

**IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 470 EDA 2021

COMMONWEALTH OF PENNSYLVANIA,
Appellee,

v.

DAVEL CARR,
Appellant.

APPEAL FROM THE JUDGMENT OF SENTENCE ENTERED JANUARY 25,
2021, IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,
CRIMINAL TRIAL DIVISION, AT CP-51-CR-0007068-2019

BRIEF FOR APPELLANT

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I. STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction pursuant to 42 Pa.C.S. § 742 (exclusive appellate jurisdiction in the Superior Court of Pennsylvania from final orders of the Court of Common Pleas) and PA.R.A.P. 341(a) (appeals as of right from a lower court's final orders).

II. ORDER IN QUESTION

The January 25, 2021 order of the Court of Common Pleas, First Judicial District of Pennsylvania, Criminal Trial Division, at Docket Number CP-51-CR-0007068-2019, is the subject of this appeal. Appendix A. The Honorable Barbara A. McDermott's order reads as follows:

ORDER OF SENTENCE

AND NOW, this 25th day of January, 2021, the defendant having been SENTENCED in the above-captioned case is hereby sentenced by this Court as follows:

Count 1 - 18 § 2702 §§ A - Aggravated Assault (F1)

To be confined for a minimum period of 3 Year(s) and a maximum period of 6 Year(s) at State Correctional Institution.

The following conditions are imposed:

Credit for time served: Credit to be calculated by the Phila. Prison System

Mandatory Court Costs - Court Costs: Defendant is to pay imposed mandatory court costs.

Other: Defendant to pay Restitution in the amount of \$3,010.00.

This sentence shall commence on 01/25/2021.

Count 4 - 75 § 3742 §§ A - Accidents Involving Death Or Personal Injury (F3)

To be confined for a minimum period of Year(s) and a maximum period of 2 Year(s) at State Correctional Institution.

This sentence shall commence on 01/25/2021.

Appendix A.

Thus, the sentencing court imposed an aggregate sentence of three to six years of imprisonment, plus a restitution award of \$3,010. *Id.*

III. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

The sentencing court restitution erred and abused its discretion in imposing \$3,010 in restitution. This “challenge to the amount of restitution and the evidence supporting it is a challenge to the sentencing court’s exercise of discretion” *Commonwealth v. Weir*, 239 A.3d 25, 38 (Pa. 2020). “Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion.” *Commonwealth v. Raven*, 97 A.3d 1244, 1253 (Pa. Super. Ct. 2014).

IV. QUESTIONS PRESENTED FOR REVIEW

A. Should this Court quash Mr. Carr's appeal as untimely?

(Answered in the negative by Mr. Carr.)

B. Did the lower court err and abuse its discretion when it ordered \$3,010 in restitution, where:

i. Mr. Carr's right to procedural due process was violated because there was no notice of the amount of the restitution?

(Not answered by the lower court.)

ii. The restitution award was speculative and not supported by sufficient evidence?

(Not answered by the lower court.)

V. STATEMENT OF THE CASE

A. Procedural History

On November 4, 2020, Mr. Carr entered a non-negotiated guilty plea to aggravated assault¹ and accidents involving death or injury². On January 25, 2021, the lower court imposed a sentence of three to six years of imprisonment, plus \$3,010 in restitution. (Notes of Testimony (“N.T.”), 1/25/21, at 67.)

Sentencing counsel filed a post-sentence motion for reconsideration. On February 8, 2021, the lower court denied the motion. Three days later, the court appointed the below-signed counsel for appellate purposes. Order Appointing Counsel, *Commonwealth v. Carr*, CP-51-CR-0007068-2019. The order stated, “Matthew F. Sullivan, Esq. is hereby appointed as appellate counsel . . . for the purposes of filing a Direct Appeal with the Superior Court of Pennsylvania no later than March 10, 2021. . . .” *Id.* Counsel filed Mr. Carr’s notice of appeal on March 1, 2021.

On April 7, 2021, this Court issued a rule to show cause why Mr. Carr’s appeal should not be quashed as untimely. Counsel filed a response on the same date, and on June 25, 2021, the Court per curiam ordered the issue be referred to the merits panel.

¹ 18 Pa.C.S. § 2702.

² 75 Pa.C.S. § 3742.1.

The lower court did not order Mr. Carr to file a statement of errors. The court filed its Opinion on September 22, 2021. Appendix B.

B. Factual History

Mr. Carr pleaded guilty to the following facts:

On May 16, 2019, at 3:30 p.m., [Mr. Carr] was driving his vehicle in a school zone . . . when he struck thirteen-year old D.B.T., who was crossing the street with his friends. A teacher from the school witnessed the collision and told [Mr. Carr] to pull over. Instead, [Mr. Carr] drove away, leaving D.B.T. bleeding on ground, and suffering from a broken ankle. The teacher recognized [Mr. Carr], having known him for fifteen years, and informed police officers of his identity when they arrived on the scene.

Security cameras from the school captured the collision. Upon reviewing the footage and taking the teacher's statement, police officers located the car at the address to which it was registered. Upon arriving at the address, police officers observed damage to the front of the car parked nearby and arrested [Mr. Carr].

Id. at 2 (citations omitted). Sentencing counsel stipulated to receiving the victim's medical records, which showed he received treatment at a hospital for a fractured ankle. (N.T., 11/2/20, at 22.)

VI. SUMMARY OF THE ARGUMENT

A. This Court should not quash Mr. Carr's appeal as untimely because a breakdown in the lower court's administrative processes caused the notice of appeal's untimeliness. *See Commonwealth v. Patterson*, 940 A.2d 493, 498 (Pa. Super Ct. 2007) (holding that this Court may grant relief in the case of a breakdown in the processes of the lower court).

