

NO. 611 EDA 2019

---

IN THE SUPERIOR COURT OF PENNSYLVANIA  
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,  
*Appellee,*

V.

MAURICE HUDSON,  
*Appellant.*

---

**BRIEF FOR THE COMMONWEALTH AS APPELLEE**

---

Defense Appeal from the Judgment of Sentence Entered on February 12, 2019 by the Court of Common Pleas of Philadelphia County, Trial Division, Criminal Section, at Docket No. CP-51-CR-0009201-2009.

ANDREW J. GREER  
Assistant District Attorney  
NANCY WINKELMAN  
Supervisor, Law Division  
LAWRENCE J. GOODE  
Supervisor, Appeals Unit  
CAROLYN ENGEL TEMIN  
First Assistant District Attorney  
LAWRENCE S. KRASNER  
District Attorney of Philadelphia

Office of the Philadelphia District Attorney  
Three South Penn Square  
Philadelphia, PA 19107-3499  
(215) 686-5720  
*andrew.greer@phila.gov*

TABLE OF CONTENTS

	Page(s)
TABLE OF AUTHORITIES .....	ii
COUNTER-STATEMENT OF THE QUESTIONS INVOLVED .....	1
COUNTER-STATEMENT OF THE CASE .....	2
SUMMARY OF ARGUMENT .....	7
ARGUMENT .....	8
<b>I. THE VOP COURT’S INQUIRY INTO DEFENDANT’S ABILITY TO PAY WAS INADEQUATE, BUT THIS IS NOT DISPOSITIVE AS TO WHETHER HE VIOLATED HIS PROBATION. ....</b>	<b>8</b>
<b>II. THE LAW OSTENSIBLY CONFLICTS REGARDING THE LEGALITY OF REQUIRING THE PAYMENT OF COURT COSTS AS A CONDITION OF PROBATION. ....</b>	<b>11</b>
<b>III. THE VOP COURT ERRED BY REVOKING DEFENDANT’S PROBATION AND SENTENCING HIM TO TOTAL CONFINEMENT. ....</b>	<b>13</b>
CONCLUSION.....	18

**TABLE OF AUTHORITIES**

	Page(s)
CASES	
<u>Bearden v. Georgia</u> , 461 U.S. 600 (1983) .....	8, 9
<u>Commonwealth v. Ballard</u> , 814 A.2d 1242 (Pa. Super. 2003) .....	9
<u>Commonwealth v. Carver</u> , 923 A.2d 495 (Pa. Super. 2007) .....	14, 16, 17
<u>Commonwealth v. Dorsey</u> , 476 A.2d 1308 (Pa. Super. 1984) .....	9
<u>Commonwealth v. Eggers</u> , 742 A.2d 174 (Pa. Super. 1999) .....	9, 10
<u>Commonwealth v. Foster</u> , 214 A.3d 1240 (Pa. 2019).....	12
<u>Commonwealth v. Hernandez</u> , 917 A.2d 332 (Pa. Super. 2007) .....	13
<u>Commonwealth v. Leverette</u> , 911 A.2d 998 (Pa. Super. 2006) .....	11
<u>Commonwealth v. Mauk</u> , 185 A.3d 406 (Pa. Super. 2018) .....	9, 10, 16
<u>Commonwealth v. Mears</u> , 972 A.2d 1210 (Pa. Super. 2009) .....	11
<u>Commonwealth v. Milton-Bivins</u> , No. 1870 WDA 2017, No. 737 WDA 2018, 2019 WL 4390657 (Pa. Super. Sept. 13, 2019).....	10
<u>Commonwealth v. Reaves</u> , 923 A.2d 1119 (Pa. 2007).....	14, 15
<u>Commonwealth v. Rivera</u> , 95 A.3d 913 (Pa. Super. 2014) .....	12
<u>Commonwealth v. Smetana</u> , 191 A.3d 867 (Pa. Super. 2018) .....	13
<u>Commonwealth v. Wall</u> , 867 A.2d 578 (Pa. Super. 2005) .....	12
STATUTES/RULES	
42 Pa.C.S. § 9721 .....	12
42 Pa.C.S. § 9754.....	12, 13
42 Pa.C.S. § 9771.....	14
Pa.R.Crim.P. 706.....	1, 8, 9, 13

**COUNTER-STATEMENT OF THE QUESTIONS INVOLVED**

1. Did the lower court's inquiry into defendant's ability to pay court costs violate Pa.R.Crim.P. 706(A), where the court found defendant in technical violation of his probation for not obtaining a "paycheck job" and a GED as well as not paying costs?

