) ("Defendant's willfulness does not simply implicate the question of his sentencing for a parole

⁴ Charles Dickens' novel *Little Dorrit* (1857) features a character whose father spent 20 years in debtors prison in Victorian England due to his unpaid debt of £40.

violation, but instead is the critical question as to whether a violation occurred in the first place.”) (citing *Commonwealth v. Dorsey*, 476 A.2d 1308 (Pa. Super. 1984)).

Here, the trial court violated both the Pennsylvania Rules and Mr. Hudson’s due process rights by imprisoning Mr. Hudson for nonpayment of “costs and fines” – despite Mr. Hudson not owing any fines – that he clearly lacked the means to pay, even as he was struggling to support his family. Judge Brinkley erroneously concluded that Mr. Hudson’s failure to pay off more than \$2,000 in court costs was willful because he had not obtained “a paycheck job,” when all the evidence presented at the hearing pointed to Mr. Hudson’s indigence, including his incarceration in another county for outstanding debts.

Pennsylvania Rule of Criminal Procedure 706 addresses incarceration for failure to pay in two places. First, in (A), it prohibits any incarceration unless “it appears after hearing that the defendant is financially able to pay the fine or costs.” Second, in (D), if a defendant has defaulted on a payment plan, it permits “imprisonment as provided by law for nonpayment” only if the defendant “is not indigent.” See also 42 Pa.C.S. § 9730(b) (permitting incarceration for nonpayment only if a defendant is financially able to pay).⁵

At a minimum, this Court has held that Pa.R.Crim.P. Rule 706 “requires ... a hearing [about a defendant’s ability to pay] prior to any order directing incarceration

⁵ Judge Brinkley previously placed Mr. Hudson on a payment plan of \$50 per month. That payment plan was likely unlawful because the court did not comply with Rule 706(B)’s requirement that it “the financial resources of the defendant and the nature of the burden its payments will impose.” See *Commonwealth v. Smetana*, 191 A.3d 867, 873 (Pa. Super. 2018) (overturning both a jail sentence and a payment plan of \$100 per month for failing to comply with Rule 706).

for failure to pay the ordered costs.” *Commonwealth v. Childs*, 63 A.3d 323, 326 (Pa. Super. 2013). The trial court must then make findings of fact on the record regarding the defendant’s ability to pay. See *Commonwealth v. Smetana*, 191 A.3d 867, 873 (Pa. Super. 2018).

An ability-to-pay hearing is required not only by rule and statute, but also the Pennsylvania and United States Constitutions. The touchstone case is *Bearden v. Georgia*, 461 U.S. 660, 672 (1983), which requires that the “sentencing court must inquire into the reasons for the failure to pay” and determine whether the “probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay” prior to imposing any sentence of incarceration.⁶ Pennsylvania’s courts have repeatedly adopted and incorporated *Bearden* into our jurisprudence, starting with *Dorsey*, 476 A.2d at 1311, which explained that the Commonwealth must prove “prove by a preponderance of the evidence a violation” and that probation cannot “be revoked for less than willful conduct.” Per *Dorsey*, a trial court must both “inquire into the reasons” for nonpayment and make findings on the record “pertaining to the willfulness” of the nonpayment. *Id.* at 1312. Critically, *even if* the defendant does not “offer any evidence concerning his indigency,” the trial

⁶ Note that, while *Bearden*—as a matter of constitutional law—permits courts to jail indigent defendants if no “alternate measure” is sufficient to meet the state’s interest in punishment and deterrence, Pennsylvania law places substantive limits on the power of courts to incarcerate indigent defendants and prohibits such practice. See Pa.R.Crim.P. 706 (fines and costs); Pa.R.Crim.P. 456 (addressing summary cases); 42 Pa.C.S. § 9730(b)(2) (same); 18 Pa. Cons. Stat. §1106(c)(2)(iii) (restitution). As the Commonwealth Court has explained, the Rules “preclude[] the possibility of imprisonment ever being imposed upon one whose indigency is established.” *Bacik v. Commonwealth*, 434 A.2d 860, 863 (Pa. Cmwlth. 1981).

court still has an affirmative inquiry to make an inquiry about his financial situation.⁷

This Court subsequently made clear in *Rosenberry*, 645 A.2d at 1331, that willfulness is not simply about punishment, but instead about whether a violation occurred in the first place, explaining that “the willful refusal to pay a fine may be considered a technical parole violation” and that absent an “indication in the record that [the defendant] has willfully failed to pay his fine,” the court could not extend the period of supervision. *See Commonwealth v. Smalls*, CP-46-CR-0005242-2013, 2018 WL 4112648 at *2 (Montgomery Co. Ct. Com. Pleas Aug. 7, 2018).

Last year, in the analogous context of a contempt proceeding for an individual who had failed to pay fines and restitution, this Court explained that pursuant to *Bearden*, a trial court must “examine the totality of the defendant's life circumstances” and determine whether the person’s “effort to secure the funds owed was made in good faith.” *Commonwealth v. Mauk*, 185 A.3d 406, 411 (Pa. Super. 2018). That is because the question of willfulness “has a *mens rea* element of specifically intending to defy the underlying court order, and impossibility of performance of the court-ordered act is an absolute defense.” *Id.* The Court acknowledged that it is not simply a question of the defendant’s present financial resources, but also if he has made a “bona fide effort” to obtain employment.⁸

⁷ The record from the previous violation of probation hearing indicates that the revocation court never made any inquiry into Mr. Hudson’s financial ability to pay court costs. *See* N.T. 5/7/19 (the date was actually 5/7/18). This suggests that the 1-year period of probation Judge Brinkley imposed on May 7, 2018, solely due to Mr. Hudson’s failure to pay court costs without inquiry into the financial reasons for nonpayment, was illegal as per *Dorsey*. Thus, the subsequent probation and revocation in the case at bar may be *void ab initio*.

⁸ This Court was quoting *Bearden* for this passage, which seemed to suggest that a defendant
(continued...)

As amicus will elucidate, when determining a defendant's ability to pay under *Bearden*, courts must inquire in detail about an individual's financial circumstances, including income and obligations. For example, in *Commonwealth v. Schwartz*, 418 A.2d 637, 639 (Pa. Super. 1980), this Court castigated the sentencing judge for imposing a \$10,000 fine when all the court knew about the defendant's financial background was that he had sold \$980 worth of drugs the previous year and was working in his father's construction company, bringing in \$150 per week. "This was hardly enough information," this Court said, "to make an intelligent finding as to appellant's ability to pay the fine." *Id.* Similarly, our Supreme Court has ruled that defendant who was "penniless," had been unemployed for more than six months "despite efforts to gain employment," and was being supported by family was not in willful noncompliance with a support order. *Commonwealth ex rel. Wright v. Hendrick*, 312 A.2d 402, 404 (Pa. 1973). While the *Hendrick* Court left open the possibility that the trial court could find that the defendant had not made a sufficient bona fide effort to find better-paying employment, the Court found the existing record plainly insufficient to support such a finding.

Yet a pro forma inquiry, without the benefit of an investigation into Mr. Hudson's financial position, is exactly what transpired here. Judge Brinkley, without evidence, claimed that Mr. Hudson's arrearage with respect to his court costs was

⁸(...continued)
can be required to borrow money. However, this Court explicitly decided last year that, as a matter of Pennsylvania law, the question is only whether the defendant has the ability to pay. *See Smetana*, 191 A.3d at 873 ("Although Appellant indicated that he could potentially borrow money from a sibling, the court failed to find—as our law requires—that he alone had the financial ability to pay the outstanding fines and costs such that imprisonment was warranted").

willful because his job working at a daycare facility (which he had previously documented) did not provide a pay stub acceptable to the court. Judge Brinkley speculated that Mr. Hudson “never wanted to get a ‘paycheck job’ because he did not want money from that check garnished by the Delaware County child support office.” Trial Court Opinion, Exhibit “A”, at 7. Thus, the court concluded, Mr. Hudson had not made “a good faith effort to pay his costs and fines, other than one \$50 payment in 2017.” Trial Court Opinion, Exhibit “A”, at 7. However, the revocation court’s rank speculation does not satisfy the requirements of *Bearden* or Rule 706(A).

Moreover, the court failed to make an adequate inquiry into such factors as Mr. Hudson’s monthly living expenses – feeding, clothing, and sheltering his two daughters. At the hearing, Mr. Hudson’s counsel did remind Judge Brinkley that he previously had produced a letter from his employer showing that he made \$150 per week (\$600 per month) (N.T. 2/12/19 at 8). Counsel also noted that Appellant’s child support payment was \$350 per month (N.T. 2/12/19 at 8-9). Under the best of circumstances, that would leave only \$250 per month to support his family, clearly insufficient to afford court costs as well.

Mr. Hudson reminded the court that he has two younger daughters to support with his \$600 per month earnings (N.T. 2/12/19 at 13), in addition to the \$350 per month he owed in child support, but his explanation fell on deaf ears. The court never cared to inquire into his monthly expenses. Mr. Hudson also tried to explain to the court that his repeated incarcerations just put him farther behind:

I’m out there working, I’m taking care of my kids and I keep getting arrested because I’m missing over money. I’m getting taken away from

my kids. I have three daughters and I'm being taken away from them because I can't afford to make a payment, to pay money to the court, for whatever reason I can't afford to pay that money or I can't afford to make a payment to this other court for my daughter and I'm being penalized and going to jail and coming back for forth to jail.

N.T. 2/12/19 at 13.

Judge Brinkley rejected Mr. Hudson's explanation, surmising that Mr. Hudson was willfully choosing to be poor, willfully choosing to go to jail for months at time, and willfully choosing to have his family suffer. This is contrary to the type of inquiry this Court requires under Rule 706(A). Recently, in *Commonwealth v. Diaz*, 191 A.3d 850, 866 (Pa. Super. 2018), this Court explained that prior to imprisoning someone (in this case, a contemnor) for failure to pay fines and costs, "the trial court must render findings of fact on the contemnor's financial resources." In *Diaz*, while the appellant had offered to sell his blood plasma – itself a horrific act of desperation from a person trying to avoid jail — the trial court failed to make a finding regarding the appellant's ability to pay his outstanding fines. Indeed, the *Diaz* court noted that a finding of indigence "would appear to preclude any determination that Appellant's failure to pay the court-ordered fines and costs was willful." *Id.* at 866 n.24.

Such a finding is mandatory before a court may imprison someone. The language of Subsections (A) and (D) is plain and unambiguous. Section (A) states that a "court **shall not** commit the defendant to prison for failure to pay a fine or costs unless it appears after hearing that the defendant is financially able to pay the fine or costs." Pa.R.Crim.P. 706(A) (*emphasis added*). "The word 'shall' by definition is mandatory and it is generally applied as such." *In re Adoption of L.B.M.*, 161 A.3d

172, 179 (Pa. 2017), quoting *Chanceford Aviation Props. L.L.P. v. Chanceford Twp. Bd. of Supervisors*, 923 A.2d 1099, 1104 (Pa. 2007).

Thus, Rule 706, along with principles of due process, plainly provided a *prohibition* on committing Mr. Hudson to prison for failure to pay costs without determining whether he was “financially able to pay,” as well as an affirmative *duty* to consider “the defendant’s financial means” in determining the imposition of any costs. Where there is a mandatory duty, or prohibition, at sentencing, it does not depend on a request by the defendant and must be performed in every case. See *Commonwealth v. Taylor*, 104 A.3d 479 (Pa. 2014).

Here, the revocation court imposed an illegal sentence by ignoring the dictates of Rule 706, along with due process. The trial court’s finding that Mr. Hudson violated probation must be reversed and his sentence vacated for remand.

B. THE REVOCATION COURT IMPOSED AN ILLEGAL SENTENCE WHEN IT REVOKED MR. HUDSON’S PROBATION FOR FAILURE TO PAY COURT COSTS BECAUSE COURT COSTS ARE NOT A VALID CONDITION OF PROBATION UNDER 42 Pa.C.S.A. §9754.

Judge Brinkley revoked Mr. Hudson’s probation and imposed 1½ to 3 years in state prison because he still owed approximately \$2,000 in court costs.⁹ However, the court lacked the statutory authority to order payment of court costs as a condition of probation in the first place. Court costs are not part of a criminal sentence but rather

⁹ The Gagnon II Summary indicates Mr. Hudson still owes \$1,941.44.

incidental to it, as a collateral consequence. Because court costs are not a valid condition of probation, revocation cannot be based on a probationer's failure to pay, even if it is willful.