B. This Court should remand the case. The order of restitution violated Mr. Carr's right to procedural due process. Before the sentencing hearing, he did not have notice of the amount of restitution that the Commonwealth sought. Furthermore, the lower court imposed a speculative restitution award, not supported by sufficient evidence.

VII. CONCISE STATEMENT OF THE REASONS RELIED ON FOR ALLOWANCE OF APPEAL PURSUANT TO PA.R.A.P. 2119(f)

Mr. Carr challenges the amount of restitution set by the sentencing court. The award violated his right to procedural due process because he did not receive notice of the amount of restitution claimed. Furthermore, the award was speculative and not supported by sufficient evidence.

VIII. ARGUMENT

A. This Court should not quash Mr. Carr's appeal as untimely.

A breakdown in the lower court's administrative processes caused the notice of appeal to be untimely. Therefore, the Court should not quash this appeal.

“If the defendant does not file a timely post-sentence motion, the defendant's notice of appeal shall be filed within 30 days of imposition of sentence, except as provided in paragraph (A)(4).” Pa. R. Crim. P. 720(A)(3). Generally, an appellate court cannot extend the time for filing an appeal. *Commonwealth v. Braykovich*, 664 A.2d 133, 136 (Pa. Super. 1995), citing Pa.R.A.P. 105(b); *Commonwealth v. Smith*, 501 A.2d 273, 275 (Pa. Super. 1985) (“A court may not enlarge the time for filing a notice of appeal as a matter of grace or indulgence.”). “Nonetheless, this general rule does not affect the power of the courts to grant relief in the case of fraud or breakdown in the processes of the court.” *Patterson*, 940 A.2d at 498.

Here, Mr. Carr was sentenced on January 25, 2021. Sentencing counsel filed a post-sentence motion for reconsideration on February 5, 2021. The motion was untimely because counsel filed it eleven days after the lower court sentenced Mr. Carr. *See* Pa. R. Crim. P. 720 (“[A] written post-sentence motion shall be filed no later than 10 days after imposition of sentence.”).

Nevertheless, on February 8, 2021, the sentencing court issued an order denying the motion. Three days later, the court appointed the below-signed counsel

for appellate purposes. Order Appointing Counsel, *Carr*, CP-51-CR-0007068-2019. The order stated, “Matthew F. Sullivan, Esq. is hereby appointed as appellate counsel . . . for the purposes of filing a Direct Appeal . . . no later than March 10, 2021.” *Id.* Counsel filed Mr. Carr’s notice of appeal on March 1, 2021.

But though the sentencing court appointed the below-signed counsel on February 8, 2021, the First Judicial District’s Court Appointments office did not transmit the Appointment Letter to counsel until February 26, 2021 – thirty-two days after the lower court imposed its sentence. Appendix C. As a result, counsel could not have timely filed a notice of appeal because he did not timely receive an appointment. *See* Pa. R. Crim. P. 720(A)(3) (“If the defendant does not file a timely post-sentence motion, the defendant’s notice of appeal shall be filed within 30 days of imposition of sentence, except as provided in paragraph (A)(4).”).

Thus, a breakdown in the lower court’s administrative processes caused the untimely filing of Mr. Carr’s notice of appeal. Accordingly, this court should not quash the appeal.

B. The sentencing court erred and abused its discretion when it ordered \$3,010 in restitution.

This Court should remand the case. Before the sentencing hearing, Mr. Carr did not have notice of the amount of restitution that the Commonwealth sought. Moreover, the sentencing court imposed a speculative restitution award, not supported by sufficient evidence.

These issues implicate the discretionary aspects of Mr. Carr's sentence. *See Weir*, 239 A.3d at 38 (“As Appellant’s claim concerns the amount of restitution ordered, rather than the propriety of restitution, his claim implicates the discretionary aspects of his sentence.”). Accordingly, Mr. Carr does not have an automatic right to appeal the claims. *See* 42 Pa.C.S. § 9781(b). Instead, he must petition this Court for permission to appeal the discretionary aspects of his sentence. *Id.*

As this Court has explained:

To reach the merits of a discretionary sentencing issue, we conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, Pa.R.A.P. 902, 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, Pa.R.Crim.P. [708]; (3) whether appellant’s brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 [Pa.C.S.A.] § 9781(b).

Commonwealth v. Cook, 941 A.2d 7, 11 (Pa. Super. Ct. 2007).

Mr. Carr satisfies each prong of the above analysis. First, as explained above, the Court should excuse Mr. Carr’s untimely notice of appeal. Second, he preserved the issues at sentencing when he objected to the amount of restitution. After the witness testified about the amount of restitution, sentencing counsel stated, “As to the restitution, if the forms are supplied, we have no objection to restitution. I haven’t seen any of the bills for the \$3,000, but if they’re there, they’re there and we’ll pay it.” (N.T., 1/25/21, at 61.) Third, this brief contains a statement of reasons relied

upon for his challenge to the discretionary aspects of his sentence as required by PA.R.A.P. 2119(f). Finally, Mr. Carr’s “challenge to the amount of restitution set by the [sentencing] court presents a substantial question.” *Commonwealth v. Solomon*, 247 A.3d 1163, 1167 (Pa. Super. Ct. 2021). Therefore, this Court should address the claim’s merits.

To earn relief, Mr. Carr must demonstrate that the sentencing court abused its discretion. *See id.* A court abuses its discretion if it orders speculative or excessive restitution or the record does not support the restitution award. *Weir*, 239 A.3d 25 at 38 (citation omitted).

Section 1106 of the Crimes Code governs restitution:

(a) General rule.--Upon conviction for any crime wherein:

* * *

(2) the victim, if an individual, suffered personal injury directly resulting from the crime,

the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

* * *

(c) Mandatory restitution.—

(1) The court shall order full restitution:

(i) Regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss.