(Answered in the negative by the court below.)

2. Did the lower court impose an illegal sentence by revoking defendant's probation, in part, for not paying court costs, where his probation was revoked, in other part, for not satisfying valid conditions of probation?

(Not answered by the court below.)

3. Did the lower court err by revoking defendant's probation and resentencing him to total confinement for not successfully completing the conditions of his one-year probation sentence, where the court found defendant in violation of probation after he had spent only 105 days not incarcerated and had made concrete steps toward satisfying the conditions of his probation when he was not incarcerated?

(Answered in the negative by the court below.)

## **COUNTER-STATEMENT OF THE CASE**

The Honorable Genece E. Brinkley found defendant in technical violation of his probation and resentenced him to one and one-half to three years of state imprisonment. On appeal, defendant claims that the lower court: (1) did not adequately consider his ability to pay court costs; (2) illegally revoked his probation for not paying court costs; and (3) erred by revoking his probation and sentencing him to total confinement. Because defendant's nonpayment of court costs was not the only technical violation of his probation, his first two claims are not dispositive as to whether the lower court was permitted to revoke his probation and impose a prison sentence. However, the Commonwealth agrees that the lower court erred by revoking defendant's probation and imposing a prison sentence because nonpayment of court costs is not a valid basis for probation revocation and it was virtually impossible for defendant to satisfy the other conditions of his probation within the time allotted.

### **Facts and Procedural History**

On April 21, 2010, defendant entered a negotiated guilty plea to two counts of robbery, and one count each of criminal conspiracy, carrying a firearm without a license, and possessing an instrument of crime. Pursuant to the plea agreement, the court sentenced defendant to two to four years of confinement, followed by three years of probation. Defendant was also ordered to attend job training, to obtain a

GED, to seek and maintain employment, and to pay mandatory court costs (totaling \$542.50 on the day of sentencing). (Sentencing Order, Brinkley, J., 4/21/10, 1–2; see N.T. 6/24/15, 2–3).

On June 25, 2015, defendant appeared for his first violation of probation (VOP) hearing. The court found defendant in technical violation for not reporting to his probation officer, not obtaining a GED, not completing job training, and not maintaining adequate employment. Defendant explained that he only recently began missing appointments because of child care scheduling conflicts. He was the primary caretaker of his daughters, whose mother worked full-time. Defendant's new probation officer did not allow him to bring his daughters to the meetings, and he struggled to find suitable child care. Moreover, he was working toward his GED, had completed the academic portion of his job training course at Job Corps, and was working, albeit under the table. Defendant testified about his struggle to find legal employment as a convicted felon. Although he had successfully maintained a job at TJMaxx for six months, he only did so by omitting his criminal record from his application. Defendant was fired once his employer discovered his prior conviction. The court revoked his probation and sentenced him to eleven and one-half to twenty-three months of county jail, followed by three years of probation with the same conditions. The court originally set repayment of costs at \$30.00 per month, but revised it to \$40.00 per month. (N.T. 6/24/15, 4–7, 9–12, 14–15, 18–20, 23).

On July 18, 2017, defendant appeared for a second VOP hearing. The court continued his probation and ordered him to comply with the conditions of his sentence. The court set repayment of costs at \$35.00 per month. (Sentencing Order, Brinkley, J., 7/18/17, 1).

On May 7, 2018, defendant appeared for a third VOP hearing. The court found defendant in technical violation for not maintaining adequate employment, not obtaining a GED, and not paying costs. However, defendant presented a letter from his employer to document his under-the-table employment and explained that he was attending GED classes three times per week. Moreover, he emphasized that his child support obligations in Delaware County had resulted in his incarceration for the outstanding debt and caused him to lose his previous job. The court revoked defendant's probation, sentenced him to one year of probation, and ordered him to obtain a GED, to seek and maintain employment with a "pay stub," and to pay costs (which, at this point, totaled \$1941.44). The court set repayment of costs at \$50.00 per month. (Sentencing Order, Brinkley, J., 5/7/18, 1; N.T. 5/7/18, 4-6, 8-11).