In her Opinion, Judge Brinkley stated that Mr. Hudson violated probation due to his failure to make timely payment of "costs and fines." This was a mis-statement by the court. Mr. Hudson was never subject to fines, only costs. There are legal distinctions among the terms "*costs* and *fines*," as the trial court described them. A *fine* is a punishment imposed by the court. It is a monetary amount equal to the severity of the crime. *Costs* are not considered punishment. They are reimbursement to the government for the expenses associated with criminal prosecution. *Commonwealth v. Wall*, 867 A.3d 578, 583 (Pa. Super. 2005), *citing Parry v. Rosemeyer*, 64 F.3d 110, 114 (3d. Cir. 1994). It is clear that Judge Brinkley never imposed a *fine* against Mr. Hudson. However, the Commonwealth assessed \$2,076.44 in court costs.¹⁰

Unlike fines (and restitution), court costs are not part of a criminal sentence. *Commonwealth v. Rivera*, 95 A.3d 913, 916 (Pa. Super. 2014). Court costs were not part of Mr. Hudson's judgment of sentence, merely incident to it as a collateral consequence. *Id.* In *Rivera*, this Court held that payment of court costs are not

¹⁰ The electronic docket lists assessed court costs as: State Court Costs (Act 204 of 1976) (\$12.30); Commonwealth Cost - HB627 (Act 167 of 1993) (\$18.40); County Court Cost (Act 204 of 1976) (\$26.80); Crime Victims Compensation (Act 96 of 1984) (\$35.00); Domestic Violence Compensation (Act 44 of 1988) (\$10.00); Victim Witness Service (Act 111 of 1998) (\$25.00); Firearm Education and Training Fund (\$5.00); Judicial Computer Project (\$8.00); ATJ (\$2.00); DNA Detection Fund Act (\$250.00); CQS Fee Felony (Philadelphia) (\$100.00); Costs of Prosecution - CJE, (\$50.00); Civil Judgment/Lien (Philadelphia) (\$83.94); Motion Filing Fee (Philadelphia) (\$12.50); Filing Fee (Philadelphia) (\$12.50); OSP (Philadelphia/State (Act 25 of 1991) (\$712.50); OSP (Philadelphia/State (Act 25 of 1991) (\$712.50). See electronic docket, Exhibit "D".

authorized under Subsections 9754(c)(11) and (13) of the Sentencing Code, or any other subsection.¹¹ Thus, the trial court could not mandate payment of court costs as a condition of Mr. Hudson's probation.

The court's revocation of probation based on the illegal condition of paying court costs implicates the legality of Mr. Hudson's sentence.¹² *Commonwealth v. Lehman*, 201 A.3d 1279 (Pa. Super. 2019), *appeal granted*, 201 A.3d 1279 (challenge to trial court's authority to impose costs as part of re-sentencing order implicates legality of sentence); *Taylor, supra*, 104 A.3d at 493 n.18; *In re M.W.*, 725 A.2d 729, 731 (Pa. 1999) (claim that juvenile court lacked statutory authority to impose restitution implicated legality sentence); *Commonwealth v. Boyd*, 73 A.3d

¹¹ **§ 9754. Order of probation**

(a) General rule.--In imposing an order of probation the court shall specify at the time of sentencing the length of any term during which the defendant is to be supervised, which term may not exceed the maximum term for which the defendant could be confined, and the authority that shall conduct the supervision.

(b) Conditions generally.--The court shall attach such of the reasonable conditions authorized by subsection (c) of this section as it deems necessary to insure or assist the defendant in leading a law-abiding life.

(c) Specific conditions.--The court may as a condition of its order require the defendant:

(1) To meet his family responsibilities....

(11) To pay such fine as has been imposed...

(13) To satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience....

42 Pa.C.S.A. §9754.

¹² Claims regarding the legality of a sentence cannot be waived and may be raised at any time. *Commonwealth v. Robinson*, 931 A.2d 15 (Pa. Super. 2007); *Commonwealth v. Fulton*, 462 A.2d 265 (Pa. Super. 1983); *Commonwealth v. Reardon*, 443 A.2d 792 (Pa. Super. 1981); *Commonwealth v. Albertson*, 410 A.2d 815 (Pa. Super. 1979).

1269, 1272 (Pa. Super. 2013) (*en banc*) (whether trial court complied with requirements of §9726 goes to legality of sentence and cannot be waived); *Commonwealth v. Robinson*, 7 A.3d 868, 870 (Pa. Super. 2010) (where trial court failed to make statutorily required determination regarding defendant's eligibility for RRRI, sentence is illegal); *Commonwealth v. Weir*, 201 A.3d 163, 171 (Pa. Super. 2018) (challenge to lower court's statutory authority to impose condition of restitution is a challenge to the legality of sentence); *Commonwealth v. Langston*, 904 A.2d 917, 921 (Pa. Super. 2006) (legality of sentence implicated where defendant claimed trial court lacked statutory authority to enter a restitution order).

Here, payment of court costs were not a lawful condition of Mr. Hudson's probation under §9754. Moreover, 42 Pa.C.S. §9771(b) unambiguously provides that revocation of probation is permissible only "upon proof of the violation of specified conditions of probation." This Court has reversed revocation when it was based on a nonlegal basis, holding it is "fundamentally unfair to incarcerate a person for violating a condition never officially imposed." *Commonwealth v. Vilsaint*, 893 A.2d 753, 757 (Pa. Super. 2006). In *Vilsaint*, the probationer was revoked for being intoxicated in violation of a condition imposed by the probation officer, prohibiting the consumption of alcoholic beverages. When a condition is a legal nullity, it cannot provide a valid basis for revocation.

If the Commonwealth sought to enforce collection of court costs, it had the remedy to either execute on a judgment against Mr. Hudson or file for contempt. See 42 Pa. C.S.A. §9728; *Rosenberry*, 645 A.2d at 1331. Here, the Commonwealth was

not particularly concerned about court costs; rather, it was the revocation court that made an issue of them. Despite the court's concern that Mr. Hudson make regular payments, it lacked any legal basis to revoke for this reason.¹³ Thus, Mr. Hudson's sentence of confinement was illegal and must be vacated.

C. THE REVOCATION COURT ABUSED ITS DISCRETION BY IMPOSING A MANIFESTLY EXCESSIVE AND UNREASONABLE SENTENCE OF 1½ TO 3 YEARS CONFINEMENT FOR FAILURE TO PAY COURT COSTS, WHERE THE COURT BLATANTLY DISREGARDED APPELLANT'S REHABILITATIVE NEEDS AND THE COURT'S AUTHORITY DID NOT NEED TO BE VINDICATED.

That Pennsylvania taxpayers should now support Mr. Hudson's confinement because he failed to repay court costs defies logic and runs contrary to the interests of justice. That the lower court would need to vindicate its authority through this gross abuse of discretion almost defies belief. Judge Brinkley sent a man to state prison who was otherwise complying with the terms of his probation and was supporting three small children because he could not "get it together," in the court's estimation. The criminal justice system is meant to rehabilitate people, not punish them for being poor.

¹³ Judge Brinkley also mentioned Mr. Hudson's failure to get a "paycheck job" as a basis for revocation. However, when imposing the probation sentence, Judge Brinkley did not specify "paycheck job" as a condition. Rather, she merely ordered Mr. Hudson to "seek and maintain employment" (which he did). See N.T. 5/7/18 at 11; electronic docket, Exhibit "D", and Gagnon II Summary.

A sentencing court has broad discretion in fashioning a sentence in a particular case, *see Commonwealth v. Pasture*, 107 A.3d 21, 27-28 (Pa. 2014), but “broad discretion” does not mean unfettered or unchecked discretion. *Commonwealth v. Gause*, 659 A.2d 1014 (Pa. Super. 1995). In *Commonwealth v. Walls*, 926 A.2d 957 (Pa. 2007), the Pennsylvania Supreme Court made clear that although deference is given to a sentencing court, its discretion is not absolute and must be reasonable. The current case concerns sentencing following a technical probation violation. While in general a sentencing court has all the sentencing alternatives available to it after a probation revocation as it did originally, the “Sentencing Code reveals that the legislature has given particular consideration to the appropriateness of sentences of total confinement following revocation of probation.” *Commonwealth v. Sierra*, 752 A.2d 910, 913 (Pa. Super. 2000). The law provides:

The court shall not impose a sentence of total confinement upon revocation unless it finds that:

- (1) the defendant has been convicted of another crime; or
- (2) the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned;
- or
- (3) such a sentence is essential to vindicate the authority of the court.

42 Pa. C.S.A. §9771(c). The establishment of one of these three conditions is a necessary prerequisite before a sentence of total confinement can be imposed following a probation violation. *Commonwealth v. Mathews*, 486 A.2d 495, 497 (Pa. Super. 1984).

When imposing her sentence, Judge Brinkley stated:

This sentence is absolutely necessary to vindicate the authority of the court. This court has been back and forth and around the block numerous times for this defendant trying to give him a chance to do that right thing and get himself together. Now I'm enlightened that he was in Delaware County on child support issues and that truly explains to me why ever single time I told him to get a paycheck job over the last – since 2015 I've been telling him to get a paycheck job and he didn't get a paycheck job.

N.T. 2/12/19 at 18.

A job lacking a court-approved pay stub is not the type of affront to the court's authority for which vindication is essential.¹⁴ Both the Gagnon II Summary and the electronic docket state only that the court ordered Mr. Hudson to “seek and maintain employment.” Mr. Hudson had a job and had previously provided documentation in the form of a letter to the court. Our Commonwealth's prisons were not built to house individuals for being insufficiently upwardly mobile.

Such trivial hairsplitting about pay stubs would turn §9771(c)(3) into a mockery. Our Supreme Court has recognized that the third condition for confinement requires “more than merely an affront to the court's authority. The language specifically requires that the sentence be ‘essential to vindicate the authority of the court.’” *Commonwealth v. Cottle*, 426 A.2d 598, 602-603 (Pa. 1981) (holding that merely failing to abide by the terms of probation was insufficient justification for the imposition of a sentence of total confinement).

Technical violations of probation can support a sentence of total confinement

¹⁴ The Gagnon II Summary does not list the violation the court mentioned. It states that Mr. Hudson failed to appear for a status hearing before Judge Brinkley on August 8, 2018; but counsel explained to the judge that Mr. Hudson was in Delaware County prison at that time. The probation officer noted, “Mr. Hudson reported as scheduled to office visits and he was working with the Rise Program to get his GED.” Gagnon II Summary, Exhibit “E”.

“when such violations are flagrant and indicate an inability to reform.” *Commonwealth v. Carver*, 923 A.2d 495, 498 (Pa. Super. 2007). The inquiry should be whether probation can still be effective in rehabilitating a defendant. *Id.*; *Commonwealth v. Sims*, 770 A.2d 346, 350 (Pa. Super. 2001). Further, revocation is not appropriate when the technical violation is not willful or evidence of flagrant disrespect. *Carver*, 923 A.2d at 499; *Commonwealth v. Ballard*, 814 A.2d 1242, 1246 (Pa. Super. 2003). Here, the lower court found appellant to be in technical violation of his probation where there was simply no evidence of any willful or flagrant conduct; and, in doing so, did not explain how a sentence of incarceration would vindicate the authority of the court. In fact, the cost to taxpayers of incarcerating Mr. Hudson for a number of years is far higher than simply forgoing the remaining court costs. The money was not owed to the court; it was owed to the Commonwealth. However, the lower court’s actions grossly exacerbated the Commonwealth’s problem.

Appellant does not suggest that failure to abide by a court’s orders, regardless of whether such orders are reasonable, should be treated lightly or ignored. They should not. But to impose a sentence of incarceration on somebody who has offered valid explanations for what the alleged violation, and for whom there was no evidence that he was a danger to the community or likely to commit another crime, places “form over substance.” *Cottle*, 426 A.2d at 602. The lower court never stated how Mr. Hudson’s failure to obtain a job to her liking would cause her to conclude that a sentence of incarceration was “essential to vindicate the authority of the court.”

Mr. Hudson's testimony evidences that his technical violation – if you can call it that – was not evidence of flagrant disrespect. There is simply not enough evidence in the record to support the lower court's conclusion that Mr. Hudson's sentence was needed to vindicate the authority of the court. The lower court's sentence violated Section 9771 of the Sentencing Code and must, therefore, be vacated.

VIII. CONCLUSION

Wherefore, for the foregoing reasons, Appellant respectfully requests that this Court vacate the lower court's judgment of sentence and discharge Appellant from all subsequent obligations due to the expiration of his probation period in May of 2019. In the alternative, Appellant respectfully requests this Court to vacate the judgment of sentence and remand for a hearing on his ability to pay court costs.

Respectfully submitted,

/S/

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CERTIFICATION OF COMPLIANCE WITH RULE 2135

I do hereby certify on this 12th day of August, 2019, that the Brief For Appellant filed in the above captioned case on this day does not exceed 14,000 words. Using the word processor used to prepare this document, the word count is 7,706 as counted by WordPerfect.

Respectfully submitted,

/S/

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CERTIFICATION OF COMPLIANCE WITH RULE 127, PA.R.A.P.

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.

/S/

KARL BAKER, Assistant Defender
Attorney Registration No. 23106

EXHIBIT “A”

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

FILED

JUN 27 PM 3:33

OFFICE OF JUDICIAL RECORDS
CRIMINAL DIVISION
FIRST JUDICIAL DISTRICT
CP-51-CR-0009201-2009

COMMONWEALTH

:

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VS.

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:

MAURICE HUDSON

:

CP-51-CR-0009201-2009 Comm. v. Hudson, Maurice
Opinion



SUPERIOR COURT
611 EDA 2019

OPINION

BRINKLEY, J.

JUNE 27, 2019

Defendant Maurice Hudson was found in technical violation for absconding from supervision, not paying cost and fines, and not maintaining a job. As a result, this Court revoked his probation and sentenced him to 1 ½ to 3 years state incarceration. Defendant filed a Notice of Appeal to Superior Court and raised the following issues: (1) whether the Court erred by revoking Defendant's probation for failing to pay fines and costs "without making an adequate determination of his ability to pay;" (2) whether the Court erred when it sentenced Defendant to a term of total confinement; and (3) whether the 1 ½ to 3 years state sentence imposed was excessive and unreasonable. This Court's judgment of sentence should be affirmed.