* * *

(2) At the time of sentencing the court shall specify the amount and method of restitution. In

determining the amount and method of restitution, the court:

(i) Shall consider the extent of injury suffered by the victim, the victim's request for restitution as presented to the district attorney in accordance with paragraph (4) and such other matters as it deems appropriate.

(ii) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just.

(iii) Shall not order incarceration of a defendant for failure to pay restitution if the failure results from the offender's inability to pay.

(iv) Shall consider any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title.

(3) The court may, at any time or upon the recommendation of the district attorney that is based on information received from the victim and the probation section of the county or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution, alter or amend any order of restitution made pursuant to paragraph (2), provided, however, that the court states its reasons and conclusions as a matter of record for any change or amendment to any previous order.

(4) (i) It shall be the responsibility of the district attorneys of the respective counties to make a recommendation to the court at or prior to the time of sentencing as to the amount of restitution to be ordered. This recommendation shall be based upon information solicited by the district attorney and received from the victim.

(ii) Where the district attorney has solicited information from the victims as provided in subparagraph (i) and has received no response, the district attorney shall, based on other available information, make a recommendation to the court for restitution.

18 Pa.C.S. § 1106. The legislature did not provide definitions for the terms “full restitution,” “fullest compensation,” or “extent of injury,” or otherwise provide more guidance to the courts to direct a sentencing court’s calculation of a restitution amount. *Solomon*, 247 A.3d at 1169.

As our Supreme Court recently observed, “[t]here is nothing within [the restitution statute] that remotely relates to the quantity or quality of the evidence necessary to establish the amount of the victim’s loss.” *Weir*, 239 A.3d at 38. Instead, the statute provides that “[i]n determining the amount and method of restitution, the court: (i) Shall consider the extent of injury suffered by the victim, the victim’s request for restitution as presented to the district attorney . . . and such other matters as it deems appropriate.” 18 Pa.C.S. § 1106(c)(2). Then, the court must order restitution “to provide the victim with the fullest compensation for the loss.” 18 Pa.C.S. § 1106(c)(1)(i).

Despite this broad mandate, “there are limits to a sentencing court’s discretion in determining a restitution amount.” *Solomon*, 247 A.3d at 1170. “[T]he amount ordered must be supported by the record; it may not be speculative or excessive.”

Commonwealth v. Pappas, 845 A.2d 829, 842 (Pa. Super. Ct. 2004).³ “Although it is mandatory under section 1106(c) to award full restitution, it is still necessary that the amount of the ‘full restitution’ be determined under the adversarial system with considerations of due process.” *Commonwealth v. Ortiz*, 854 A.2d 1280, 1282 (Pa. Super. Ct. 2004).

i. The restitution award violated Mr. Carr’s right to due process.

The sentencing court’s restitution order violated Mr. Carr’s procedural due process right because he did not have notice of the amount of restitution claimed. As a result, he could not defend against the requested restitution amount.

Concerning procedural due process, the Commonwealth

is prohibited from depriving individuals of life, liberty, or property, unless it provides the process that is due. While not capable of an exact definition, the basic elements of procedural due process are adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case.

Commonwealth v. Turner, 80 A.3d 754, 764 (Pa. 2013). When it evaluates a due process claim, the Court first questions whether “there is a life, liberty, or property interest at issue, and, if so, whether the procedures attendant to that deprivation were constitutionally sufficient.” *Id.* Mr. Carr answers that question in the affirmative

³ See also *Commonwealth v. Pleger*, 934 A.2d 715, 720 (Pa. Super. Ct. 2007) (“A restitution award must not exceed the victim’s losses.”).

because he had a property interest in his money, which the Commonwealth sought to confiscate for restitution.

Before his sentencing hearing, the Commonwealth did not notify Mr. Carr of the amount of restitution that it sought. The Commonwealth did not produce the victim's medical bills, though it provided medical records. Thus, Mr. Carr could not prepare a defense to dispute whatever amount the Commonwealth might claim he owed as restitution.

Mr. Carr's situation is akin to one where a probationer has not received the relevant due process requirements associated with the revocation of their probation. In those cases, this Court has held that "written notice of the alleged violations is one of the several minimum requirements of due process which must be complied with before parole can be revoked." *Commonwealth v. Ballard*, 378 A.2d 445, 446 (Pa. Super. 1977) (en banc).

Like the probationers who did not receive notice, Mr. Carr's right to procedural due process was violated because he did not receive written notice of the amount of restitution the Commonwealth sought. Accordingly, this Court should hold that it was reversible error for the Commonwealth not to provide pre-hearing written notice of the restitution sought. And the Court should remand the case.

ii. The evidentiary record of the restitution amount was insufficient.

This Court should vacate the sentencing court's restitution order because it was speculative and not supported by a sufficient factual record. Besides the witness's testimony, there was no independent and verifiable evidence for the court to determine the appropriate amount of restitution. Therefore, this Court should vacate the order.

At Mr. Carr's sentencing, the victim's mother testified about the restitution amount. The prosecutor asked, "Did you have to pay any medical bills or any ambulance services or anything like that?" (N.T., 1/25/21, at 40.) The witness answered, "Yeah. I have an ankle surgery bill that keep getting billed for \$2,050 and have an ambulance bill that I keep getting for \$960." *Id.* Yet there was no evidence that the lower court or parties ever saw these bills. And the sentencing court did not make an on-the-record determination that these amounts were congruent with the victim's medical treatment.

