

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	Nos. CR-774-2011
	:	CR-833-2011
KEVIN BRANDWEIN,	:	CR-724-2013
	:	
Defendant	:	

Gary F. Dobias, Esquire
Assistant District Attorney

Counsel for the Commonwealth

Kevin Brandwein

Pro Se

MEMORANDUM OPINION

Serfass, J. - September 10, 2026

Kevin Brandwein (hereinafter "Defendant"), has taken this appeal from our June 23, 2026, Order of Court denying his "Petition for Writ of Mandamus - Nunc Pro Tunc". We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid order be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant's appeal relates to three (3) separate cases. With respect to the case indexed to docket number CR-774-2001, Defendant was charged with Harassment¹ and Simple Assault². On August 2, 2013, Defendant, with the assistance of Paul J. Levy, Esquire, of

¹ 18 Pa.C.S.A. §2709(a)(1).

² 18 Pa.C.S.A. §2701(a)(1).

the Carbon County Public Defender's Office, entered a guilty plea to Simple Assault with the remaining charge being dismissed. On that same date, this Court sentenced Defendant to a period of incarceration in a state correctional institution of not less than nine (9) months nor more than eighteen (18) months. Defendant was credited with five (5) days for time served. The sentence was to run consecutive to the sentence imposed in the case indexed to docket number CR-823-2011, and the minimum sentence to be served for all offenses was one hundred twenty-six (126) months.

In the case indexed to docket number CR-823-2011, Defendant was charged with Aggravated Assault³, Criminal Attempt-Homicide⁴, two (2) counts of Criminal Conspiracy-Homicide⁵, and two (2) counts of Criminal Conspiracy-Aggravated Assault⁶. On August 2, 2013, Defendant, again with the assistance of Attorney Levy, entered a guilty plea to Count #1 - Aggravated Assault and Count #4 - Criminal Conspiracy-Aggravated Assault, with the remaining charges being dismissed. On that same date, this Court sentenced Defendant on Count #1 to a period of incarceration in a state correctional institution of not less than one hundred seventeen (117) months nor more than two hundred thirty-four (234) months. Defendant received six hundred fifty-two (652) days credit for time served.

³ 18 Pa.C.S.A. §2702(a)(1).

⁴ 18 Pa.C.S.A. §2501.

⁵ 18 Pa.C.S.A. §903(a)(1) and 18 Pa.C.S.A. §903(a)(2).

⁶ 18 Pa.C.S.A. §903(a)(1) and 18 Pa.C.S.A. §903(a)(2).

On that same date, this Court sentenced Defendant on Count #4 to a period of incarceration in a state correctional institution of not less than ninety (90) months nor more than one hundred eighty (180) months. That sentence was to run concurrently with the sentence imposed in Count #1, with the minimum sentence to be served being one hundred seventeen (117) months.

Lastly, with respect to the case indexed to docket number CR-724-2013, Defendant was charged with two (2) counts of Aggravated Harassment by Prisoner.⁷ On August 2, 2013, Defendant, again with the assistance of Attorney Levy, entered a guilty plea to one (1) count of Aggravated Harassment by Prisoner with the remaining charge being dismissed. On that same date, this Court sentenced Defendant to a period of incarceration in a state correctional institution of not less than twenty-seven (27) months nor more than fifty-four (54) months. Defendant received ninety-two (92) days credit for time served. That sentence was to run concurrently with Count #1 of the case indexed to docket number CR-823-2011, with the minimum sentence to be served on all offenses being one hundred seventeen (117) months.

On April 11, 2016, Defendant filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction, Nunc Pro Tunc." On July 11, 2016, Defendant also filed a "Motion Pursuant to 'Pa.R.A.P. 2115(b)

⁷ 18 Pa.C.S.A. §2703.1.

- Failure to Act.'" On August 1, 2016, this Court entered orders denying both motions.

On August 18, 2016, Defendant filed a Notice of Appeal. Pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), this Court issued an order on August 23, 2016, directing Defendant to file of record and serve upon the undersigned, a concise statement of the matters complained of on appeal. On September 12, 2016, Defendant filed his concise statement in compliance with our Order. On September 30, 2016, we filed our Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) recommending that our August 1, 2016 orders be affirmed. On October 28, 2016, the Superior Court of Pennsylvania dismissed Defendant's appeal for failure to comply with Pennsylvania Rule of Appellate Procedure 3517.