Facts and Procedural History

On April 21, 2011, Defendant appeared before this Court and pled guilty to two counts of Robbery graded as felonies of the first degree; one count of Criminal Conspiracy graded as a felony of the first degree; one violation of the Uniform Firearms Act (VUFA): carrying a firearm

without a license, § 6106; and Possession of an Instrument of Crime. Pursuant to his negotiated sentence, this Court sentenced him to 2 to 4 years incarceration (to be served in county prison) plus 3 years reporting probation. Defendant was made work release eligible and received credit for time served.

On October 22, 2012, Defendant was released from prison and began serving probation. He rarely reported to his probation officer. On October 16, 2014, Defendant was arrested and charged with knowing and intentional possession of a controlled substance (K&I) and possession of marijuana. This matter was withdrawn on May 27, 2015. On June 25, 2015, Defendant appeared before this Court for his first violation of probation (VOP) hearing. This Court found him in technical violation failing to report to his probation officer, failing to obtain employment, and failure to pay costs and fines. Defendant chronically missed appointments with his probation officer and told his probation officer that he was content with not working. This Court sentenced him to 11 ½ to 23 months county incarceration plus 3 years reporting probation, with credit for time served. This Court ordered Defendant to enroll in a job training program, seek and maintain employment, earn his GED, undergo random urinalysis, and pay costs and supervision fees at a rate of \$40/month. This Court warned him that he could face a state sentence if he returned for another violation hearing.

On January 12, 2016, this Court made Defendant eligible for work release forthwith; however, he was not approved for work release by the prison due to the nature of his convictions. On May 20, 2016, this Court granted Defendant's parole petition, noting that Defendant acknowledged a status hearing date of November 10, 2016 and that he must comply with all terms and conditions of his sentence. On June 6, 2016, Defendant reported to Adult Probation and Parole, where his probation officer explained to him the terms and conditions of his sentence,

outlined the rules and regulations of parole/probation, and referred him to the Rise program for employment services. On November 30, 2016, Defendant appeared for a status hearing; Defendant was told to bring in proof of employment and payments of costs/fees to his next status hearing scheduled for April 20, 2017. This matter was administratively relisted for May 4, 2017.

On May 4, 2017, Defendant failed to appear for a court date and a bench warrant was issued; Defendant surrendered on May 11, 2017. On July 18, 2017, Defendant appeared before this Court for a violation hearing. Defendant claimed that he did not know about the previous court date because the notice was sent to his aunt's house and he did not live there. Defendant stated that he was working two part-time jobs and was enrolled in GED classes. This Court lifted his detainer and allowed probation to continue. This Court ordered Defendant to report as directed and pay \$35 per month towards fines, costs, and supervision fees. On November 9, 2017, Defendant appeared for a status hearing. Defendant was enrolled in the Rise program, working towards his GED, but was not employed. This Court was told to get a part-time, above-the-table job, and allowed probation to continue. On April 9, 2018, Defendant appeared before this Court for another status hearing. Defendant had not accomplished anything since his last court date and was still non-compliant with the terms and conditions of his sentence. This Court allowed probation to continue and told Defendant to get a job and pay fines and costs.

On May 7, 2018, Defendant appeared before this Court for yet another violation hearing. This Court found Defendant in technical violation for failing to get a job, not attending his job/educational training program, and not making any payments towards costs, fines, and fees since June 2017. This Court sentenced him to one year reporting probation and once again reiterated that Defendant needed to get a job, earn his GED, and pay costs, fines, and fees at a rate of \$50 per month. On August 17, 2018, Defendant failed to appear for a status hearing and a

judge-only bench warrant and wanted cards were issued. On December 10, 2018, Defendant was arrested and charged with retail theft. This charge was subsequently withdrawn.

On February 12, 2019, Defendant appeared before this Court for his fourth violation hearing. Defendant was represented by Elisa Downey-Zayas, Esquire of the Defender Association of Philadelphia. First, this Court reviewed Defendant's conduct and criminal history since his first appearance in 2011. The probation officer's summary was incorporated into the record by reference. This Court noted that the probation officer had no specific recommendation and left the sentence to the Court's discretion. (N.T. 2/12/19, p. 3-6).

Next, defense counsel Ms. Downey-Zayas stated that Defendant failed to appear at his August 2018 status hearing because he was incarcerated from July 12, 2018 - November 1, 2018 in Delaware County for not paying child support. She stated that she did not know why Defendant did not turn himself in after he was released from Delaware County. Defense counsel stated that Defendant currently was employed part-time at a daycare making \$150/week, but she did not have documentation to support this as he was paid in cash. Ms. Downey-Zayas argued that Defendant did not make enough money to pay his child support payment of \$350/month and make ends meet. She recommended that this Court impose a period of probation. *Id.* at 8-11.

Erilda Livingston, Esquire, on behalf of the Commonwealth, stated that Defendant had been appearing before this Court since 2009 and was unable to "get it together." She argued that it appeared Defendant did not know what to do with probation and that it did not work for him. She recommended one year of incarceration with no probation tail. *Id.* at 11-12.

Next, Defendant spoke on his own behalf. He stated that his attorney did not sound like she was "for me." He stated that it was not true that he wasn't trying; he argued that he always

had a job but can't pay his court costs and fines because he was "struggling out there on the street." He stated that he was not a criminal and he regretted his 2009 robbery case. *Id.* at 12-14.

This Court found Defendant in technical violation and revoked his probation. Defendant was sentenced to 1 ½ to 3 years state incarceration. This Court stated that this sentence was absolutely necessary to vindicate the authority of the court as this Court had given Defendant numerous chances over the years to get himself together and that each time Defendant had excuses for why he could not do the things he was supposed to do. *Id.* at 17-18.

On February 14, 2019, Defendant filed a Petition to Vacate and Reconsider Sentence. On February 15, 2019, Defendant filed a Notice of Appeal to Superior Court. On April 3, 2019, upon receipt of the notes of testimony, this Court ordered that Defendant file a Statement of Errors Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b) and defense counsel did so on April 15, 2019.

Discussion

Defendant raises three issues on appeal: (1) whether the Court erred by revoking Defendant's probation for failing to pay fines and costs "without making an adequate determination of his ability to pay;" (2) whether the Court erred when it sentenced Defendant to a term of total confinement; and (3) whether the 1 ½ to 3 years state sentence imposed was excessive and unreasonable. All of his claims are without merit.

I. This Court properly revoked Defendant's probation, in part, for failure to pay fines and costs.

This Court properly found Defendant in technical violation and revoked his probation, in part, for failure to pay fines and costs. Under Pennsylvania law, "a term of probation may not be provoked for failure to pay costs and fines absent certain considerations by the revocation court." Commonwealth v. Ballard, 814 A.2d 1242, 1247 (Pa.Super. 2003) (quoting Commonwealth v.

Eggers, 742 A.2d 174, 175 (Pa.Super.1999)). Prior to revoking probation on the basis of failure to pay fines, costs or restitution, the court must “inquire into the reasons for a defendant’s failure to pay and [...] make findings pertaining to the willfulness of the party’s omission.” Id. (quoting Eggers at 175-176). Thus,

A proper analysis should include an inquiry into the reasons surrounding the probationer’s failure to pay, followed by a determination of whether the probationer made a willful choice not to pay.... After making those determinations, if the court finds the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court should then consider alternatives to incarceration.

Id.

In the case at bar, this Court properly found Defendant in technical violation and revoked his probation, in part, for failure to pay costs and fines. The record shows that this Court conducted a proper inquiry into the reasons for Defendant’s failure to pay and determined that Defendant made a willful choice not to pay. At the violation hearing, defense counsel Ms. Downey-Zayas told that Court that Defendant was working at a day care center a few hours a day cleaning up in the morning and again in the evening. She stated that Defendant earned \$600 per month at this job and was obligated to pay \$350 per month in child support. He had been incarcerated in Delaware County for several months for failure to pay child support. (N.T. 2/12/19, p. 8-11). Defendant stated that he was struggling out in the streets but that he kept getting arrested over failure to pay child support. He stated, “I can’t afford to make the payment, to pay money to the courts, for whatever reason I can’t afford to pay that money or I can’t afford to make a payment to this other court for my daughter and I’m being penalized and going to jail and coming back and forth to jail.” Id. at 13-14. After considering these arguments from defense counsel and Defendant, this Court noted that since 2009, Defendant had never had “paystub job,” meaning a job where his employer paid him with a proper paycheck subject to tax withholdings.

This Court had ordered him numerous times over the years to get a part-time job at night where he could get a paycheck; however, she stated that it now appeared clear that Defendant never wanted to get a “paystub job” because he did not want money from that check garnished by the Delaware County child support office. This Court stated that this “contributes [to] the defendant’s intentional decision to not get a job with a paycheck even though I told him numerous times to get a job with a paycheck that he’s decided not to do it obviously because he doesn’t want to have money taken out.” Id. at 16. This Court stated that Defendant had not made a good faith effort to pay his costs and fines, other than one \$50 payment in 2017. Specifically, the Court noted on the record the following payments by Defendant:

2/9/11:	\$6.37
2/14/11:	\$5.41
6/9/11:	\$0.94
8/26/11:	\$5.00
9/19/11:	\$2.80
10/3/11:	\$1.98
11/18/11:	\$0.63
12/2/11:	\$1.60
12/9/11:	\$1.44
1/4/12:	\$1.66
2/21/12:	\$29.36
6/13/17:	\$50.00

As this Court stated at the violation hearing, this showed that Defendant never took his sentence seriously and “did not even attempt to make a good faith effort to comply with this court’s

conditions.” *Id.* at 19-20. The record shows that Defendant made a willful choice not to pay his cost and fines. He chose to work minimally “under the table” so that he could avoid paying child support. Furthermore, he cannot in good faith argue that he had to pay child support and therefore could not afford to pay fines and costs because, as he himself admitted he was jailed for failing to make his child support payments. After determining that Defendant willfully chose not to make meaningful payments towards his costs and fines despite the ability to do so, this Court properly found Defendant in technical violation of his probation and sentenced him to 1 ½ to 3 years state incarceration.

II. This Court properly sentenced Defendant to a term of total confinement.

This Court properly sentenced Defendant to a term of total confinement after finding him in technical violation of his probation for the fourth time. The standard of review for sentences imposed following a revocation of probation is well-settled:

The imposition of sentence following the revocation of probation is vested within the sound discretion of the trial court, which, absent an abuse of that discretion, will not be disturbed on appeal. An abuse of discretion is more than an error in judgment—a sentencing court has not abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.

Commonwealth v. Swope, 123 A.3d 333 (Pa.Super.2015) (quoting Commonwealth v. Colon, 102 A.3d 1033, 1043 (Pa.Super.2014)). A violation of probation hearing’s main purpose is “to determine whether [probation] remains a viable means of rehabilitation...” Shimonvich, 858 A.2d at 136 (quoting Mitchell, 632 A.2d at 936-937). The primary concern of probation is the rehabilitation and restoration of the individual to a useful life. Commonwealth v. Mullins, 591 Pa. 341, 347, 918 A.2d 82, 85 (2007). It is a suspended sentence of incarceration “served upon such lawful terms and conditions as imposed by the sentencing court.” *Id.* (citing

Commonwealth v. Walton, 493 Pa. 588, 397 A.2d 1179, 1184-84 (1979)). “The purpose of the revocation hearing is simply to establish to the satisfaction of the judge who granted probation that the individual’s conduct warrants his continuing as a probationer.” Id. (quoting Commonwealth v. Kates, 452 Pa. 102, 304 A.2d 701, 710 (1973)). Thus, “a probation violation is established whenever it is shown that the conduct of the probationer has indicated that probation has proven to be an ineffective vehicle to accomplish rehabilitation and not sufficient to deter against future antisocial conduct.” Commonwealth v. Infante, 585 Pa. 408, 421, 888 A.2d 783, 791 (2005) (quoting Commonwealth v. Brown, 503 Pa. 514, 524, 469 A.2d 1371, 1376 (1983)). Technical violations “can support revocation and a sentence of incarceration when such violations are flagrant and indicate an inability to reform.” Commonwealth v. Carver, 2007 PA Super. 122, 923 A.2d 495, 498 (2007).

When considering an appeal from a sentence imposed after the revocation of probation or parole, appellate review is limited to the determination of “the validity of the probation revocation proceedings and the authority of the sentencing court to consider the same sentencing alternatives it had at the time of the initial sentencing.” Commonwealth v. MacGregor, 2006 PA Super. 336, 2006 Pa. Super. LEXIS 4088, 3 (2006) (citing 42 Pa.C.S. § 9771(c)); Commonwealth v. Gheen, 455 Pa. Super. 499, 688 A.2d 1206, 1207 (1997)). The sentencing court is limited only by the maximum sentence it could have imposed at the time of the original sentencing. Id. Pursuant to 204 Pa. Code 303.1(b), sentencing guidelines do not apply to sentences imposed as a result of revocation of probation, intermediate punishment or parole. Once probation or parole has been revoked, a sentence of total confinement may be imposed if any of the following conditions exist: the defendant has been convicted of another crime; the conduct of the defendant indicates that it is likely that he will commit another crime if he is not

imprisoned; or, such a sentence is essential to vindicate the authority of the court. 42 Pa.C.S.A. § 9771(c); Commonwealth v. Coolbaugh, 2001 PA Super. 77, 770 A.2d 788, 792 (2001). There is no requirement that a sentencing court's imposition of sentence be the "minimum possible confinement." Walls, 592 Pa. at 571, 926 A.2d at 965.