Defendant was scheduled to appear for a status hearing on August 7, 2018, at which he was supposed to provide a pay stub from a job and a letter from the Rise Program verifying his enrollment in a GED course. Defendant did not appear, and a bench warrant was issued. Unbeknownst to the court, however, defendant had been

incarcerated in Delaware County since June 12, 2018 for defaulting on his child support payments. (N.T. 5/7/18, 10–11; 2/12/19, 6).

On November 1, 2018, defendant was released from custody in Delaware County but did not immediately turn himself in on the open bench warrant. On December 10, 2018, he was arrested and charged with summary retail theft (MC-51-SU-0011124-2018).<sup>1</sup> Defendant was issued a citation. Rather than being released, however, he was held on a detainer until his next VOP hearing because of the open bench warrant. The Commonwealth withdrew the retail theft charge on January 4, 2019. (Gagnon II Summary, 2/7/19, 2; N.T. 2/12/19, 5–6).

On February 12, 2019, defendant appeared for a fourth VOP hearing. The court found him in technical violation for not obtaining a “job with a paycheck,” not obtaining a GED, and not paying costs. However, defendant’s probation officer’s latest report, which the court incorporated into the record by reference, stated that defendant had been reporting to the officer as scheduled and working toward his GED. Defendant explained that he continued to work part-time, under the table and attend GED classes until he was incarcerated in Delaware County for nearly four months. Moreover, he only needed to pass the Math section of the GED to graduate. He also submitted that he earned only \$600.00 per month from working and that his

---

<sup>1</sup> The police report shows that defendant was caught attempting to steal six bags of frozen shrimp from a local grocery store.



monthly child support obligations were \$350.00. Nevertheless, the court faulted defendant for not completing the conditions of his one-year probation term within the 105 days that he was not incarcerated either for not paying child support or on the detainer for missing his status hearing while in custody for not paying child support. The court also underscored defendant's shortcomings during his previous probation terms, recited his history of sporadic payments toward costs, and found that he purposely did not seek and maintain a "paycheck job" to prevent his wages being garnished to pay his child support debt. Accordingly, the court revoked defendant's probation and sentenced him to one and one-half to three years of state imprisonment. (Gagnon II Summary, 2/7/19, 2; N.T. 2/12/19, 6, 15–21).

Defendant filed a motion for reconsideration of sentence, which the lower court has not addressed. This appeal followed.

## SUMMARY OF ARGUMENT

The VOP court's inquiry into defendant's ability to pay was inadequate because the court failed to conduct a meaningful investigation into defendant's finances and debts. Even so, nonpayment of costs was not the sole basis for revoking defendant's probation: the VOP court also found defendant in violation for not obtaining a "paycheck job" or a GED. Accordingly, the adequacy of the VOP court's ability-to-pay inquiry is not dispositive as to whether the court was permitted to revoke his probation and sentence him to total confinement.

Similarly, while the law is not clear as to whether the payment of court costs is a valid condition of probation, this Court need not reach the issue because defendant's probation was not revoked solely because of nonpayment.

The Commonwealth does, however, agree that the VOP court erred by revoking defendant's probation and sentencing him to total confinement. The VOP court found defendant in technical violation for not completing all of the conditions of his one-year probation term despite the fact that he had been incarcerated for nearly half of that year. Consequently, the VOP court lacked the evidence necessary to determine whether defendant had been rehabilitated, and a sentence of total confinement was not justified. Accordingly, the Commonwealth does not oppose this Court vacating defendant's judgment of sentence.

## ARGUMENT

### **I. THE VOP COURT'S INQUIRY INTO DEFENDANT'S ABILITY TO PAY WAS INADEQUATE, BUT THIS IS NOT DISPOSITIVE AS TO WHETHER HE VIOLATED HIS PROBATION.**

Defendant claims that the VOP court violated Pa.R.Crim.P. 706(A) by finding him in technical violation of his probation and sentencing him to total confinement without adequately inquiring into his ability to pay costs. (Brief for Appellant, 13). The Commonwealth agrees that the VOP court's inquiry was insufficient to support its conclusion that defendant willfully avoided gaining the means to pay costs. Yet, nonpayment of costs was not the only basis for revoking defendant's probation. The VOP court also found defendant in technical violation for not obtaining a "paycheck job" and a GED. Therefore, because these additional violations could have potentially justified the VOP court's probation revocation, the inadequacy of the VOP court's ability-to-pay inquiry is not dispositive as to whether the VOP court was permitted to revoke defendant's probation and impose a prison sentence.