On August 21, 2017, Defendant filed a "Motion for Failure to Act, Pursuant to Pa.R.A.P. 2115(B)". On February 5, 2018, Defendant also filed a "Motion to Stop 20% Deduction and Return of Money Pursuant to 24 Pa.C.S.A. §8127". We considered Defendant's "Motion to Stop 20% Deduction and Return of Money Pursuant to 24 Pa.C.S.A. §8127" to be a Petition for Post-Conviction Relief, so on February 21, 2018, we appointed the Carbon County Public Defender's Office to represent Defendant. On July 3, 2018, Assistant Public Defender Matthew J. Mottola, Esquire filed a "Motion to Withdraw as Counsel". Therein, Attorney Mottola stated that he believed

Defendant's Petition for Post-Conviction Relief lacked merit because this Court lacked jurisdiction to address it. On July 3, 2018, this Court issued a Notice of Intent to Dismiss Defendant's Post-Conviction Relief Petition. Pursuant to that notice, we dismissed Defendant's Petition for Post-Conviction Relief on July 30, 2018.

On June 3, 2026, Defendant filed a "Petition for Writ of Mandamus - Nunc Pro Tunc" which sought the correction of the sentences imposed by this Court in the above captioned cases on August 2, 2013, based upon the dismissal of certain surcharges in each of Defendant's cases as part of the negotiated plea agreements. On June 23, 2026, this Court denied Defendant's "Petition for Writ of Mandamus - Nunc Pro Tunc".

On July 24, 2026, Defendant filed a Notice of Appeal. Pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), this Court issued an order that same date, directing Defendant to file of record and serve upon the undersigned, a concise statement of the matters complained of on appeal. On August 17, 2026, Defendant filed his concise statement in compliance with our Order.

ISSUES

In his concise statement, Defendant raises the following issues for appellate review:

1. Did this Court err in denying Defendant's request to have his sentence imposed at CR-823-2011 and CR-724-2013

dismissed/vacated in accordance with the Court Order(s)
issued in and around July/August 2016; and

2. Did this Court's refusal to dismiss/vacate the aforesaid sentences create a breakdown in the criminal justice system and cause an unlawful enforcement of an eighteen (18) month sentence that was previously dismissed/vacated?

DISCUSSION

In both issues raised by Defendant, he claims that he was sentenced on charges that the Commonwealth had agreed to dismiss pursuant to the negotiated plea agreements. This argument is completely without merit. With respect to the case indexed to docket number CR-823-2011, Defendant was charged with Aggravated Assault, Criminal Attempt-Homicide, two (2) counts of Criminal Conspiracy-Homicide, and two (2) counts of Criminal Conspiracy-Aggravated Assault. Pursuant to the Stipulation executed on July 31, 2013, Defendant entered a guilty plea to Aggravated Assault and Criminal Conspiracy-Aggravated Assault in return for the Commonwealth's agreement to dismiss the remaining charges. On the Aggravated Assault charge, Defendant was sentenced to a period of incarceration in a state correctional institution of not less than one hundred seventeen (117) months nor more than nor more than two hundred thirty-four (234) months. On the Criminal Conspiracy-Aggravated Assault Charge, Defendant was sentenced to a period of incarceration in a state correctional institution of not less than

ninety (90) months nor more than one hundred eighty (180) months. This sentence was to run concurrently with the sentence imposed on the Aggravated Assault charge, making Defendant's minimum sentence one hundred seventeen (117) months.

With respect to the case indexed to docket number CR-724-2013, Defendant was charged with two (2) counts of Aggravated Harassment by Prisoner. Pursuant to the Stipulation executed on August 1, 2013, Defendant entered a guilty plea to one count of Aggravated Assault by Prisoner in return for the remaining charge being dismissed by the Commonwealth. Defendant was then sentenced to a period of incarceration in a state correctional institution of not less than twenty-seven (27) months nor more than fifty-four (54) months. This sentence was to run concurrently with the sentence imposed in CR-823-2011, making Defendant's minimum sentence for both cases one hundred seventeen (117) months.

On July 25, 2016, Assistant District Attorney Gary F. Dobias, Esquire, requested that this Court dismiss certain surcharges in all of Defendant's cases. Specifically, in regards to CR-823-2011, Attorney Dobias requested that the Criminal Attempt - Homicide and the Criminal Conspiracy - Homicide surcharges be dismissed. In regards to CR-724-2013, Attorney Dobias requested that the remaining Aggravated Harassment by Prisoner surcharge be dismissed. On August 1, 2016, the aforementioned surcharges were dismissed.

These August 1, 2016 Orders dismissing certain surcharges appear to be the orders that Defendant is referencing which presumably form the basis for his claims that the sentences imposed in CR-823-2011 and CR-724-2013 must be dismissed/vacated. However, as noted above, Defendant was not sentenced on any of the dismissed surcharges. Therefore, he is not entitled to any modification or "correction" of his sentences. Clearly, this Court committed no error in denying Defendant's request to have the sentences imposed at CR-823-2011 and CR-724-2013 dismissed or vacated. Moreover, there has been no breakdown in the criminal justice system which would merit any form of relief in these matters.

CONCLUSION

Based upon the foregoing, we submit that Defendant's appeal is without merit and respectfully recommend that our Order of June 23, 2026 be affirmed accordingly.

BY THE COURT:

\s\ Judge Steven R. Serfass
Steven R. Serfass, J.