In the case at bar, this Court properly sentenced Defendant to a term of total confinement as such a sentence was essential to vindicate the authority of the court. Since his original appearance before this Court in 2011, Defendant never complied with any of this Court's orders. He failed to obtain his GED, he failed to seek and maintain lawful employment, and he did not make a good faith effort to pay costs and fines. He failed to report as scheduled to his probation officer and missed more than one court date. As this Court stated at the violation hearing:

This sentence is absolutely necessary to vindicate the authority of the court. This Court has been back and forth and around the block numerous times for this defendant trying to give him a chance to do the right thing and to get himself together. Each time he has come back here with excuses on why he didn't do something. [...] He was in the Rise program. He never completed it. He was supposed to be going to Temple University to get his GED and he never completed that either. He was supposed to bring in paystubs from whatever job he got to the court and he still didn't do that either and then it was not even a good faith effort to make a payment since 2017. In 2017 there is only one payment. There wasn't anything other than that one payment. [...] That definitely shows that he has never taken this sentence seriously and he did not even attempt to make a good faith effort to comply with this court's conditions.

(N.T. 2/12/19, p. 18-20). This Court had given Defendant numerous chances to get his life together while on probation/parole. Instead, he chose to squander these opportunities and simply continued doing what he wanted to do. This Court explained to Defendant at the violation hearing:

All this time that you've been back and forth before this Court and every single time you got a break. Even the first time you came in

front of this Court you didn't go to state prison. [...] You got the biggest break when you first got sentenced. You got two to four to be served in the County and everything was running concurrent. That was a big break. I don't know if anybody ever broke it down to you that way. That was a big break because you never had to go to State prison and since that time I've been giving you break after break after break and every single time you came in here with nothing but excuses about why you didn't do what you're supposed to do.

Id. at 22-23. After taking this all into consideration, this Court found it appropriate to impose a term of total confinement as it was absolutely necessary to vindicate the authority of the court. Accordingly, this Court's judgment of sentence should be affirmed.

III. This Court properly sentenced Defendant to 1 ½ to 3 years state incarceration.

This Court properly sentenced Defendant to 1 ½ to 3 years state incarceration after finding him in technical violation of his probation. Defendant argues that this sentence was "excessive and unreasonable," claiming that this Court failed to consider the protection of the public, the gravity of the offense and the rehabilitative needs of Defendant. 42 Pa.C.S.A. 9721(b). This claim is without merit.

This Court sentenced Defendant to 1 ½ to 3 years state incarceration after finding him in technical violation of his probation. This sentence was within the statutory limits and was reasonable after considering all relevant factors. As stated above, the length of incarceration was solely within this Court's discretion and was limited only by the maximum sentence that could have been imposed at the original sentencing. Under Pennsylvania law, the maximum sentences for Robbery and Criminal Conspiracy, both graded as felonies of the first degree, is 20 years state incarceration, \$25,000 fine, or both. The maximum sentence for VUFA § 6106 is 7 years state incarceration, \$15,000 fine, or both. The maximum sentence for PIC is 5 years state incarceration, \$10,000 fine, or both. This Court sentenced Defendant to 1 ½ to 3 years state


incarceration. This sentence was well within the statutory limits and was a reasonable exercise of this Court's discretion in light of Defendant's failure to make payments towards costs and fees, failure to report as scheduled, failure to get his GED, and failure to seek and maintain lawful employment. Indeed, this was the fourth time that this Court found Defendant in technical violation, not including multiple status hearings where Defendant was not in compliance but this Court chose to allow probation to continue and give Defendant more time to work on himself. The record shows that after his original guilty plea in 2011, Defendant was found in technical violation on June 24, 2015. This Court sentenced him to 11 ½ to 23 months county incarceration plus 3 years reporting probation. A status listing was held on November 8, 2017. Defendant was not in compliance but a counselor from the RISE program spoke on Defendant's behalf and indicated that Defendant was enrolled in GED courses and a job readiness program. On April 9, 2018, Defendant appeared for another status hearing and yet again was not in compliance. On May 7, 2018, Defendant appeared for his second VOP and was found in technical violation. This Court was once again lenient and sentenced him to one year probation so he could have another chance to work on his rehabilitation. A status hearing was scheduled for August 7, 2018. Defendant failed to appear. It was later discovered that he was incarcerated at that time in Delaware County for failing to pay child support. He was released from Delaware County jail on November 1, 2018. Instead of turning himself into Philadelphia authorities, or at a minimum contacting his probation officer, Defendant was arrested on December 10, 2018 and charged with retail theft (a charge that was later withdrawn). None of this conduct indicated a willingness to reform. In fact, as discussed above, it demonstrated that Defendant never took this Court's sentence seriously and had no intention of completing the terms and conditions of his sentence.

Furthermore, this Court properly considered the factors set forth in 42 Pa.C.S.A. § 9721: the protection of the public, the gravity of Defendant's offense in relation to the impact on the victim and the community, and his rehabilitative needs. Since his original guilty plea in 2011, this Court had given Defendant numerous chances to rehabilitate himself through work release, county probation and parole, and county incarceration. Unfortunately, Defendant failed to take his sentence seriously and his conduct while on probation indicated that he was not making meaningful progress towards rehabilitation as he chose to completely ignore the terms and conditions of his sentence. Probation clearly was not serving as an effective means to rehabilitate Defendant since after more than eight years he still had not accomplished anything he had been ordered to do. As stated above, there is no requirement that this Court impose the "minimum possible sentence." Rather, based upon Defendant's ongoing failure to take the necessary steps to comply with the terms and conditions of probation, this Court found it appropriate to sentence Defendant to a flat term of 1 ½ to 3 years incarceration, with no probationary tail.

CONCLUSION

After reviewing the applicable case law, statutes, and testimony, this Court committed no error. This Court properly sentenced Defendant to 1 ½ to 3 years state incarceration after finding him in technical violation for the fourth time. Accordingly, this Court's judgment of sentence should be affirmed.

BY THE COURT:



J.

EXHIBIT “B”

DEFENDER ASSOCIATION OF PHILADELPHIA
BY: KEIR BRADFORD-GREY, Defender, and
OWEN LARRABEE, Deputy Chief
KARL BAKER, Chief, Appeals Division
Cheryl Brooks, Assistant Defender

Identification No. 00001
1441 Sansom Street
Philadelphia, PA 19102
(215) 568-3190

Attorney for Maurice Hudson

<u>COMMONWEALTH OF PENNSYLVANIA</u>	:	COURT OF COMMON PLEAS
	:	CRIMINAL TRIAL DIVISION
	:	
VS.	:	CP-51-CR-0009201-2009
	:	
MAURICE HUDSON	:	611 EDA 2019
	:	
PP# 972939	:	
	:	VIOLATION OF PROBATION

STATEMENT OF ERRORS COMPLAINED OF ON APPEAL

TO THE HONORABLE GENECE BRINKLEY, JUDGE OF SAID COURT:

Appellant, Maurice Hudson, by his attorneys, Cheryl Brooks, Assistant Defender, Owen W. Larrabee, Assistant Defender, Deputy Chief, Appeals Division, Karl Baker, Assistant Defender, Chief, Appeals Division, and Keir Bradford-Grey, Defender, files the following Statement of Errors Complained of on Appeal and respectfully represents:

1. On February 15, 2019, counsel for the Appellant, Maurice Hudson, filed a notice of appeal. The notice of appeal was accompanied by a request for the notes of testimony for all relevant proceedings.
2. On February 12, 2019, this Court revoked Appellant's probation on the charges of robbery (2 counts), conspiracy, carrying a firearm without a license, and possessing instrument of crime and sentenced Appellant to 1½ to 3 years state incarceration. The

revocation of probation was based on technical violations, principally the failure to make adequate payments towards court and supervision fees.

3. On May 7, 2018, this Court previously had violated Appellant's probation on the above charges due to the failure to make adequate payments towards court and supervision fees and imposed an additional one year of probation.
4. Appellant, through counsel filed a petition to vacate and reconsider the sentence on February 14, 2019.
5. On April 3, 2019, this Court filed an order directing counsel to file a Concise Statement of Errors Complained of on Appeal pursuant to Pa. R.A.P. § 1925(b)(1) within twenty-one (21) days from the date of the order.
6. Appellant identifies the following issues that may be raised on appeal:
 - a. This Court erred and violated Mr. Hudson's right to due process by revoking his probation – on two occasions – for failing to pay fines and court costs without making an adequate determination of his ability to pay.
 - b. This Court violated 42 Pa. C.S. §9771(c) and the Due Process Clause of the U.S. and Pennsylvania Constitutions, along with the fundamental norms of sentencing, by imposing a sentence of 1 ½ to 3 years, a sentence of total confinement, where Mr. Hudson had not been convicted of another crime, where his conduct did not indicate that he was likely to commit another crime if not imprisoned, and where the sentence was not necessary to vindicate the authority of this Court.
 - c. This Court violated 42 Pa. C.S. §9721 and the Due Process Clause of the U.S. and Pennsylvania, where the 1 ½ to 3 year sentence imposed for the technical violation of failing to pay court fines and costs was excessive and unreasonable in that it was not consistent with protection of the public, the gravity of the offense, or the rehabilitative needs of Mr. Hudson.

Respectfully submitted,

/S/

CHERYL BROOKS, Assistant Defender
DEFENDER ASSOC. OF PHILADELPHIA
1441 SANSOM STREET
PHILADELPHIA, PA 19102

DEFENDER ASSOCIATION OF PHILADELPHIA

**BY: KEIR BRADFORD-GREY, Defender, and
OWEN LARRABEE, Deputy Chief
KARL BAKER, Chief, Appeals Division
Cheryl Brooks, Assistant Defender**

**Identification No. 00001
1441 Sansom Street
Philadelphia, PA 19102
(215) 568-3190**

Attorney for Maurice Hudson

<u>COMMONWEALTH OF PENNSYLVANIA</u>	:	COURT OF COMMON PLEAS
	:	CRIMINAL TRIAL DIVISION
	:	
VS.	:	CP-51-CR-0009201-2009
	:	
MAURICE HUDSON	:	611 EDA 2019
	:	
PP# 972939	:	
	:	VIOLATION OF PROBATION

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Statement of Errors Complained of On Appeal upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Honorable Genece Brinkley
1404 Criminal Justice Center
1301 Filbert St.
Philadelphia PA 19107

Lawrence Goode
District Attorney of Philadelphia
3 South Penn Square
Philadelphia, PA 19102

TYPE OF SERVICE:
()First Class Mail (x)E-File

TYPE OF SERVICE:
()Personal (x)E-File

DATE: April 15, 2019

EXHIBIT “C”

IN THE COURT OF COMMON PLEAS
DEFENDER ASSOCIATION OF PHILADELPHIA
COMMONWEALTH OF PENNSYLVANIA

CRIMINAL TRIAL DIVISION
Identification No. 00001

Post Trial Unit
By: T. COS

VS. : CP-51-CR-0009201-2009

Maurice Hudson : Hon. Genece Brinkley
PP# 972939

ORDER

AND NOW, this _____ day of _____, 2019, it is hereby ORDERED that the sentence of 1½ to 3 years incarceration on the above mentioned Bill and Term Number(s), imposed on February 12, 2019 is vacated and a new sentencing hearing is scheduled.

Signature where APPROVED by the Sentencing Judge:

BY THE COURT: above

_____ J.

Date: _____

Hearing Date: _____

For Signature Where NOT APPROVED by the Sentencing Judge:

BY THE COURT:

_____ Date: _____

Date Submitted: February 13, 2019

DEFENDER ASSOCIATION OF PHILADELPHIA

**BY: Keir Bradford-Grey, Defender
Victoria L. Sanita, Assistant Defender**

Identification No. 00001

1441 Sansom Street

Philadelphia, PA 19102

(215) 568-3190

/

Attorney for Maurice Hudson

COMMONWEALTH OF PENNSYLVANIA

**COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION**

VS.

: CP-51-CR-0008171-2008

**Maurice Hudson
PP# 972939**

: Hon. Genece Brinkley

PETITION TO VACATE AND RECONSIDER SENTENCE

TO THE HONORABLE GENECE BRINKLEY, PRESIDING IN THE COURT OF COMMON PLEAS CRIMINAL TRIAL DIVISION FOR THE COUNTY OF PHILADELPHIA:

Maurice Hudson, by his attorneys Victoria L. Sanita, Assistant Defender, and Keir Bradford-Grey, Defender, respectfully requests that this Honorable Court vacate the sentence of February 12, 2019 for the following reasons:

1. On February 12, 2019, the petitioner appeared before the Court for a violation of probation hearing, at which time the Court revoked supervision and sentenced him to 1 ½ to 3 years incarceration.
2. The petitioner was sentenced to 2 to 4 years plus 3 years probation on this case originally on 4/21/2010.
3. On June 24, 2015, while on the probation tail, after serving his state sentence, he was violated for technical violations of poor reporting and re-sentenced to 11 ½ to 23 months incarceration followed by 3 years probation. Petitioner served 12 months in custody before he was paroled on this sentence.
4. On May 7th of 2018, the client was once again revoked and resentenced to

1 year probation, this time for not being employed and failing to pay his fines and costs. This was despite the probation officer's report that the Petitioner was attending GED classes, had negative urines and her recommendation was for probation to be continued.