The United States Supreme Court has held that a VOP court "must inquire into the reasons" for a probationer's nonpayment before revoking probation for not paying "a fine or restitution." Bearden v. Georgia, 461 U.S. 600, 672 (1983). Only if the probationer "willfully refused to pay or failed to make sufficient *bona fide* efforts legally to acquire the resources to pay" may the VOP court revoke probation

and impose a sentence of total confinement. Id. Otherwise, the VOP court must consider a punishment other than imprisonment. Id.

This Court has interpreted Bearden to require that, before revoking probation for nonpayment of fines, restitution, or costs, a VOP court must: (1) “inquire into the reasons” for a probationer’s nonpayment; and (2) make “findings pertaining to the willfulness” of the probationer’s nonpayment. Commonwealth v. Dorsey, 476 A.2d 1308, 1312 (Pa. Super. 1984); see also Pa.R.Crim.P. 706(A) (“A court shall not commit the defendant to prison for failure to pay a fine or costs unless it appears after a hearing that the defendant is financially able to pay the fine or costs.”). Since then, this Court has consistently applied the Dorsey interpretation of Bearden in evaluating the validity of revocation proceedings. See, e.g., Commonwealth v. Ballard, 814 A.2d 1242, 1247 (Pa. Super. 2003); Commonwealth v. Eggers, 742 A.2d 174, 175–76 (Pa. Super. 1999). However, the VOP courts in each of these cases conducted no inquiry and made no factual findings. See Ballard, 814 A.2d at 1247; Eggers, 742 A.2d at 176; Dorsey, 476 A.2d at 1312. Consequently, other than the bare requirement that a VOP court conduct *some* inquiry and make *some* factual findings, the *adequacy* of such a proceeding remained undefined.

Recently, however, this Court explained that there must be an examination of “the totality of the defendant’s life circumstances” before determining whether nonpayment of costs and fines is willful. Commonwealth v. Mauk, 185 A.3d 406,

411 (Pa. Super. 2018) (applying the holding in Bearden to a contempt proceeding); see also Commonwealth v. Milton-Bivins, No. 1870 WDA 2017, No. 737 WDA 2018, 2019 WL 4390657, at \*4 (Pa. Super. Sept. 13, 2019) (holding that the VOP courts did not conduct “an *adequate* hearing into [the probationer’s] ability to pay restitution” despite “some discussion” regarding her finances (emphasis added)).

Here, defendant submitted that he earned \$600.00 per month, but owed \$350.00 per month in child support. The VOP court concluded that defendant willfully chose “to work minimally ‘under the table’ so that he could avoid paying child support” through wage garnishment. (Opinion, Brinkley, J., 6/27/19, 8). This single inquiry into defendant’s high debt-to-income ratio and finding of purposely inadequate employment was the sum and substance of the VOP court’s review of defendant’s circumstances. The Commonwealth agrees that this inquiry failed to consider “the totality of [] defendant’s life circumstances” and was therefore legally inadequate to justify revoking probation and imposing a prison sentence solely on the basis of nonpayment of costs. Mauk, 185 A.3d at 411; see Eggers, 742 A.2d at 176 (holding that there was “no judicial inquiry” into defendant’s ability to pay where “the only evidence [of] ability to pay presented at the hearing was the fact that for some time during per probationary period, [the defendant] held a part-time job . . . and had recently started a new job”).

However, the VOP court found defendant in technical violation of conditions of his probation in addition to the nonpayment of costs. Accordingly, the inadequacy of the VOP court's ability-to-pay inquiry does not, by itself, determine the propriety of defendant's probation revocation and sentencing.

## **II. THE LAW OSTENSIBLY CONFLICTS REGARDING THE LEGALITY OF REQUIRING THE PAYMENT OF COURT COSTS AS A CONDITION OF PROBATION.**

Defendant also claims that the VOP court imposed an illegal sentence by revoking his probation and sentencing him to total confinement because costs are not a valid condition of probation. (Brief for Appellant, 20).<sup>2</sup> As discussed below, the law ostensibly conflicts between: (1) treating payment of costs as a condition of probation as illegal; and (2) allowing probation to be revoked and a prison sentence to be imposed for the willful nonpayment of costs. Again, the VOP court revoked defendant's probation for technical violations other than his nonpayment of costs. Accordingly, the legality of including payment of costs as a condition of probation is not dispositive of the legality of defendant's probation revocation.