Mr. Carr's case is different from those in which this Court ruled that the record supported a restitution award. For example, in *Commonwealth v. Crosley*, in a pre-sentencing letter and at the defendant's sentencing hearing, the Commonwealth recommended that the trial court award \$7,864.72 in restitution. *Commonwealth v. Crosley*, 180 A.3d 761, 771 (Pa. Super. Ct. 2018). And the court awarded the requested restitution. *Id.*

The defendant appealed and argued that this Court should vacate the restitution award because the Commonwealth failed to provide sufficient evidence. *Id.* at 772. The Court affirmed the restitution order and held that although an itemized accounting of expenditures was not supplied, the trial court determined that “a \$7,864.72 restitution award . . . could not have been excessive under the factual circumstances established at trial and during the sentencing hearing.” *Id.*

The situation before this Court is different from the *Crosley* case, where the defendant received notice about the restitution amount. *See id.* at 771. In Mr. Carr’s case, there was no evidence that the sentencing court or either party ever received medical bills or other documentation about the requested restitution amount. And the court did not rule on the reasonableness of the requested amount. Therefore, the restitution award was speculative and not supported by sufficient evidence.

IX. CONCLUSION

For the preceding reasons, Mr. Carr respectfully requests this Honorable Court vacate the restitution award and remand the case. The sentencing court's order violated Mr. Carr's due process rights. Furthermore, it was speculative and not supported by sufficient evidence.

Respectfully Submitted,

s/ Matt Sullivan
Matthew Sullivan, Esq.
Counsel for Appellant

Date: February 11, 2022

X. CERTIFICATION OF WORD COUNT

Pursuant to P.A.R.A.P. 2135, I certify that the accompanying brief, which I prepared using Times New Roman 14-point font, contains 3,547 words, excluding the parts of the document exempted by the Rule.

s/ Matt Sullivan
Matthew Sullivan, Esq.

XI. VERIFICATION

I, Matthew Sullivan, Esq., verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: February 11, 2022

By: s/ *Matt Sullivan*
Matthew Sullivan, Esq.

XII. CERTIFICATE OF SERVICE

I, Matthew Sullivan, Esq., certify that on this day, I served a true and correct copy of the foregoing upon the following via electronic filing:

Pennsylvania Superior Court
530 Walnut Street, Suite 315
Philadelphia, PA 19106

Office of the District Attorney
Philadelphia County
Three South Penn Square
Philadelphia, Pennsylvania 19107-3499

The Honorable Barbara A. McDermott
Stout Justice Center, Room 1418
Philadelphia, PA 19107

Date: February 11, 2022

By: s/ *Matt Sullivan*
Matthew Sullivan, Esq.
Counsel for Appellant

APPENDIX A

Commonwealth of Pennsylvania
v.
Davel J. Carr

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

CP-51-CR-0007068-2019 Comm. v. Carr, Davel J.
Order - Sentence/Penalty Imposed



DOCKET NO: CP-51-CR-0007068-2019
DATE OF ARREST: 08/26/2019
OTN: U 178114-6
SID: 288-16-44-8
DOB: 07/24/1978
PID: 0897661

ORDER OF SENTENCE

AND NOW, this 25th day of January, 2021, the defendant having been SENTENCED in the above-captioned case is hereby sentenced by this Court as follows:

Count 1 - 18 § 2702 §§ A - Aggravated Assault (F1)

To be confined for a minimum period of 3 Year(s) and a maximum period of 6 Year(s) at State Correctional Institution.

The following conditions are imposed:

Credit for time served: Credit to be calculated by the Phila. Prison System

Mandatory Court Costs - Court Costs: Defendant is to pay imposed mandatory court costs.

Other: Defendant to pay Restitution in the amount of \$3,010.00.

This sentence shall commence on 01/25/2021.

Count 4 - 75 § 3742 §§ A - Accidents Involving Death Or Personal Injury (F3)

To be confined for a minimum period of 1 Year(s) and a maximum period of 2 Year(s) at State Correctional Institution.

This sentence shall commence on 01/25/2021.

LINKED SENTENCES:

Link 1

CP-51-CR-0007068-2019 - Seq. No. 1 (18 § 2702 §§ A) - Confinement is Concurrent with

CP-51-CR-0007068-2019 - Seq. No. 4 (75 § 3742 §§ A) - Confinement

The following Judge Ordered Conditions are imposed:

Condition

Start Date

End Date

Condition Text

Restitution

Amount owed:\$3,010.00

Amount paid to date:o

Will be disbursed to:CRIME VICTIM

Payment shall be made to:APPD

Payment is due immediately unless the court has established a payment plan in which case payments begin on:

This restitution is imposed as (1) part of the sentence.

Commonwealth of Pennsylvania

v.
Davel J. Carr

Order of Sentence

Docket No: CP-51-CR-0007068-2019

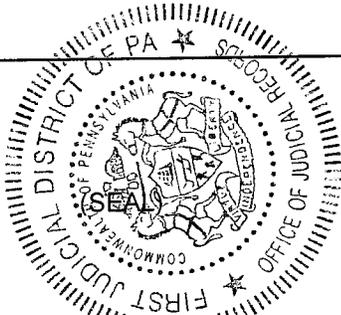
The defendant shall pay the following:

	Fines	Costs	Restitution	Crime Victim's Compensation Fund -	Total Due
Amount:	\$0.00	\$845.25	\$3,010.00	\$60.00	\$3,915.25
Balance Due:	\$0.00	\$832.75	\$3,010.00	\$60.00	\$3,902.75

Non-Negotiated Guilty Plea: Defendant sentenced on Charge 1: to 3-6 years incarceration and Charge 4: 1-2 years' incarceration to run concurrent. Credit for time served. All other charges Nolle Prossed. ADA: K.Kelton/E. Rebstock, Defense Attorney: William D. Hobson, Court Clerk: Diane Young, Steno: Mo Prak in courtroom 707. Defendant on bail, present in courtroom. Defendant taken into custody

BY THE COURT:

