

**[J-10-2021] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 50 MAP 2020
	:	
Appellee	:	Appeal from the Order of Superior
	:	Court at No. 48 EDA 2019 dated
v.	:	March 27, 2020 Affirming the
	:	Judgment of Sentence dated
	:	December 3, 2018 of the
	:	Montgomery County Court of
JOSEPH MCCABE,	:	Common Pleas, Criminal Division, at
	:	No. CP-46-CR-2684-2016.
Appellant	:	
	:	ARGUED: March 10, 2021

CONCURRING OPINION

JUSTICE WECHT

DECIDED: December 22, 2021

I join the Court’s opinion in full. I write separately to distinguish this case from our recent decision in *Commonwealth v. Cochran*, 244 A.3d 413 (Pa. 2021).

Among his claims, Joseph McCabe asserts that the trial court’s restitution order is illegal because it was enforced prior to sentencing and without statutory authority. Section 1106 of the Crimes Code authorizes the imposition of restitution as a direct sentence for theft by unlawful taking, the offense to which McCabe pleaded guilty.¹ Notwithstanding a provision of the statute that requires a sentencing court to specify the amount and method of restitution “[a]t the time of sentencing,” 18 Pa.C.S. § 1106(c)(2), this Court observed in *Cochran* that “nothing in the Rules of Criminal Procedure or the

¹ See generally 18 Pa.C.S. § 1106(a)(1) (“Upon conviction for any crime wherein: (1) property of a victim has been stolen, converted or otherwise unlawfully obtained, . . . the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.”); see also 42 Pa.C.S. § 9721(c) (“[T]he court shall order the defendant to compensate the victim of his criminal behavior for the damage or injury that he sustained.”).

Judicial Code . . . precludes a sentencing court from conducting a sentencing proceeding over multiple days as the needs of the parties . . . may necessitate.” 244 A.3d at 420-21. Although I disagreed with the Court’s decision in that case for jurisdictional reasons specifically occasioned by the lengthy delay in ordering restitution, I granted that a trial court had the power to resolve restitution issues in bifurcated proceedings *ahead of* sentencing. See *id.* at 425 (Wecht, J., dissenting).

In *Cochran*, the trial court accepted Cochran’s guilty plea and agreed to hold a separate hearing to resolve disputes over the ownership of a few items that had been included in the roughly \$65,000 in restitution agreed to by Cochran and the Commonwealth. Instead of imposing that \$65,000 amount as a *bona fide* placeholder, or deferring sentencing altogether pending the restitution hearing, “the trial court inexplicably imposed a sentence of prison time and court costs with no concomitant restitution order.” *Id.* at 423 (Wecht, J., dissenting). While a majority of this Court agreed that bifurcation was permissible under the circumstances, see *id.* at 421-22 (Saylor, C.J., concurring), I dissented on the grounds that Section 1106, in conjunction with longstanding rules governing the jurisdiction of our trial courts, plainly forbade imposing restitution more than a month *after* a defendant had been sentenced. *Id.* at 425 (Wecht, J., dissenting). Central to my view was the fact that the trial court had chosen to enter its judgment of sentence instead of holding it in abeyance pending the requested restitution hearing. In doing so, the court triggered the thirty-day period within which Cochran could seek reconsideration of the court’s sentencing order or appeal it under 42 Pa.C.S. § 5505 and Pa.R.A.P. 903(a), respectively.² Because the trial court imposed restitution *two months*

² See 42 Pa.C.S. § 5505 (“Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.”); Pa.R.A.P. 903(a) (“**General rule.** Except as otherwise prescribed by this rule, the notice of appeal required by Rule 902 (manner of

after sentencing—manifestly beyond that thirty-day window—I observed that it had lost jurisdiction of the case by operation of law and thus acted *ultra vires*. *Cochran*, 244 A.3d at 423.

McCabe’s case readily is distinguishable, for two critical reasons. First, in significant contrast with *Cochran*, the trial court in this case did not act *ultra vires* when it held a restitution hearing and ordered McCabe to compensate the victim for the gold coins that McCabe stole. As a threshold matter, our Rules of Criminal Procedure permit trial courts to delay sentencing beyond ninety days of the entry of a guilty plea “for good cause shown.” Pa.R.Crim.P. 704(A)(1)-(2). Here, the trial court had good cause to decouple the restitution and probationary components of McCabe’s sentence so that he could participate in the Veterans Treatment Court (“VTC”), a “specialized court-supervised treatment” program available to qualifying veterans. *Maj. Op.* at 12. The court accepted McCabe’s open guilty plea and admitted him into the program on April 24, 2017. It then scheduled a hearing for August 14, 2017, to take evidence for the purpose of determining the amount and method of payment. Ultimately, on January 2, 2018, the court ordered McCabe to pay \$34,857.24 in restitution and established a monthly payment plan that McCabe was to follow throughout his time in the program.³ Because the court deferred sentencing pending McCabe’s participation in the program, it retained jurisdiction of the case when it issued the restitution order.

Second, McCabe consented to the unique, bifurcated restitution procedure as the price of his admission to the VTC program. Acceptance into the program is expressly

taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.”).

³ As the Majority correctly notes, McCabe conceded that restitution was mandatory, and he did not challenge the timing of the hearing when he sought reconsideration of the coins’ valuation. See *Maj. Op.* at 3 n.5.

conditioned upon a promise to pay restitution. See Montgomery County VTC Policy & Procedure Manual at 8 (providing, among other conditions of compliance, that “Veterans will be required to . . . [p]ay all applicable restitution in full”).⁴ In exchange for his agreement to fully compensate his victim, McCabe received a benefit upon his acceptance into the program in the form of specialized treatment unavailable to most offenders. But although he was current with his monthly payments, McCabe would not have paid off the entire amount by the time he completed the program on December 7, 2018. In light of those circumstances, when it sentenced McCabe to two years’ probation on December 3 of that year, the trial court explained that the restitution order would remain in effect until it was paid in full. McCabe cannot now claim that the court lacked the authority to order restitution simply because he was unsatisfied with the consequences that awaited him when the program ended.⁵ Nor may McCabe shirk his responsibility to keep up his end of the bargain.

⁴ The VTC Manual is available at <https://www.montcopa.org/DocumentCenter/View/740/Veterans-Treatment-Court-Policy-and-Procedure-Manual?bidId=> (last visited Nov. 4, 2021).

⁵ See Maj. Op. at 13 (“There is no guarantee or entitlement to dismissal of the charges upon completion of the program.”).