A sentence is illegal if "no statutory authorization exists" to support it. Commonwealth v. Leverette, 911 A.2d 998, 1001 (Pa. Super. 2006). Fines and costs are legally distinguishable: fines are punishment because they are direct

---

<sup>2</sup> Although defendant did not raise this issue in his Rule 1925(b) Statement, "[c]hallenges to an illegal sentence cannot be waived." Commonwealth v. Mears, 972 A.2d 1210, 1211 (Pa. Super. 2009).

consequences of a criminal conviction; costs are not because they are “akin to collateral consequences.” Commonwealth v. Wall, 867 A.2d 578, 582 (Pa. Super. 2005). Accordingly, “[c]osts are not part of [a] sentence.” Commonwealth v. Rivera, 95 A.3d 913, 917 (Pa. Super. 2014).

The specific conditions of probation that a court may impose are authorized by 42 Pa.C.S. § 9754(c). Our Supreme Court recently held that a VOP court may find a probationer to be in violation of probation only if he “has violated one of the ‘specific conditions’ of probation included in the probation order.” Commonwealth v. Foster, 214 A.3d 1240, 1250 (Pa. 2019). It elaborated that the “specific conditions” listed in the probation order must derive from those “enumerated in Section 9754(c).” Id. In Rivera, this Court held that the imposition of a specific cost as a condition of probation was not authorized under either Section 9754(c)(11), permitting the payment of fines, or Section 9754(c)(13), permitting “any other conditions reasonably related to the rehabilitation of the defendant.” Rivera, 95 A.3d at 916–17. Read together, Foster and Rivera suggest that costs cannot be imposed as a condition of probation, and, consequently, that probation cannot be revoked for nonpayment of costs. But cf. 42 Pa.C.S. § 9721(c.1) (directing sentencing courts to “order the defendant to pay costs”).

This interpretation, however, conflicts with the developed body of case law that allows a VOP court to revoke probation and sentence a probationer to total

confinement if the court follows the requirements of Rule 706. See, e.g., Commonwealth v. Smetana, 191 A.3d 867, 872–73 (Pa. Super. 2018) (evaluating the validity of a probation revocation for nonpayment of costs under Rule 706); Commonwealth v. Hernandez, 917 A.2d 332, 336 (Pa. Super. 2007) (holding that the statute directing defendants to pay the costs of prosecution was constitutional because Rule 706 “is an adequate procedural tool” to ensure “that an indigent will be afforded an opportunity to prove his financial ability to pay the costs of prosecution before being sentenced to prison”).

Here, however, the VOP court found defendant in technical violation for not making payments toward costs *and* for not obtaining a “job with a paycheck” and a GED. These latter two conditions are authorized by Section 9754. See 42 Pa.C.S. § 9754(c)(2), (4). Therefore, the legality of costs as a condition of probation does not, by itself, determine the propriety of defendant’s probation revocation.

### **III. THE VOP COURT ERRED BY REVOKING DEFENDANT’S PROBATION AND SENTENCING HIM TO TOTAL CONFINEMENT.**

Defendant finally claims that the VOP court erred by revoking his probation for technical violations and sentencing him to total confinement because the violations were not willful and the sentence was not essential to vindicate the authority of the court. (Brief for Appellant, 27–28). The Commonwealth agrees. Although the VOP court had sentenced defendant to a one-year term of probation to



obtain a “paycheck job,” obtain a GED, and pay costs, defendant only spent 105 days of that term not incarcerated before the VOP court revoked his probation. Moreover, the evidence was sufficient to show that defendant had made meaningful steps toward completing his probation conditions before those efforts were impeded by his detention in Delaware County for not paying child support. For these reasons, the Commonwealth does not oppose vacating defendant’s judgment of sentence.

Although a VOP court may revoke probation and impose a sentence of total confinement for technical violations, the violations must be “flagrant and indicate an inability to reform.” Commonwealth v. Carver, 923 A.2d 495, 498 (Pa. Super. 2007). Moreover, “revocation is not automatic[; r]ather, the focus must remain on whether probation can still be an effective tool for rehabilitation.” Id.

A VOP court “shall not impose a sentence of total confinement after probation revocation” unless: (1) the probationer “has been convicted of another crime;” (2) the probationer’s conduct indicates that he is likely to commit another crime; or (3) the sentence is “essential to vindicate the authority of the court.” 42 Pa.C.S. § 9771(c). However, “the length of incarceration[] rests peculiarly within the discretion of the VOP [court].” Commonwealth v. Reaves, 923 A.2d 1119, 1131 n.12 (Pa. 2007).