Barbara McDermott
Judge Barbara A. McDermott

DC-300B (PART I) Rev. 12/05 <p style="text-align: center;">COURT COMMITMENT STATE OR COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania v. Davel J. Carr</p>	Type or Print Legibly COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 8837 CAMP HILL, PA 17001-0598 Attn: Central Office Records <input checked="" type="checkbox"/> DC-300B (PART I) Attached					
COMMITMENT NAME: Carr, Davel J.		COURT OF INITIAL JURISDICTION <input type="checkbox"/> COMMON PLEAS <input checked="" type="checkbox"/>				
SEX <input type="checkbox"/> F <input checked="" type="checkbox"/> M	DATE OF BIRTH 07/24/1978	SID 288-16-44-8	OTN U 178114-6	COMMITTING COUNTY: Philadelphia		
MANDATORY SENTENCE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		BOOT CAMP <input checked="" type="checkbox"/> Ineligible		COURT NUMBER AND TERM: 0007068-2019 Ct. 1		
		COUNTY REFERENCE #: 0897661		SEX OFFENDER CLASS:		
The above defendant after		<input checked="" type="checkbox"/> Pleading Guilty	<input type="checkbox"/> Nolo Contendere	<input type="checkbox"/> Alford Plea	<input type="checkbox"/> Being Found Guilty	<input type="checkbox"/> GBMI
was on 01/25/2021 , sentenced by Barbara A. McDermott to Confinement for a term of A minimum period of 3 Year(s) and a maximum period of 6 Year(s), or 3 years - 6 years for the offense of Aggravated Assault (Section 18 § 2702 §§ A of the Crimes and Offenses Code). It is further ordered that the said defendant be delivered by the proper authority to and treated as the law directs at the State Correctional Institution facility located at _____						
RRRI:				<input type="checkbox"/> STATE DRUG TREATMENT PROGRAM INELIGIBLE		
Fine: Amount \$0.00 Balance \$0.00	Cost: Amount \$845.25 Balance \$832.75	Restitution: Amount \$3,010.00 Balance \$3,010.00	Crime Victim's Compensation Fund - Victim/Witness Services Fund: Amount \$60.00 Balance \$60.00			
CREDIT FOR TIME SERVED (EXPLANATION OF CREDIT COMPUTATION ON PAGE TWO) 0 Days					EFFECTIVE DATE OF SENTENCE 01/25/2021	
THIS SENTENCE IS CONCURRENT WITH: <-- See Supplemental Page -->						
THIS SENTENCE IS CONSECUTIVE TO:						
PROSECUTING ATTORNEY: <u>K. Kelton / E. Robstocik</u> Philadelphia County District Attorney's Office				DEFENSE ATTORNEY: William D. Hobson		
DISPOSITION ON NON-INCARCERATION OFFENSE(S): (THIS BLOCK NOT TO BE USED FOR INCARCERATION OFFENSE)						
Ct. 2 - Accidents Involving Death or Injury While Not Licensed - Nolle Prossed Ct. 3 - Endangering Welfare of Children - Parent/Guardian/Other Commits Offense - Nolle Prossed Ct. 5 - Poss Instrument Of Crime W/Int - Nolle Prossed Ct. 6 - Simple Assault - Nolle Prossed Ct. 7 - Recklessly Endangering Another Person - Nolle Prossed Ct. 8 - Dr Unregist Veh - Nolle Prossed Ct. 9 - Driv While Oper Priv Susp Or Revoked - Nolle Prossed Ct. 10 - Reckless Driving - Nolle Prossed Ct. 11 - Receiving Stolen Property - Nolle Prossed Ct. 12 - Unauth Use Motor/Other Vehicles - Nolle Prossed Ct. 13 - DUI: Gen Imp/Inc of Driving Safely - 1st Off - Nolle Prossed Ct. 14 - DUI: Controlled Substance - Impaired Ability - 1st Offense - Nolle Prossed Ct. 15 - Aggravated Assault By Vehicle While Dui - Nolle Prossed						
				In witness, whereof I have hereunto set my hand and seal of said court, this <u>25th</u> day of <u>January</u> , 20 <u>21</u> .  AUTHORIZED SIGNATURE		



The sentence for Carr, Davel J. was computed as follows:

Date of Sentence	County or Magisterial District	Court Number and Term	Type Sentence	Minimum			Maximum			Judge or Magisterial District Judge	OTN (Include Alpha Suffix)
				Yrs.	Mos.	Days	Yrs.	Mos.	Days		
01/25/2021	Philadelphia	0007068-2019	Ct 1 Conf.	3	0	0	6	0	0	Barbara A. McDerm	U 178114-6
01/25/2021	Philadelphia	0007068-2019	Ct 4 Conf.	1	0	0	2	0	0	Barbara A. McDerm	U 178114-6
Total Sentence											

Credit for Time Served

Locked Up (Location)	Dates		No. of Days
	From	To	
Total			

All Detainers Must Be Attached To This Form

Total Number Of Detainers Attached

Dated	Indict - Warrant Nos.	Remarks

Recommendations of the Court

Ct. 1 Confinement Conditions: Credit for time served: Credit to be calculated by the Phila. Prison System
Mandatory Court Costs - Court Costs: Defendant is to pay imposed mandatory court costs.
Other: Defendant to pay Restitution in the amount of \$3,010.00.

The following Judge Ordered Conditions are imposed:

Condition

Amount owed:\$3,010.00

Amount paid to date:0

Will be disbursed to:CRIME VICTIM

Payment shall be made to:APPD

Payment is due immediately unless the court has established a payment plan in which case payments begin on:

This restitution is imposed as (1) part of the sentence.