5. In this instance, the Petitioner is alleged to have violated his probation by the commission of a technical violation that involves conduct that is not criminal. The defendant failed to appear for a status hearing on August 7, 2018 after which a bench warrant and wanted cards were issued. Prior to this the Petitioner was reporting as scheduled and working with the RISE Program towards his GED.

6. If petitioner is found to have committed this technical violation, a sentence of total confinement is barred by 42 Pa.C.S. 9771 © and the Due Process Clauses of the United States and Pennsylvania Constitutions.

7. Section 9771 ©, in mandatory terms ("shall not"), prohibits a sentence of a probation except in three specified limited circumstances:

c) Limitation on sentence of total confinement.—The Court shall not impose a sentence of total confinement upon revocation unless it finds that:

- (1) The defendant has been convicted of another crime; or
- (2) The conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned; or
- (3) Such a sentence is essential to vindicate the authority of the court.

8. Circumstances (1) and (2) of Section §9771 © are indisputably inapplicable here. The third permissible circumstance, "(3) such a sentence is essential to vindicate the authority of the court," should be held to be inapplicable to this case.

9. As now Justice Donohue noted concerning §9771 ©, "(t)he General Assembly, in writing this statute, placed on obvious constraint on the trial court's discretion to incarcerate a probation violator." Commonwealth v. Schutzues, 54 A.3d 86, 92 (Pa. Super. 2012). See Commonwealth vs. Matthews, 486 A.2d 495, 497 (Pa.Super. 1984) (same).

10. Applying well established principles of statutory construction, subsection (c) may not be applied here. Subsection (c) (3) unambiguously provides that total confinement is permissible only when “such a sentence is essential to vindicate the authority of the court.” (emphasis ended). The word essential’s well established definition is “(i)ndispensably necessary.” Black’s Law Dictionary, 490 (Fifth Edition). See, e.g., Webster’s New World Dictionary, 463-64 (Third College Edition). This plain language is controlling (1 Pa.C.S. §1921), and subsection (c) (2). See, e.g., *Mission Funding Alpha v. Commonwealth*, 173 A.3d 748, 757 (Pa. 2017). Further, as a criminal sentencing statute, (c) (3) must be strictly construed (1 Pa.C.S. § 1928 (b) (1), with any doubts existing as to the proper construction being resolved in favor of the defendant. E.g., *Commonwealth v. Booth*, 766 A. 2d 843, 846 (Pa. 2001).

11. Applying these governing principles, subsection (c) (3) must be construed, if possible, in a manner that provides meaningful guidance to the judiciary, and limits total confinement to situations as serious as where there has been a new conviction ((c) (1)), or where there is conduct indicating a likelihood of criminal conduct in the future ((c) (2)).

12. This provision, 42 Pa.C.S. §9771 (renumbered), was enacted in 1974. In the 44 years since its enactment this shapeless provision, (c) (3), has had no judicial limiting construction. Whether total confinement was warranted because it was “essential to vindicate the authority of the court” ((c) (3)) has been a subjective ad hoc determination. See, e.g., *Commonwealth v. Malovich*, 903 A.2d 1247, 1253-54 (Pa. Super. 2006); *Commonwealth v. Cappellini*, 690 A.2d 1220, 1226 (Pa. Super. 1997). This is the hallmark of a provision that is void for vagueness under the Due Process Clause. There is not enough clarity in the provision, resulting in more potential for arbitrary enforcement by judges than the Due Process Clause tolerates. See, e.g., *Johnson v. United States*, 135 S.Ct. 2551, 2157-60 (2015) (invalidating a sentencing provision on vagueness due process grounds).

13. Further, counsel understands that a new policy recommendation has been implemented by the Philadelphia District Attorney’s office relating to recommendations to be

made by prosecutors in revocations involving technical Violations – that is, the Philadelphia prosecutor will only recommend a maximum sentence of incarceration of 6 to 12 months upon revocation for technical violations only. Petitioner’s case involves only technical violations, the revocation was founded on that basis, and is within the bounds of this policy.

14. 42 Pa. C.S.A. Section 9721 requires that the Court follow the following principle that:

“The sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant.”

The sentence imposed by this Court was excessive in that it far surpassed what was required to protect the public, the complainant or the community, and was well beyond what was necessary to foster the defendant’s rehabilitation.

15. This Court erred as a matter of law and abused its discretion in imposing a new sentence or imposition of backtime upon a finding of the instant probation/parole violation inasmuch as the Court's sentence failed to comply with the requirements of 42 Pa.C.S. §9771 (c) and was manifestly excessive and unreasonable. The Court failed to adequately examine and investigate the defendant's background, character and rehabilitative needs, the Court failed to state sufficiently adequate reasons for imposing the new sentence and did not order or consider a pre-sentence report and/or did not place the Court's reasons for dispensing with such a report on the record as required by Pa.R.Crim.P. 702.

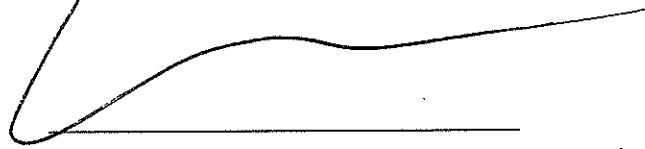
16. Counsel is asking the Court to vacate the sentence and schedule a new sentencing hearing.

Pursuant to Pa. Crim. P. 575 and 113.1, the undersigned hereby verifies and certifies that the facts contained in this petition are true to the best of his/her information and belief, and that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and

documents differently than non-confidential information and documents. This verification is made subject to penalties of unsworn falsification to authorities (18 Pa. C.S.A. 4904). Pursuant to Pa. Crim. P. 576, it is certified that service has been made upon the District Attorney's Prison Litigation Unit.

WHEREFORE, Petitioner, through his counsel, respectfully request that this Honorable Court vacate the sentence of 1 ½ to 3 years incarceration, imposed on February 12, 2019, and a new sentencing hearing is scheduled.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Victoria L. Sanita', written over a horizontal line.

VICTORIA L. SANITA, Esquire
Assistant Director, Alternative Sentencing
and with her,
KEIR BRADFORD-GREY, DEFENDER
ATTORNEYS FOR PETITIONER

cc: District Attorney

EXHIBIT “D”

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET



Docket Number: CP-51-CR-0009201-2009

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

Maurice Hudson

Page 1 of 29

CASE INFORMATION

Cross Court Docket Nos: 611 EDA 2019

Judge Assigned: Brinkley, Genece E.

Date Filed: 07/16/2009

Initiation Date: 07/16/2009

OTN: N 576076-4

LOTN:

Originating Docket No: MC-51-CR-0052453-2008

Initial Issuing Authority: Francis P. Cosgrove

Final Issuing Authority: Francis P. Cosgrove

Arresting Agency: Philadelphia Pd

Arresting Officer: Hunt, Rodney L.

Complaint/Incident #:

Case Local Number Type(s)

Case Local Number(s)

Legacy Microfilm Number

10005010

District Control Number

0818069750

RELATED CASES

Related Docket No

Related Case Caption

Related Court

Association Reason

Joined Codefendant Cases

CP-51-CR-0009200-2009

Comm. v. Spence, Sterling

CP-01-51-Crim

Same District Control
Number

STATUS INFORMATION

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET



Docket Number: CP-51-CR-0009201-2009

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

Maurice Hudson

Page 2 of 29

Case Status: Closed

Status Date

Processing Status

Arrest Date: 10/21/2008

02/15/2019

Awaiting Appellate Court Decision

02/12/2019

Completed

12/12/2018

Awaiting Violation of Probation Hearing

05/07/2018

Awaiting Violation of Probation/Status

05/07/2018

Sentenced/Penalty Imposed

01/04/2018

Awaiting Violation of Probation/Status

11/08/2017

Completed

11/08/2017

Awaiting Violation of Probation/Status

07/18/2017

Awaiting Violation of Probation Hearing

07/18/2017

Completed

06/01/2017

Awaiting Violation of Probation Hearing

05/16/2017

Awaiting Violation of Probation Hearing

11/09/2016

Awaiting Violation of Probation Hearing

07/06/2015

Completed

07/02/2015

Awaiting Post Sentence Motion Hearing

Disposition

06/24/2015

Completed

05/06/2015

Awaiting Violation of Probation Hearing

04/21/2010

Sentenced/Penalty Imposed

04/21/2010

Awaiting Sentencing

09/14/2009

Awaiting Trial

08/03/2009

Awaiting Pre-Trial Conference

07/31/2009

Awaiting Formal Arraignment

07/16/2009

Awaiting Filing of Information

Complaint Date: 10/22/2008

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET



Docket Number: CP-51-CR-0009201-2009

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

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v.

Maurice Hudson

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>	<u>Start</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Time</u>			<u>Status</u>
Formal Arraignment	08/05/2009	11:00 am	505	Trial Commissioner Russell Joell	Scheduled
Pre-Trial Conference	09/03/2009	9:00 am	1103	Judge Rose DeFino-Nastasi	Scheduled
Scheduling Conference	09/14/2009	9:00 am	1002	Senior Judge John J. Poserina Jr.	Scheduled
Trial	10/27/2009	9:00 am	1002	Judge Michael Erdos	Continued
Motions Hearing	11/24/2009	9:00 am	1002	Judge Michael Erdos	Continued
Motions Hearing	12/04/2009	9:00 am	1002	Judge Michael Erdos	Scheduled
Trial	04/21/2010	9:00 am	1002	Judge Michael Erdos	Moved
Trial	04/21/2010	9:00 am	1002	Judge Genece E. Brinkley	Scheduled
Gagnon I Hearing	05/06/2015	9:00 am	888	Trial Commissioner Christy McCall	Scheduled
Violation of Probation	05/14/2015	9:00 am	907	Judge Genece E. Brinkley	Continued
Violation of Probation	05/27/2015	9:30 am	907	Judge Genece E. Brinkley	Continued
Violation of Probation	06/24/2015	9:00 am	907	Judge Genece E. Brinkley	Scheduled
Violation of Probation	11/20/2015	9:00 am	907	Judge Genece E. Brinkley	Cancelled
Violation of Probation	11/30/2016	9:00 am	802	Judge Genece E. Brinkley	Continued
Violation of Probation	04/27/2017	9:00 am	1108	Judge Genece E. Brinkley	Moved
Violation of Probation	05/04/2017	9:00 am	1108	Judge Genece E. Brinkley	Scheduled
Gagnon I Hearing	05/23/2017	9:00 am	888	Trial Commissioner Linda Mariani	Scheduled
Violation of Probation	06/01/2017	9:00 am	1108	Judge Genece E. Brinkley	Continued
Violation of Probation	06/09/2017	9:00 am	1108	Judge Genece E. Brinkley	Continued
Violation of Probation	06/12/2017	9:00 am	1108	Judge Genece E. Brinkley	Moved
Violation of Probation	06/16/2017	9:00 am	1108	Judge Genece E. Brinkley	Continued
Violation of Probation	07/17/2017	9:00 am	1108	Judge Genece E. Brinkley	Continued

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET



Docket Number: CP-51-CR-0009201-2009

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

Maurice Hudson

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CALENDAR EVENTS

<u>Case Calendar Event Type</u>	<u>Schedule Start Date</u>	<u>Start Time</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule Status</u>
Violation of Probation	07/18/2017	9:00 am	1108	Judge Genece E. Brinkley	Continued
Violation of Probation	11/08/2017	9:00 am	504	Judge Genece E. Brinkley	Scheduled
Violation of Probation	11/09/2017	9:00 am	1108	Judge Genece E. Brinkley	Moved
Violation of Probation/Status	01/31/2018	9:00 am	908	Judge Genece E. Brinkley	Continued
Violation of Probation/Status	01/31/2018	9:00 am	504	Judge Genece E. Brinkley	Moved
Violation of Probation/Status	04/09/2018	9:00 am	908	Judge Genece E. Brinkley	Continued
Violation of Probation/Status	05/07/2018	9:00 am	908	Judge Genece E. Brinkley	Continued
Violation of Probation/Status	08/07/2018	9:00 am	908	Judge Genece E. Brinkley	Scheduled
Gagnon I Hearing	12/19/2018	9:00 am	1004	Trial Commissioner Cynthia S. Gregg	Scheduled
Violation of Probation	12/20/2018	9:00 am	908	Judge Genece E. Brinkley	Continued
Violation of Probation	02/01/2019	9:00 am	908	Judge Genece E. Brinkley	Continued
Violation of Probation	02/12/2019	9:00 am	908	Judge Genece E. Brinkley	Scheduled

CONFINEMENT INFORMATION

<u>Confinement Known As Of</u>	<u>Confinement Type</u>	<u>Destination Location</u>	<u>Confinement Reason</u>	<u>Still in Custody</u>
05/29/2019	DOC Confined	SCI Phoenix		Yes

DEFENDANT INFORMATION

Date Of Birth: 04/29/1990 City/State/Zip: PHILADELPHIA, PA 19139

Alias Name

HUDSON, CHANNING
Hudson, Maurice T.
Jefferson, Maurice
Watts, Maurice

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CASE PARTICIPANTS

<u>Participant Type</u>	<u>Name</u>
Defendant	Hudson, Maurice
Probation Officer	Frascella, Jennifer
Probation Officer	Winokur, Eric
Probation Officer	Pavia-Martinez, Elba