Here, on May 7, 2018, the VOP court revoked defendant’s probation and imposed a new probation term of one year “so [defendant] could have another chance

to work on his rehabilitation.” (Opinion, Brinkley, J., 6/27/19, 12). Defendant only served 66 days of that one-year probation term before he was incarcerated in Delaware County for not paying child support. (N.T. 2/12/19, 6). Defendant’s probation officer’s report stated that he had been reporting to the probation office as scheduled and was working toward his GED until his abrupt detention. (Gagnon II Summary, 2/7/19, 2, incorporated into the record by reference at N.T. 2/12/19, 6). Defendant explained that he worked part-time, under the table and attended GED classes until he was incarcerated and that he only needed to pass the Math section of the test to receive his GED. (N.T. 2/12/19, 21).

Defendant remained incarcerated on his child support debt until November 1, 2018, deducting a total of 112 days from the 365 that he was allotted to satisfy the conditions of his probation. (Id. at 6). By this time, he had an open bench warrant for not appearing at a status hearing that occurred while he was incarcerated on child support debt. (Id.). Accordingly, defendant was once again detained, this time on the bench warrant, merely 39 days after his release from custody in Delaware County. (Id.). When he was not incarcerated, defendant maintained an under-the-table job as a custodian, although he had not yet found a “paycheck job.” (Id. at 8–9, 18). Unsatisfied with defendant’s inability to maintain a “paycheck job” or obtain his GED, the VOP court revoked his one-year probation sentence after he had spent only 105 days of the allotted year serving probation and not incarcerated. (Id. at 18).

Defendant's failure to obtain a GED and a "paycheck job" during his 105 non-sequential days of probation supervision were not "flagrant" technical violations nor did they "indicate an inability to reform." Carver, 923 A.2d at 498; cf. Mauk, 185 A.3d at 411 (explaining that "impossibility of performance of the court-ordered act is an absolute defense" in contempt proceedings because there is an intent-to-defy requirement). On average, a GED takes three months to obtain. See How Do I Get My GED and How Long Does it Take?, GED Testing Service, LLC, (Sept. 3, 2019), <https://ged.com/blog/how-do-i-get-my-ged-and-how-long-does-it-take/>; (see also N.T. 2/12/19, 21 ("It's not like I can just get my GED. I have to be ready for that, Your Honor.")). Additionally, as defendant had already explained at his first VOP hearing, he had had difficulty maintaining a "paycheck job" as a convicted felon and was fired from TJMaxx after the employer learned of his criminal history. (N.T. 6/24/15, 11-12).

At the VOP hearing, defendant attempted to explain his steps toward rehabilitation and the impediments he faced during the one-year probation term that he was currently serving. (N.T. 2/12/19, 20-21). The court interrupted and said, "I can appreciate that your mind wants you to focus on what just happened in the last year, but this is a pattern . . . since you were sentenced at the very beginning." (Id. at 23). The VOP court then recited defendant's history of technical violations and nonpayment of costs that predated the probation sentence he was serving at the time.

(Id. at 23–24). The VOP court’s focus on this earlier conduct was not relevant to show that defendant’s conduct while serving the current probation sentence amounted to flagrant violations or indicated an inability to reform. Cf. Carver, 923 A.2d at 497 (“It . . . is inappropriate to consider the [probationer’s] conduct prior to imposition of the probationary term because the efficacy of probation has not yet been tested when that behavior occurred.”).

The VOP court explained that it had sentenced defendant to “one year [of] probation was because [it] wanted to see if he would just get himself together *in the one year.*” (N.T. 2/12/19, 15) (emphasis added). Nevertheless, the court revoked his probation after he had had only 105 days to achieve the goals it had set. The Commonwealth agrees with the VOP court’s May 2018 imposition of a one-year probation term. But because probation was revoked after less than one-third of that time, revocation of probation was improper.

**CONCLUSION**

For the foregoing reasons, the Commonwealth does not oppose vacating defendant's judgment of sentence.

Respectfully submitted,

*/s/ Andrew J. Greer*

ANDREW J. GREER

Assistant District Attorney

NANCY WINKELMAN

Supervisor, Law Division

LAWRENCE J. GOODE

Supervisor, Appeals Unit

CAROLYN ENGEL TEMIN

First Assistant District Attorney

LAWRENCE S. KRASNER

District Attorney of Philadelphia