The Following Additional Reports are Attached

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Continuation Sheet (DC-300B, Part II) | <input type="checkbox"/> Arrest Report | <input type="checkbox"/> FBI |
| <input type="checkbox"/> Pre / Postsentence Investigation | <input type="checkbox"/> Behavior Clinic | <input type="checkbox"/> PSP |
| <input type="checkbox"/> Sentencing Sheet | <input type="checkbox"/> Sentencing Guidelines | <input type="checkbox"/> Statement of Costs |
| <input type="checkbox"/> Sentence Order | <input type="checkbox"/> Criminal Complaint | |

The Following Additional Reports will be Forthcoming

- | | |
|--|--|
| <input type="checkbox"/> Arrest Report | <input type="checkbox"/> Presentence or Postsentence Investigation |
|--|--|

DC-300B (PART II)
Rev. 12/05

COURT COMMITMENT
CONTINUATION SHEET
STATE OR COUNTY CORRECTIONAL INSTITUTION
Commonwealth of Pennsylvania
v.
Davel J. Carr

Type or Print Legibly
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
BOX 8837 CAMP HILL, PA 17001-0598
Attn: Central Office Records

COMMITTING COUNTY: Philadelphia COURT NUMBER AND TERM: 0007068-2019 Ct. 4 OTN: U 178114-6

The above defendant after Pleading Guilty Nolo Contendere Alford Plea Being Found Guilty GBMI

was on 01/25/2021, sentenced by **Barbara A. McDermott** to **Confinement** for a term of A minimum period of 1 Year(s) and a maximum period of 2 Year(s), or 1 year - 2 years for the offense of Accidents Involving Death Or Personal Injury (Section 75 § 3742 §§ A of the Vehicles Code).

RRRI: STATE DRUG TREATMENT PROGRAM INELIGIBLE

Fine:	Cost:	Restitution:	Crime Victim's Compensation Fund - Victim/Witness Services Fund:
Amount \$0.00	Amount \$0.00	Amount \$0.00	Amount \$0.00
Balance \$0.00	Balance \$0.00	Balance \$0.00	Balance \$0.00

CREDIT FOR TIME SERVED: 0 Days EFFECTIVE DATE OF SENTENCE: 01/25/2021

THIS SENTENCE IS CONCURRENT WITH: <-- See Supplemental Page -->

THIS SENTENCE IS CONSECUTIVE TO:

[Empty space for case details]

<p>DC-300B (PART II) Rev. 12/05</p> <p>COURT COMMITMENT CONTINUATION SHEET STATE OR COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania v. Davel J. Carr</p>	<p>Type or Print Legibly</p> <p>COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 8837 CAMP HILL, PA 17001-0598 Attn: Central Office Records</p>
<p>LINKED SENTENCES:</p> <p>Link 1 CP-51-CR-0007068-2019 - Seq. No. 1 (18 § 2702 §§ A) - Confinement is Concurrent with CP-51-CR-0007068-2019 - Seq. No. 4 (75 § 3742 §§ A) - Confinement</p>	

<p>DC-300B (PART II) Rev. 12/05</p> <p style="text-align: center;">COURT COMMITMENT CONTINUATION SHEET STATE OR COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania v. Davel J. Carr</p>	<p>Type or Print Legibly</p> <p>COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 8837 CAMP HILL, PA 17001-0598 Attn: Central Office Records</p>
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Case Assessment Summary

<u>Offense No</u>	<u>Statute Description</u>	<u>Fines</u>	<u>Costs</u>	<u>Restitution</u>	<u>CVC</u>
1	Aggravated Assault	\$0.00	\$832.75	\$3,010.00	\$60.00
	Non-offense related	\$0.00	\$12.50	\$0.00	\$0.00
Total Ordered:		\$0.00	\$845.25	\$3,010.00	\$60.00
Amount Paid:		\$0.00	-\$12.50	\$0.00	\$0.00
Total Due:		\$0.00	\$832.75	\$3,010.00	\$60.00

Commonwealth of Pennsylvania
Court of Common Pleas
County of Philadelphia
1st Judicial District



**Itemized Account of Fines, Costs, Fees,
and Restitution**

Commonwealth of Pennsylvania
v.
Davel J. Carr

Davel J. Carr
1702 N 28TH St
Philadelphia, PA 19121

Docket No: CP-51-CR-0007068-2019

Assessments to be paid by Davel J. Carr

Costs/Fees

- Judicial Computer Project
- OAG - JCP
- CQS Fee Felony (Philadelphia)
- Victim Witness Service (Act 111 of 1998)
- Costs of Prosecution - CJEA
- Crime Victims Compensation (Act 96 of 1984)
- Commonwealth Cost - HB627 (Act 167 of 1992)
- Booking Center Fee (Philadelphia)
- County Court Cost (Act 204 of 1976)
- Firearm Education and Training Fund
- Criminal Lab Fee (Philadelphia)
- ATJ
- State Court Costs (Act 204 of 1976)
- Motion Filing Fee (Philadelphia)
- DNA Detection Fund (Act 185-2004)
- CJES
- JCPS
- Domestic Violence Compensation (Act 44 of 1988)

Distribution Account

Assessment Balance

COMM - JCP	\$8.00
COMM - OAG	\$2.50
CTY - 51	\$100.00
COMM - VWS	\$25.00
COMM - CJEA	\$50.00
COMM - CVC	\$35.00
COMM - CST1	\$21.60
CTY - 51	\$175.00
CTY	\$31.50
COMM - FETA	\$5.00
PHILLY - POLICE ADMIN BUILDING	\$135.00
COMM - ATJ	\$6.00
COMM - COST	\$14.40
CTY - 51	\$0.00
COMM - DNA	\$250.00
COMM - CJES	\$2.50
COMM - JCPS	\$21.25
COMM - DVC	\$10.00
	\$892.75

Restitution

Individual Restitution

ESCR - REST	\$3,010.00
	\$3,010.00

Balance Due: \$3,902.75

First Judicial District of Pennsylvania
Attention Accounting Unit
714 Market Street
Philadelphia, PA 19106

You can now make case payments online through Pennsylvania's Unified Judicial System web portal. Visit the portal at <https://ujspportal.pacourts.us/epay> to make a payment and learn more.

Commonwealth of Pennsylvania

v.