BAIL INFORMATION

Hudson, Maurice					Nebbia Status: None
<u>Bail Action</u>	<u>Date</u>	<u>Bail Type</u>	<u>Percentage</u>	<u>Amount</u>	
					<u>Bail Posting Status</u> <u>Posting Date</u>
Set	10/22/2008	Monetary	10.00%	\$25,000.00	
Change Bail Type	09/03/2009	Unsecured		\$25,000.00	

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	12	F1	18 § 3701 §§ A1II	Robbery-Threat Immed Ser Injury	09/26/2008	N 576076-4
2	2	F1	18 § 903 §§ A1	Criminal Conspiracy Engaging - Robbery-Inflict Serious Bodily Injury	09/26/2008	N 576076-4
3	3	F3	18 § 6106 §§ A1	Firearms Not To Be Carried W/O License	09/26/2008	N 576076-4
4	4	M1	18 § 3921 §§ A	Theft By Unlaw Taking-Movable Prop	09/26/2008	N 576076-4
5	5	M1	18 § 3925 §§ A	Receiving Stolen Property	09/26/2008	N 576076-4
6	6	M1	18 § 6108	Carry Firearms Public In Phila	09/26/2008	N 576076-4
7	7	M1	18 § 907 §§ A	Poss Instrument Of Crime W/Int	09/26/2008	N 576076-4
8	9	M2	18 § 2701 §§ A	Simple Assault	09/26/2008	N 576076-4
9	10	M2	18 § 2705	Recklessly Endangering Another Person	09/26/2008	N 576076-4
10	13	F1	18 § 3701 §§ A1II	Robbery-Threat Immed Ser Injury	09/26/2008	N 576076-4
11	2	F1	18 § 903 §§ A1	Criminal Conspiracy Engaging - Robbery-Inflict Serious Bodily Injury	09/26/2008	N 576076-4
12	3	F3	18 § 6106 §§ A1	Firearms Not To Be Carried W/O License	09/26/2008	N 576076-4
13	4	M1	18 § 3921 §§ A	Theft By Unlaw Taking-Movable Prop	09/26/2008	N 576076-4
14	5	M1	18 § 3925 §§ A	Receiving Stolen Property	09/26/2008	N 576076-4
15	6	M1	18 § 6108	Carry Firearms Public In Phila	09/26/2008	N 576076-4
16	7	M1	18 § 907 §§ A	Poss Instrument Of Crime W/Int	09/26/2008	N 576076-4
17	9	M2	18 § 2701 §§ A	Simple Assault	09/26/2008	N 576076-4
18	10	M2	18 § 2705	Recklessly Endangering Another Person	09/26/2008	N 576076-4
99,999	8	M1	18 § 2706 §§ A1	Terroristic Threats W/ Int To Terrorize Another	09/26/2008	N 576076-4

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CHARGES

Seq.	Orig Seq.	Grade	Statute	Statute Description	Offense Dt.	OTN
99,999	8	M1	18 § 2706 §§ A1	Terroristic Threats W/ Int To Terrorize Another	09/26/2008	N 576076-4
99,999	1	F1	18 § 3701 §§ A1I	Robbery-Inflict Serious Bodily Injury	09/26/2008	N 576076-4
99,999	1	F1	18 § 3701 §§ A1I	Robbery-Inflict Serious Bodily Injury	09/26/2008	N 576076-4

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>			
Lower Court Proceeding (generic)			
Preliminary Hearing	07/15/2009	Not Final	
2 / Criminal Conspiracy Engaging - Robbery-Inflict Serious Bodily Injury	Held for Court	F1	18 § 903 §§ A1
3 / Firearms Not To Be Carried W/O License	Held for Court	F3	18 § 6106 §§ A1
4 / Theft By Unlaw Taking-Movable Prop	Held for Court	M1	18 § 3921 §§ A
5 / Receiving Stolen Property	Held for Court	M1	18 § 3925 §§ A
6 / Carry Firearms Public In Phila	Held for Court	M1	18 § 6108
7 / Poss Instrument Of Crime W/int	Held for Court	M1	18 § 907 §§ A
8 / Simple Assault	Held for Court	M2	18 § 2701 §§ A
9 / Recklessly Endangering Another Person	Held for Court	M2	18 § 2705
11 / Criminal Conspiracy Engaging - Robbery-Inflict Serious Bodily Injury	Held for Court	F1	18 § 903 §§ A1
12 / Firearms Not To Be Carried W/O License	Held for Court	F3	18 § 6106 §§ A1
13 / Theft By Unlaw Taking-Movable Prop	Held for Court	M1	18 § 3921 §§ A
14 / Receiving Stolen Property	Held for Court	M1	18 § 3925 §§ A
15 / Carry Firearms Public In Phila	Held for Court	M1	18 § 6108
16 / Poss Instrument Of Crime W/int	Held for Court	M1	18 § 907 §§ A
17 / Simple Assault	Held for Court	M2	18 § 2701 §§ A
18 / Recklessly Endangering Another Person	Held for Court	M2	18 § 2705
99,999 / Robbery-Inflict Serious Bodily Injury	Held for Court	F1	18 § 3701 §§ A1I
99,999 / Terroristic Threats W/ Int To Terrorize Another	Dismissed - LOE	M1	18 § 2706 §§ A1
Proceed to Court			
Information Filed	07/31/2009	Not Final	
1 / Robbery-Threat Immed Ser Injury	Replacement by Information	F1	18 § 3701 §§ A1II
2 / Criminal Conspiracy Engaging - Robbery-Inflict Serious Bodily Injury	Held for Court	F1	18 § 903 §§ A1

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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>			
3 / Firearms Not To Be Carried W/O License	Held for Court	F3	18 § 6106 §§ A1
4 / Theft By Unlaw Taking-Movable Prop	Held for Court	M1	18 § 3921 §§ A
5 / Receiving Stolen Property	Held for Court	M1	18 § 3925 §§ A
6 / Carry Firearms Public In Phila	Held for Court	M1	18 § 6108
7 / Poss Instrument Of Crime W/Int	Held for Court	M1	18 § 907 §§ A
8 / Simple Assault	Held for Court	M2	18 § 2701 §§ A
9 / Recklessly Endangering Another Person	Held for Court	M2	18 § 2705
10 / Robbery-Threat Immed Ser Injury	Replacement by Information	F1	18 § 3701 §§ A1II
11 / Criminal Conspiracy Engaging - Robbery-Inflict Serious Bodily Injury	Held for Court	F1	18 § 903 §§ A1
12 / Firearms Not To Be Carried W/O License	Held for Court	F3	18 § 6106 §§ A1
13 / Theft By Unlaw Taking-Movable Prop	Held for Court	M1	18 § 3921 §§ A
14 / Receiving Stolen Property	Held for Court	M1	18 § 3925 §§ A
15 / Carry Firearms Public In Phila	Held for Court	M1	18 § 6108
16 / Poss Instrument Of Crime W/Int	Held for Court	M1	18 § 907 §§ A
17 / Simple Assault	Held for Court	M2	18 § 2701 §§ A
18 / Recklessly Endangering Another Person	Held for Court	M2	18 § 2705
99,999 / Robbery-Inflict Serious Bodily Injury	Charge Changed	F1	18 § 3701 §§ A1I
Replaced by 18 § 3701 §§ A1II, Robbery-Threat Immed Ser Injury			
99,999 / Terroristic Threats W/ Int To Terrorize Another	Disposed at Lower Court	M1	18 § 2706 §§ A1

Guilty Plea - Negotiated

<u>Trial</u>	<u>04/21/2010</u>	<u>Final Disposition</u>	
1 / Robbery-Threat Immed Ser Injury	Guilty Plea - Negotiated	F1	18 § 3701 §§ A1II

Brinkley, Genece E.
Confinement

04/21/2010
Min of 2.00 Years
Max of 4.00 Years
2 years - 4 years

SENTENCE TO BE SERVED IN THE COUNTY ON WORK RELEASE. THE JUDGE RECOMMENDS
HOFFMAN HALL
To obtain a G.E.D.
To attend an educational institution or participate in a course of vocational training.
To seek employment.
To work at his or her employment.
SERVED IF APPLICABLE

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<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>			
Defendant eligible for work release.			
Probation	Max of 3.00 Years 3 years		
To devote himself/herself to a specific occupation or employment.			
Defendant is to pay imposed mandatory court costs.			
Brinkley, Genece E.	06/24/2015		
Confinement	Min of 11.00 Months 15.00 Days Max of 23.00 Months 11 1/2 - 23 months		06/24/2015
Technical violation. Probation revoked. New sentence. The Court stipulates this defendant to Hoffman Hall. Credit time served fro, 04/22/2015 to 06/24/2015. Conditions: seek and maintain employment;complete job training;random testing for drug usage;obtain GED (or provide proof of GED);pay mandatory court costs and supervision fees at the minimum rate of \$40 per month. Detainer lifted.			
Probation	Max of 3.00 Years 3 years		
Brinkley, Genece E.	05/07/2018		
Probation	Min of 1.00 Years Max of 1.00 Years 1 year		
to seek and maintain employment with documentation			
To obtain a G.E.D. and have documentation			
Defendant is to pay imposed mandatory court costs.			
to pay \$50.00 per month			
status date: 8/7/2018 room 908			
Brinkley, Genece E.	02/12/2019		
Confinement	Min of 1.00 Years 6.00 Months Max of 3.00 Years 1 1/2 - 3 years		02/12/2019
Defendant found in technical violation. Probation Revoked. New sentence imposed of 1 1/2-3years istate incarceration. Random urinalysis, seek and maintain employment, fines/costs to remain.			
2 / Criminal Conspiracy Engaging - Robbery-Inflict	Guilty Plea - Negotiated	F1	18 § 903 §§ A1
Serious Bodily Injury			
Brinkley, Genece E.	04/21/2010		
Confinement	Min of 2.00 Years Max of 4.00 Years 2 years - 4 years		

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<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>			
Probation	Max of 3.00 Years 3 years		
Brinkley, Genece E.	06/24/2015		
Confinement	Min of 11.00 Months 15.00 Days Max of 23.00 Months 11 1/2 - 23 months		06/24/2015
Probation	Max of 3.00 Years 3 years		
Brinkley, Genece E.	05/07/2018		
Probation	Min of 1.00 Years Max of 1.00 Years 1 year		
Brinkley, Genece E.	02/12/2019		
Confinement	Min of 1.00 Years 6.00 Months Max of 3.00 Years 1 1/2 - 3 years		02/12/2019
Defendant found in technical violation. Probation Revoked. New sentence imposed of 1 1/2-3years istate incarceration. Random urinalysis, seek and maintain employment, fines/costs to remain.			
3 / Firearms Not To Be Carried W/O License	Guilty Plea - Negotiated	F3	18 § 6106 §§ A1
Brinkley, Genece E.	04/21/2010		
Confinement	Min of 2.00 Years Max of 4.00 Years 2 years - 4 years		
Probation	Max of 3.00 Years 3 years		
Brinkley, Genece E.	06/24/2015		
Confinement	Min of 11.00 Months 15.00 Days Max of 23.00 Months 11 1/2 - 23 months		06/24/2015
Probation	Max of 3.00 Years 3 years		
Brinkley, Genece E.	05/07/2018		
Probation	Min of 1.00 Years Max of 1.00 Years 1 year		
Brinkley, Genece E.	02/12/2019		

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<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>			
Confinement	Min of 1.00 Years 6.00 Months Max of 3.00 Years 1 1/2 - 3 years	02/12/2019	
Defendant found in technical violation. Probation Revoked. New sentence imposed of 1 1/2-3years istate incarceration. Random urinalysis, seek and maintain employment, fines/costs to remain.			
4 / Theft By Unlaw Taking-Movable Prop	Nolle Prossed	M1	18 § 3921 §§ A
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
5 / Receiving Stolen Property	Nolle Prossed	M1	18 § 3925 §§ A
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
6 / Carry Firearms Public In Phila	Nolle Prossed	M1	18 § 6108
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
7 / Poss Instrument Of Crime W/Int	Guilty Plea - Negotiated	M1	18 § 907 §§ A
Brinkley, Genece E.	04/21/2010		
Probation	Max of 3.00 Years 3 years		
ARE APPLIED			
Brinkley, Genece E.	06/24/2015		
Probation	Max of 3.00 Years 3 years		
Brinkley, Genece E.	05/07/2018		
Probation	Min of 1.00 Years Max of 1.00 Years 1 year		
Brinkley, Genece E.	02/12/2019		

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<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>			
Confinement	Min of 1.00 Years 6.00 Months Max of 3.00 Years 1 1/2 - 3 years	02/12/2019	
Defendant found in technical violation. Probation Revoked. New sentence imposed of 1 1/2-3years istate incarceration. Random urinalysis, seek and maintain employment, fines/costs to remain.			
8 / Simple Assault	Nolle Prossed	M2	18 § 2701 §§ A
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
9 / Recklessly Endangering Another Person	Nolle Prossed	M2	18 § 2705
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
10 / Robbery-Threat Immed Ser Injury	Guilty Plea - Negotiated	F1	18 § 3701 §§ A1II
Brinkley, Genece E.	04/21/2010		
Confinement	Min of 2.00 Years Max of 4.00 Years 2 years - 4 years		
Probation	Max of 3.00 Years 3 years		
Brinkley, Genece E.	06/24/2015		
Confinement	Min of 11.00 Months 15.00 Days Max of 23.00 Months 11 1/2 - 23 months	06/24/2015	
Probation	Max of 3.00 Years 3 years		
Brinkley, Genece E.	05/07/2018		
Probation	Min of 1.00 Years Max of 1.00 Years 1 year		
Brinkley, Genece E.	02/12/2019		

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<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>	
<u>Sentence Conditions</u>			
Confinement	Min of 1.00 Years 6.00 Months Max of 3.00 Years 1 1/2 - 3 years	02/12/2019	
Defendant found in technical violation. Probation Revoked. New sentence imposed of 1 1/2-3years istate incarceration. Random urinalysis, seek and maintain employment, fines/costs to remain.			
11 / Criminal Conspiracy Engaging - Robbery-Inflict Serious Bodily Injury	Nolle Prossed	F1	18 § 903 §§ A1
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
12 / Firearms Not To Be Carried W/O License	Nolle Prossed	F3	18 § 6106 §§ A
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
13 / Theft By Unlaw Taking-Movable Prop	Nolle Prossed	M1	18 § 3921 §§ A
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
14 / Receiving Stolen Property	Nolle Prossed	M1	18 § 3925 §§ A
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
15 / Carry Firearms Public In Phila	Nolle Prossed	M1	18 § 6108
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
16 / Poss Instrument Of Crime W/Int	Nolle Prossed	M1	18 § 907 §§ A

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<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>			
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
17 / Simple Assault	Nolle Prossed	M2	18 § 2701 §§ A
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
18 / Recklessly Endangering Another Person	Nolle Prossed	M2	18 § 2705
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
99,999 / Robbery-Inflct Serious Bodily Injury	Charge Changed	F1	18 § 3701 §§ A1I
Replaced by 18 § 3701 §§ A1II, Robbery-Threat Immed Ser Injury			
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		
99,999 / Terroristic Threats W/ Int To Terrorize Another	Disposed at Lower Court	M1	18 § 2706 §§ A1
Brinkley, Genece E.	04/21/2010		
Brinkley, Genece E.	06/24/2015		
Brinkley, Genece E.	05/07/2018		
Brinkley, Genece E.	02/12/2019		

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LINKED SENTENCES:

Link 1

- CP-51-CR-0009201-2009 - Seq. No. 10 (18§ 3701 §§ A11) - Confinement is Concurrent with
- CP-51-CR-0009201-2009 - Seq. No. 7 (18§ 907 §§ A) - Confinement is Concurrent with
- CP-51-CR-0009201-2009 - Seq. No. 3 (18§ 6106 §§ A1) - Confinement is Concurrent with
- CP-51-CR-0009201-2009 - Seq. No. 2 (18§ 3701 §§ A1) - Confinement is Concurrent with
- CP-51-CR-0009201-2009 - Seq. No. 1 (18§ 3701 §§ A11) - Confinement

COMMONWEALTH INFORMATION	ATTORNEY INFORMATION
<u>Name:</u> Philadelphia County District Attorney's Office Prosecutor	<u>Name:</u> Defender Association of Philadelphia Public Defender
<u>Supreme Court No:</u>	<u>Supreme Court No:</u>
<u>Phone Number(s):</u> 215-686-8000 (Phone)	<u>Rep. Status:</u> Active
<u>Address:</u> 3 South Penn Square Philadelphia, PA 19107	<u>Phone Number(s):</u>
	<u>Address:</u>

ENTRIES			
Sequence Number	CP Filed Date	Document Date	Filed By
1	07/16/2009		Court of Common Pleas - Philadelphia County
Held for Court			
3	07/16/2009		Unknown Filer
Transferred from Municipal Court			
1	07/31/2009		Commonwealth of Pennsylvania
Information Filed			
5	08/03/2009		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	09/03/2009		DeFino-Nastasi, Rose
Order Granting Motion for Modification of Bail Bail set to SOB Bail. Defendant releasable to House Arrest with electronic monitoring.			
5	09/03/2009		DeFino-Nastasi, Rose
Bail Type Changed - Hudson, Maurice			

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Sequence Number	CP Filed Date	Document Date	Filed By
1	09/14/2009		Court of Common Pleas - Philadelphia County
Order Granting Motion for Continuance Defense request, continue for further scheduling, EPD/TRE, 10/27/09 room 1002.			
4	09/14/2009		Court of Common Pleas - Philadelphia County
Hearing Notice			
3	10/27/2009		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	10/27/2009		Court of Common Pleas - Philadelphia County
Commonwealth Request, No Sever Mr. Bozzelli appointed to replace Mr. Meehan. Defense ready. CW to file joinder motion (Defense to file motions to sever). All motions to be filed on or before 11/17/09. Motions hearing date: 11/24/09. List for 1 week jury trial (w/co-defendants) 04/21/10 room 1002, EPD.			
1	10/28/2009		Erdos, Michael
Attorney Relieved Counsel Permitted to Withdraw by the Court			
1	10/29/2009		Bozzelli, Lawrence J.
Entry of Appearance			
2	10/29/2009		
Appointment Notice			
3	11/09/2009		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	11/17/2009		Philadelphia County District Attorney's Office
Motion to Consolidate Cases for Joint Trial			
3	11/24/2009		Court of Common Pleas - Philadelphia County
Hearing Notice			

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Sequence Number	CP Filed Date	Document Date	Filed By
6	11/24/2009		Court of Common Pleas - Philadelphia County
Hearing Notice			
7	11/24/2009		Court of Common Pleas - Philadelphia County
Defense Request roll over to 12/04/09 room 1002, EPD.			
1	12/04/2009		Erdos, Michael
Motion to consolidate granted List for trial w/co-defs, EPD, 04/21/10 room 1002.			
1	04/21/2010		Brinkley, Genece E.
Guilty Plea - Negotiated			
2	04/21/2010		Brinkley, Genece E.
Disposition Filed			
3	04/21/2010		Brinkley, Genece E.
Order - Sentence/Penalty Imposed ADA: K. MCCREA, ATTY: L. BOZZELLI, STENO: N. MCNEELY, CC: C. WILSON			
4	04/21/2010		Court of Common Pleas - Philadelphia County
Penalty Assessed			
1	10/21/2011		Court of Common Pleas - Philadelphia County
Entry of Civil Judgment			
1	02/24/2015		Court of Common Pleas - Philadelphia County
Delinquency Notice Filed - 1700 Days Overdue			
1	05/05/2015		Philadelphia County Adult Probation Unit
Gagnon 1 Summary Filed			

Recent entries made in the court filing offices may not be immediately reflected on these docket sheets . Neither the courts of the Unified Judicial System of the Commonwealth of Pennsylvania nor the Administrative Office of Pennsylvania Courts assume any liability for inaccurate or delayed data, errors or omissions on these reports. Docket Sheet information should not be used in place of a criminal history background check which can only be provided by the Pennsylvania State Police. Moreover an employer who does not comply with the provisions of the Criminal History Record Information Act may be subject to civil liability as set forth in 18 Pa.C.S. Section 9183.

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ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	05/06/2015		Smith, Keith
Detainer Issued T/C Keith Smith Clerk of Court Jeff Kostic Violation of Probation Arrest Warrant is lifted. Detainer is issued .Detainer to remain pending GAGNON 11 (VOP) hearing before Judge. Defendant notified of the next Court date			
5	05/06/2015		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	05/07/2015		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
4	05/14/2015		Court of Common Pleas - Philadelphia County
Hearing Notice			
5	05/14/2015		Brinkley, Genece E.
VOP Continued To Date Certain The Honorable Genece E. Brinkley Violation Hearing continued pending the disposition of an open matter. Detainer to remian. Next court date 05/27/2015,Courtroom 907. (ADA/John O'Neill; PD/Randi Fensterer;Court Reporter/Jaclyne Craighead;Court Clerk/Deborah Creech) County custody-House of Corrections.			
4	05/27/2015		Court of Common Pleas - Philadelphia County
Hearing Notice			
8	05/27/2015		Court of Common Pleas - Philadelphia County
Hearing Notice			

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Sequence Number	CP Filed Date	Document Date	Filed By
9	05/27/2015		Brinkley, Genece E.
VOP Continued To Date Certain The Honorable Genece E. Brinkley Court on trial. Violation Hearing continued. Detainer to remain. Next court date 06/24/2015, Courtroom 907. (ADA/Joseph Whitehead; PD/Julia Lucas; Court Reporter/Tracy Allen; Court Clerk/Deborah Creech) House of Corrections			
1	05/28/2015		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
1	06/24/2015		Brinkley, Genece E.
Violation Penalties Imposed The Honorable Genece E. Brinkley Technical Violation. Probation revoked. New Sentence-Not less than 11 1/2 months nor less than 23 months incarceration with 3 years consecutive reporting probation as to Robbery (2 cts); VUFA 6106 F3. PIC-3 years reporting probation to run concurrent with the period of probation on the other charges. The Court stipulates this defendant to Hoffman Hall. Detainer lifted. (ADA/Kirk Handrich; Defense Counsel/Edward Meehan; Court Reporter/William Geftman; Court Clerk/Deborah Creech)			
2	06/24/2015		Meehan, Edward C. Jr.
Entry of Appearance			
1	07/02/2015		Meehan, Edward C. Jr.
Motion for Reconsideration of VOP Sentence Motion for Reconsideration of Sentence filed on behalf of Hudson, Maurice.			
1	07/06/2015		Hudson, Maurice
Receipt of Filing from Represented Defendant Not Signed by Attorney			
1	01/13/2016	01/12/2016	Brinkley, Genece E.
Order Granting Motion for Work Release			
1	03/23/2016		Philadelphia County Adult Probation Unit
Motion for Parole Motion for Parole filed on behalf of *.			

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Sequence Number	CP Filed Date	Document Date	Filed By
1	05/10/2016		Stein, Gerald A.
Entry of Appearance Entry of Appearance filed on behalf of Hudson, Maurice.			
2	05/10/2016		Stein, Gerald A.
Motion for Parole Motion for Parole filed on behalf of Hudson, Maurice.			
1	05/20/2016		Brinkley, Genece E.
Order Granting Motion for Parole Immediate Parole.			
1	11/28/2016		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
4	11/30/2016		Court of Common Pleas - Philadelphia County
Hearing Notice			
5	11/30/2016		Brinkley, Genece E.
VOP Continued To Date Certain ADA: Rachel Collins Def. Atty.: D. Rainey, Def. Assn., standing in for Gerald Stein Rept.: A. Dimou clerk:flannery Hon. Genece Brinkley, J. VOP status hearing continued to 4/20/17 in Rm. 1108. Defendant to bring documentation of his activities to next listing.			
1	02/14/2017		Hudson, Maurice
Return Case From Collection Agency - Court Request			
2	02/14/2017		Hudson, Maurice
Referral of Account to Collection Agency			
3	02/21/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			

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4	02/21/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	05/02/2017		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
3	05/16/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	05/17/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	05/19/2017		Philadelphia County Adult Probation Unit
Gagnon 1 Summary Filed			
2	05/23/2017		Smith, Keith
Detainer Issued T/C Keith Smith Clerk of Court Violation of Probation Arrest Warrant is lifted. Detainer is issued .Detainer to remain pending GAGNON 11 (VOP) hearing before Judge. Defendant notified of the next Court date Ct Clk: Kate Sanders			
4	06/01/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
5	06/01/2017		Brinkley, Genece E.
VOP Continued To Date Certain The Court is on trial. The VOP hearing is continued to 6/9/17, Rm 1108. The detainer is to remain. Hon. Genece Brinkley, ADA Golden, Def. Atty. Fensterer, Ct. Rpt. Rios, Ct. Clk. McCullough			

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Sequence Number	CP Filed Date	Document Date	Filed By
6	06/01/2017		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
4	06/09/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
7	06/09/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
8	06/09/2017		Brinkley, Genece E.
VOP Continued To Date Certain			
The Defenders Association is appointed. The Court orders the following documentation for the next court date: proof of payments, employment and GED completion. The next court listing is scheduled 6/16/17, Rm 1108. The defendant is in custody at the Detention Center.			
Hon. Genece Brinkley, ADA Powers, Def. Atty. Jovanov, Ct. Rpt. Rios, Ct. clk. McCullough			
4	06/16/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
5	06/16/2017		Brinkley, Genece E.
VOP Continued To Date Certain			
The defendant has open matters pending. The VOP hearing is continued to 7/17/17, Rm 1108. The detainer is to remain.			
Hon. Genece Brinkley, ADA Chakraborty, Def. Atty. Lipsky, Ct. Rpt. Dimou, Ct. Clk. McCullough			