Davel J. Carr

Itemized Account of Fines, Costs, Fees, and Restitution

Docket No: CP-51-CR-0007068-2019

I hereby certify that as of the date indicated below Davel J. Carr is indebted to the County of Philadelphia for the sum of \$3902.75 which is the total of all fines, costs, fees, and restitution that have accrued as of this date in the above-captioned case.

Civil Judgment

A Civil Judgment will be recorded 60 days from the sentencing date on all non-exempt cases. The Civil Judgment Fee of \$100.69 will be added to the above assessments.

Supervision Fee

A Supervision Fee (OSP) in the amount of \$25.00 per month may be added to the above assessments unless waived by the Court.

Original Case Balance: \$3,915.25

Date

(Signature of Issuing Authority)

Mail payments to:
Court of Common Pleas
Office of Judicial Records
P.O. Box 786251
Philadelphia, PA 19178-6251

Hand Deliver payments to:
Payment Center
Stout Center For Criminal Justice
1301 Filbert Street, B-02
Philadelphia, PA 19107
Or
Payment Center
Office of Judicial Records
714 Market Street
Philadelphia, PA 19102

Payment by: cash, money order, check, credit card, debit card

First Judicial District of Pennsylvania
Attention Accounting Unit
714 Market Street
Philadelphia, PA 19106

You can now make case payments online through Pennsylvania's Unified Judicial System web portal. Visit the portal at <https://ujportal.pacourts.us/epay> to make a payment and learn more.



APPENDIX B

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

COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0007068-2019

v.

DAVEL CARR

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:
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FILED

SEP 22 2021

Office of Judicial Records
Appeals/Post Trial

OPINION

McDermott, J.

September 22, 2021

Procedural History

On May 16, 2019, the Defendant, Davel Carr, was arrested and charged with Aggravated Assault and related offenses. On November 2, 2020, the Defendant appeared before this Court and entered into an open guilty plea to Aggravated Assault and Accident Involving Death or Personal Injury.¹

Sentencing was deferred for completion of presentence and mental health reports, and on January 25, 2021, this Court sentenced the Defendant to three to six years of imprisonment for Aggravated Assault and a concurrent term of one to two years of imprisonment for Accident Involving Death or Personal Injury.

On February 5, 2021, the Defendant filed a Motion for Reconsideration of Sentence, which this Court denied on February 8, 2021. On February 11, 2021, this Court granted trial counsel's motion to withdraw and appointed appellate counsel. On March 1, 2021, the Defendant filed a timely Notice of Appeal with the Superior Court of Pennsylvania.²

¹ The remaining charges were *nolle prossed*.

² This Court was not served the Notice of Appeal by electronic filing and was only made aware of the Notice of Appeal after auditing its caseload to make certain all matters pending before the Superior Court had been PACfiled.

Facts

At the November 2, 2020, guilty plea colloquy, the Defendant pled guilty to the following facts. On May 16, 2019, at 3:30 p.m., the Defendant was driving his vehicle in a school zone, with his own young child unbuckled in the backseat, when he struck thirteen-year-old D.B.T., who was crossing the street with his friends. A teacher from the school witnessed the collision and told the Defendant to pull over. Instead, the Defendant drove away, leaving D.B.T. bleeding on ground, and suffering from a broken ankle. The teacher recognized the Defendant, having known him for fifteen years, and informed police officers of his identity when they arrived on the scene. N.T. 11/02/2020 at 18–24.

Security cameras from the school captured the collision. Upon reviewing the footage and taking the teacher’s statement, police officers located the car at the address to which it was registered. Upon arriving at the address, police officers observed damage to the front of the car parked nearby and arrested the Defendant. *Id.*

Discussion

In the Defendant’s post-sentence motion, he challenged the discretionary aspects of his sentencing and asked this Court to impose a sentence of two to four years of imprisonment for Aggravated Assault and a concurrent sentence of one to two years of imprisonment for Accident Involving Death or Personal Injury. When imposing a sentence, a trial court “shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense [...] and the rehabilitative needs of the defendant.” 42 Pa.C.S. § 9721(b). It is well-settled that sentencing is a matter vested in the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion. *Commonwealth v. Akhmedov*, 216 A.3d 307, 328 (Pa. Super. 2019) (*citing Commonwealth v.*

Gonzalez, 109 A.3d 711, 731 (Pa. Super. 2015)). An abuse of discretion is not merely an error in judgment, but a defendant must establish that the sentencing court misapplied the law or exercised its judgment for reasons of partiality, prejudice, bias, or ill-will, or arrived at a manifestly unreasonable decision. *Commonwealth v. Nevels*, 203 A.3d 229, 247 (Pa. Super. 2019) (citing *Commonwealth v. Cook*, 941 A.2d 7, 11–12 (Pa. Super. 2007)).

A defendant challenging the discretionary aspects of his sentence must establish, *inter alia*, that there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code. *Commonwealth v. Serrano*, 150 A.3d 470, 473 (Pa. Super. 2016) (quoting *Commonwealth v. Swope*, 123 A.3d 333, 337 (Pa. Super. 2015) (citations omitted)). A substantial question exists when an appellant raises a colorable argument that the sentence imposed is either inconsistent with a specific provision of the Sentencing Code or is contrary to the fundamental norms underlying the sentencing process. *Commonwealth v. Andrews*, 213 A.3d 1004, 1017 (Pa. Super. 2019) (citing *Commonwealth v. Manivannan*, 186 A.3d 472, 489 (Pa. Super. 2018)). Bald assertions of sentencing errors are not sufficient to articulate a substantial question. A defendant must articulate the reasons a sentencing court's actions violated the sentencing code. *Commonwealth v. Lynch*, 242 A.3d 339, 346 (Pa. Super. 2020) (finding blanket assertions of sentencing violations insufficient to raise a substantial question for review).