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ENTRIES

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1	07/17/2017		Brinkley, Genece E.
VOP Continued To Date Certain Court is on trial. Status of probation compliance is rolled to 7/18/17, Rm 1108. Hon. Genece Brinkley, ADA Burgmann, Def. Atty. Fensterer, Ct. Rpt. Craighead, Ct. Clk. McCullough			
5	07/17/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	07/18/2017		Brinkley, Genece E.
Probation/Parole Continued The Court orders probation sentence to continue. The detainer is lifted. The defendant is ordered to pay \$35 monthly toward court costs and supervision fees and comply with conditions of the sentence. Status of compliance is continued to 11/9/17, Rm 1108; defendant signed the subpoena. No Commonwealth objection is noted. Hon. Genece Brinkley, ADA Meintel, Def. Atty. Helman, Ct. Rpt. Mena, Ct. Clk. McCullough			
2	07/18/2017		Brinkley, Genece E.
Detainer Lifted			
6	07/18/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
3	08/22/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	08/22/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			

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Sequence Number	CP Filed Date	Document Date	Filed By
1	11/04/2017		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
2	11/08/2017		Court of Common Pleas - Philadelphia County
Hearing Notice			
3	11/08/2017		Brinkley, Genece E.
Probation/Parole Continued			
Honorable Genece E. Brinkley, ADA: Sheryl Labar, PD: Randi Fensterer, Steno: Jowandaly Graham, Clerk: Lisa Norris			
Probation is Continued			
List for further Status of Compliance			
Next court date: 1/31/2018 Room 504			
Defendant present in room, Signed Service.			
2	01/04/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	01/26/2018		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
3	01/31/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	01/31/2018		Brinkley, Genece E.
Court on Trial - Case Ready Not Reached			
NCD: 4/9/18 R.908			
ADA: Martin Howley PD: Danielle Yacono			
STENO: Sherri Conti COURT CLERK: Joyce Scott			
JUDGE: GENECE BRINKLEY			
1	04/05/2018		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			

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3	04/09/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	05/07/2018		Brinkley, Genece E.
Order - Sentence/Penalty Imposed ada: Martin Howley, pd: Danielle Yacono, steno: Megan Carey, clerk: Sharon Mascuilli, Judge: Brinkley- defendant in technical violation - revoked to a new one year Probation			
4	05/07/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
5	05/07/2018		Philadelphia County Office of Court Compliance
Payment Plan/Financial Information Submitted			
1	08/03/2018		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
3	12/12/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	12/12/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	12/13/2018		Philadelphia County Adult Probation Unit
Gagnon 1 Summary Filed			
1	12/17/2018		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			

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<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	12/19/2018		Smith, Keith
Detainer Issued T/C Keith Smith Office of Judicial Records Violation of Probation Arrest Warrant is lifted. Detainer is issued. Detainer to remain pending GAGNON II (VOP) hearing before Judge. Defendant notified of the next Court date Court Services Manager: Lisa Corbitt			
2	12/19/2018		Gregg, Cynthia S.
Order Denying Motion to Remove Detainer The Defender Association of Philadelphia objects to these Gagnon Hearings not being recorded by digital recording or a representative of the Court Reporter's Office. There is also an objection to the defendant not being brought down in person. Per the Trial Commissioner, the objections have been noted and the Public Defender has a right to interview clients at the prison ahead of time. The detainer remains. The VOP hearing is scheduled on 12/20/18, Rm 908. Trial Commissioner Lisa McNevin, ADA Sam/King, PD Jovanov, Ct. Clk. McCullough			
4	12/20/2018		Brinkley, Genece E.
VOP Continued To Date Certain Open bills. Detainer to remain. NCD: 2/1/19 R.908 ADA: C. Smith PD: E. Downey-Zayas STENO: S. Rios COURT CLERK: J. Scott JUDGE: GENECE BRINKLEY			
4	02/01/2019		Court of Common Pleas - Philadelphia County
Hearing Notice			
5	02/01/2019		Brinkley, Genece E.
VOP Continued To Date Certain Open bills. Detainer to remain. Court on trial NCD: 2/12/19 R.908 ADA: E. Livingston PD: E. Downey-Zayas STENO: J. Parisse COURT CLERK: J. Scott JUDGE: GENECE BRINKLEY			

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Sequence Number	CP Filed Date	Document Date	Filed By
1	02/07/2019		Philadelphia County Adult Probation Unit
Gagnon 2 Summary Filed			
1	02/12/2019		Brinkley, Genece E.
Violation Penalties Imposed			
Defendant found in technical violation. Probation Revoked. New sentence imposed of 1 1/2-3years istate incarceration. Random urinalysis, seek and maintain employment, fines/costs to remain.			
ADA: E. Livingston PD: E. Downey-Zayas			
STENO: G. Parisse COURT CLERK: J. Scott			
JUDGE: GENECE BRINKLEY			
1	02/14/2019		Defender Association of Philadelphia
Motion for Reconsideration of VOP Sentence			
Motion for Reconsideration of VOP Sentence filed on behalf of Hudson, Maurice.			
1	02/15/2019		Defender Association of Philadelphia
Notice of Appeal to the Superior Court			
Notice of Appeal to the Superior Court filed on behalf of Hudson, Maurice.			
JOS J. Brinkley			
FILE LOCATED			
copy senet to court reporters			
1	03/07/2019		Superior Court of Pennsylvania - Eastern District
Docketing Statement from Superior Court			
611 EDA 2019			
1	04/03/2019		Brinkley, Genece E.
Order Issued Pursant to Pa.R.A.P. 1925(b)			
1	04/15/2019		Defender Association of Philadelphia
Statement of Matters Complained on Appeal			
Statement of Errors Complained on Appeal filed on behalf of Hudson, Maurice.			
1	06/27/2019		Brinkley, Genece E.
Opinion			

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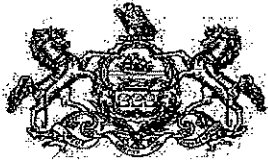
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ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	07/02/2019		Court of Common Pleas - Philadelphia County
Appeal Docket Entries and Served			
2	07/02/2019		Court of Common Pleas - Philadelphia County
Certificate and Transmittal of Record to Appellate Court			
Sent Date:			
7/2/2019			
Tracking Number:			
WSPRED00523580			
Docket Number:			
611 EDA 2019			

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PAYMENT PLAN SUMMARY

<u>Payment Plan No</u>	<u>Payment Plan Freq.</u>	<u>Next Due Date</u>	<u>Active</u>	<u>Overdue Amt</u>
<u>Responsible Participant</u>			<u>Suspended</u>	<u>Next Due Amt</u>
51-2010-P000007629	Monthly	07/08/2018	Yes	\$365.03
Hudson, Maurice			No	\$5.03

<u>Payment Plan History:</u>	<u>Receipt Date</u>	<u>Payment</u>	<u>Payor Name</u>	<u>Participant Role</u>	<u>Amount</u>
	02/09/2011	Payment	Department Of Corrections	Payor	\$6.37
	02/14/2011	Payment	Department Of Corrections	Payor	\$5.41
	06/09/2011	Payment			\$0.94
	08/26/2011	Payment	Department Of Corrections	Payor	\$5.00
	09/19/2011	Payment	Department Of Corrections	Payor	\$2.08
	10/03/2011	Payment	Department Of Corrections	Payor	\$1.98
	11/18/2011	Payment	Department Of Corrections	Payor	\$0.63
	11/22/2011	Payment	Department Of Corrections	Payor	\$2.05
	12/02/2011	Payment	Department Of Corrections	Payor	\$1.60
	12/09/2011	Payment	Department Of Corrections	Payor	\$1.44
	01/04/2012	Payment	Department Of Corrections	Payor	\$1.66
	02/02/2012	Payment	Department Of Corrections	Payor	\$1.48
	02/21/2012	Payment	Department Of Corrections	Payor	\$29.36
	06/13/2017	Payment	Goldsboro, Shamira Mone	Payor	\$50.00
	05/24/2019	Payment	Department Of Corrections	Payor	\$25.00
	07/01/2019	Payment	Department Of Corrections	Payor	\$28.32
	07/29/2019	Payment	Department Of Corrections	Payor	\$1.65

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CASE FINANCIAL INFORMATION

Last Payment Date: 07/29/2019

Total of Last Payment: -\$1.65

Hudson, Maurice Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees					
State Court Costs (Act 204 of 1976)	\$12.30	\$0.00	\$0.00	\$0.00	\$12.30
Commonwealth Cost - HB627 (Act 167 of 1992)	\$18.40	\$0.00	\$0.00	\$0.00	\$18.40
County Court Cost (Act 204 of 1976)	\$26.80	\$0.00	\$0.00	\$0.00	\$26.80
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
Judicial Computer Project	\$8.00	(\$8.00)	\$0.00	\$0.00	\$0.00
ATJ	\$2.00	(\$2.00)	\$0.00	\$0.00	\$0.00
DNA Detection Fund (Act 185-2004)	\$250.00	\$0.00	\$0.00	\$0.00	\$250.00
CQS Fee Felony (Philadelphia)	\$100.00	(\$5.69)	\$0.00	\$0.00	\$94.31
Costs of Prosecution - CJEA	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Civil Judgment/Lien (Philadelphia)	\$83.94	\$0.00	\$0.00	\$0.00	\$83.94
Motion Filing Fee (Philadelphia)	\$12.50	(\$12.50)	\$0.00	\$0.00	\$0.00
Filing Fee (Philadelphia)	\$12.50	(\$12.50)	\$0.00	\$0.00	\$0.00
OSP (Philadelphia/State) (Act 35 of 1991)	\$712.50	(\$44.62)	\$137.50	\$0.00	\$805.38
OSP (Philadelphia/State) (Act 35 of 1991)	\$712.50	(\$44.66)	\$137.50	\$0.00	\$805.34
Costs/Fees Totals:	\$2,076.44	(\$189.97)	\$275.00	\$0.00	\$2,161.47
Grand Totals:	\$2,076.44	(\$189.97)	\$275.00	\$0.00	\$2,161.47

** - Indicates assessment is subrogated

EXHIBIT “E”



FIRST JUDICIAL DISTRICT OF PA
COURT OF COMMON PLEAS
 TRIAL DIVISION CRIMINAL

CHARLES J. HOYT
 CHIEF PROBATION OFFICER

ADULT PROBATION AND PAROLE DEPARTMENT
 1401 ARCH STREET
 PHILADELPHIA, PA 19102
 PHONE: (215) 683-1281 FAX: (215) 683-1280
 WEB: <http://www.court.phila.gov>

GAGNON II SUMMARY

2/7/2019

TO: Honorable Brinkley, Genece E.		DOCKET: CP-51-CR-0009201-2009	
STATUS: CUSTODY	INMATE #: 1819531	LOCATION: DC	Warrant: <input type="checkbox"/>
ISSUE: <input type="checkbox"/>		LODGE: <input type="checkbox"/>	LIFT: <input type="checkbox"/>
PID: 972939	SID: 31317771	OFFENDER: HUDSON, MAURICE	DOB: 4/29/1990
OFFICER: Pavia-Martinez, Elba	PHONE: (215) 683-1212	TEAM: AS1	
START: 5/7/2018	END: 5/7/2019	SUPERVISOR: Poe-Dickens, Lisa	PHONE: (215) 683-1200

On 5/7/2018, the subject was sentenced to the following by The Honorable Brinkley, Genece E.

- 18-3701-A1ll - Robbery-Threat Immed Ser Injury
- 18-6106-A1 - Firearms Not To Be Carried W/O License
- 18-903-A1 - Criminal Conspiracy Engaging
- 18-907-A - Poss Instrument Of Crime W/int

to: **PROBATION REVOKED**
1 YEAR PROBATION.

Probation Start Date: 5/07/2018
 Probation End Date: 5/07/2019

- Conditions:
- To obtain a G.E.D.
 - To attend an educational institution or participate in a course of vocational training.
 - To seek employment.
 - To work at his or her employment.
 - Defendant eligible for work release
 - Court Cost/Fines Fees

Balance on Money owed: \$1,941.44 Paid: \$135.00

DIRECT VIOLATIONS

POTENTIAL DIRECT VIOLATIONS

OTHER JURISDICTION VIOLATIONS

DRUG TESTING RESULTS

EMPLOYMENT STATUS

AS OF 11/27/2017 - Unemployed -

SUPERVISION SUMMARY

On 08/07/2018, At the last status hearing , Mr. Hudson failed to appear and a bench warrant was issued. The Probation and Parole Department issued wanted cards.

On 12/10/2018, Mr. Hudson incurs a new arrest (MC51-00111242018) with lead charge retail theft. A detainer is lodged.

On 1/4/2019, Mr. Hudson open bill MC51-00111242018, was withdrawn.

Probation Officer notes that Mr. Hudson reported as scheduled to office visits and he was working with the Rise Program to get his GED. Mr Hudson has not provided verification of completing GED.

This summary was updated by Probation Officer Elba Pavia-Martinez on 02/07/2019.


RECOMMENDATION

At the courts discretion.

VIOLATION HISTORY

ORIGINAL SENTENCE	4/21/2010	TO BE CONFINED FOR A MIN TERM OF 2 YRS AND A MAX TERM OF 4 YRS, FOLLOWED BY 3 YRS REP PROB.
VOP SENTENCE	6/24/2015	11 & 1/2 to 23 months confinement. vop. court stipulates defendant to Hoffman, Hall, cred. time served from 4/22/15 to 6/24/15. seek maintain employment, complete job training, random testing for drug usage, obtain ged or provide proof of ged, pay manad

Reviewed and Approved by



Poe-Dickens, Lisa

2/7/2019 3:24:21 PM

TEAM: AS1

EMAIL: Lisa.Poe-Dickens@courts.phila.gov

PO EMAIL: elba.pavia-martinez@courts.phila.gov