In every case where a trial court imposes sentence, the court must state adequate reasons for imposition of the sentence in writing or on the record in open court. *Commonwealth v. Antidormi*, 84 A.3d 736, 760 (Pa. Super. 2014) (citing *Commonwealth v. Robinson*, 931 A.2d 15, 26 (Pa. Super. 2007)). The Sentencing Code proscribes individualized sentencing by requiring the court to consider the protection of the public, the gravity of the offense, the impact on the victim and the community, and the rehabilitative needs of the defendant before imposing

sentence. *Commonwealth v. Luketic*, 162 A.3d 1149, 1161 (Pa. Super. 2017). The court has discretion to impose sentences consecutively or concurrently, and a challenge to this exercise of imposition does not raise a substantial question. *See* 41 Pa.C.S. § 9721.

Where the trial court is informed by a pre-sentence report, it is presumed that the court is aware of all appropriate sentencing factors and considerations, and that its discretion should not be disturbed. *Commonwealth v. Bullock*, 170 A.3d 1109, 1126 (Pa. Super. 2017) (*citing Commonwealth v. Ventura*, 975 A.2d 1128, 1135 (Pa. Super. 2009)). The court need not parrot the words of the Sentencing Code, rather the sentence must reflect due consideration of the statutory conditions at the time of sentencing. *Commonwealth v. Johnson-Daniels*, 167 A.3d 17, 26 (Pa. Super. 2017) (*citing Commonwealth v. Culverson*, 34 A.3d 135, 145 (Pa. Super. 2011)). A sentencing court's indication that it reviewed a presentence report can satisfy the requirement of placing reasons for imposing the sentence on the record. *Bullock*, 170 A.3d at 1126 (*citing Commonwealth v. Burns*, 765 A.2d 1144 (Pa. Super. 2000)).

The Defendant fails to raise a substantial question that warrants review. This Court imposed its aggregate sentence of three to six years of imprisonment after careful consideration of all the factors presented at the guilty plea colloquy and during the sentencing hearing. This Court formulated its sentence to best reflect its duty to consider the gravity of the offense, the protection of the public, and the Defendant's own rehabilitative needs. In so doing, this Court reviewed the presentence and mental health reports provided in anticipation of the sentencing hearing. Thus, the Defendant is unable to raise a substantial question challenging this Court's sentencing scheme.

At the time of his offenses, the Defendant had a prior record score of five. The Aggravated Assault offense has an offense gravity score of 11 and the standard range sentence is

between seventy-two and ninety-months (six to seven and a half years). Accident Involving Death or Personal Injury has an offense gravity score of five, with a standard range sentence of twenty-four to thirty months.

Frankly, this Court's sentence was a merciful imposition, as it was a significant downward departure. This Defendant struck a child in a school zone at 3:30 p.m. as that child was leaving school. Despite the collision and seeing the child bleeding on the ground, the Defendant abandoned the scene. It is only through sheer luck that this child was not permanently handicapped and was able to recover after a surgery and time in a wheelchair.

In mitigation, this Court considered that the Defendant has now accepted responsibility for his actions and apologized to the victim and his family for the trauma that he caused. Additionally, this Court also credited the Defendant's actions prior to the collision, where he appeared to be driving at the same speed as other vehicles on the road and showed no signs of reckless driving. This Court also noted the circumstances of the collision where the victim and other teenage boys were drifting onto the street and not crossing using the crosswalk.

However, this incident reflects a disturbing pattern of behavior displaying the Defendant's inability to conform his behavior to the norms of an ordered and law-abiding society, despite the multiple opportunities to do so. For this reason, he is undeserving of a further downward departure from the sentencing guidelines. The Defendant's criminal history is approximately twenty years old and includes four convictions of Possession of a Controlled Substance with Intent to Distribute and three convictions of Driving Under the Influence ("DUI"). The Defendant has had ten total convictions and three commitments and has violated probation eleven times, leading to five revocations.

The number of the Defendant's DUI convictions reveals another disturbing pattern at issue in this matter, which is his inability to drive safely. As recently as 2016, when he was thirty-seven years old, the Defendant was convicted of DUI and Driving with a Suspended License in Montgomery County and was sentenced to serve five days to six months in prison. Given these convictions and his collision with the victim in this matter, his continued driving poses a grave risk to the public.

Further, the video played at the sentencing hearing gave this Court pause, as the Defendant could clearly see the child-victim bleeding in the street when he drove away, despite his own child sitting in the backseat of the car. As this Court noted at the sentencing hearing:

I see someone sitting in his car after he's clearly hit someone for over a minute, a minute and-a-half while other teenagers are trying to render aid. And then some adults come. For the life of me, I can't understand how you could stay in your car, particularly if you have a child in the car, hit a kid, and then just sit there and then take off. It wasn't oh, my God, I hit, bam. You watched him lying on the ground unable to get up. That's what I saw in the video.

N.T. 1/25/2021 at 64.

The continued disregard for the safety of his fellow citizens and his unwillingness to modify his behavior left this Court no other choice than to fashion its sentence that gave great weight towards the protection of the public, while also considering the mitigating circumstances of the incident.

For the foregoing reasons, the Defendant's judgment of sentence should be affirmed.

BY THE COURT



Barbara A. McDermott, J.

Commonwealth v. Davel Carr, CP-51-CR-0007068-2019

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing filing upon the person(s), and in the manner indicated below, which service satisfies the requirements of Pa. R. Crim. P. 114:

Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107
Attn: Lawrence Goode

Type of Service: **Regular Mail**

Davel Carr
QH-9626
SCI Dallas
1000 Follies Road
Dallas, PA 18612-0286

Type of Service: **Certified Mail**

Matthew F. Sullivan
1327 Spruce Street
7D
Philadelphia, Pennsylvania 19107

Type of Service: **Regular Mail**

Dated: September 22, 2021



Alexander Palmer
Judicial Clerk to the
Honorable Barbara A. McDermott

APPENDIX C

