

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>:</b>	<b>NO. CR – 1763 – 2006</b>
	<b>:</b>	
<b>vs.</b>	<b>:</b>	<b>CRIMINAL DIVISION</b>
	<b>:</b>	
<b>DERRECK JOHNSON,</b>	<b>:</b>	
<b>Defendant</b>	<b>:</b>	

**OPINION and ORDER**

**AND NOW** this 11<sup>th</sup> day of **March, 2025** following a hearing held on Defendant's Motion to Vacate Probation on February 25 and March 5, 2025, and following this Court's review of the court file, Defendant's Motion is denied.

Defendant raises two issues in his Motion:

1. Defendant's current sentence of special probation is illegal and should be stricken pursuant to the holding in Commonwealth v. Rosario, 294 A.3d 338 (Pa. 2023) and because Defendant's current sentence is illegal, the detainer filed against him is also illegal and needs to be vacated; and
2. If this Court determines that Defendant's current sentence is not illegal, the detainer currently holding Defendant (lodged on or about October, 2024) is illegal because Defendant's term of special probation of three (3) years expired December 20, 2023.

Defendant was sentenced under Docket No. 1763-2006 on January 3, 2008 to a parole sentence of 18-36 months followed by a consecutive sentence of two years probation (the result of a misdemeanor 2 Recklessly Endangering [Count 7] and misdemeanor 1 Receiving Stolen Property [Count 10] that ran concurrent to each other but consecutive to the parole sentence). Defendant received credit for time served that resulted in the special probation portion of his sentence beginning October 17, 2010. In December, 2010, while Defendant was serving the

special probation portion of his sentence, Defendant received new criminal charges. Defendant received a sentence of 5-10 years as a result of the new criminal charges with a max out date of December 6, 2020 (Docket No. 154-2011). As a result of the conviction on the new charges, Defendant's original sentence of special probation under Docket No. 1763-2006 was revoked following a hearing and Order dated October 20, 2011. Per the October 11, 2011 Order, Defendant was resentenced under the Reckless Endangerment Count to 24 months of probation followed by a consecutive period of probation under the Receiving Stolen Property Count. Both probationary periods were to be supervised by the PA Board of Probation and Parole and both periods of probation were ordered to run entirely consecutive to the sentence that Defendant received under Docket no. 154-2011. The effective dates for Defendant's sentences of Special Probation under the Reckless Endangerment Count and the Receiving Stolen Property Counts was December 19, 2020 and December 19, 2025, respectively.

The Order of October 20, 2011 where Defendant was resentenced to consecutive periods of special probation does not run afoul of the holding in Commonwealth v. Rosario, 294 A.3d 338 (Pa. 2023). Rosario held that the "anticipatory revocation of a probation sentence that has yet to start is illegal under Pennsylvania law." Id. at 356. Here, Defendant was actively serving his sentence of probation under Docket No. 1763-2006 at the time he received new criminal charges and the probation Ordered under Count 7 was concurrent to the probation Ordered under Count 10. Accordingly, Defendant was not subject to an anticipatory revocation of his probation sentence pursuant to the Order of October 20, 2011.

Defendant attempts to bolster his second issue by the introduction of Defendant's Exhibits four and five. Exhibit four is a document titled "Conditions Governing Special Probation/Parole" and begins by stating that the "Pennsylvania Board of Probation and

Parole.....on May 13, 2014, accepted [Defendant] for supervision as [a] special probation or parole case.....” as a result of the October 20, 2011 Order. On page two of this document, Defendant affixed his signature May 15, 2014. Defendant’s Exhibit five is a Lycoming County Order dated June 6, 2019 finding probable cause to believe that Defendant violated his conditions of probation under Docket No. 1763-2006 and pending a final hearing no bail was set. Defendant argues that Exhibit four demonstrates that Defendant’s sentence of probation per the Order of October 20, 2011 commenced May 14, 2014. Defendant further argues that Exhibit 5 reinforces this position because the June 16, 2019 Order is docketed to No. 1763-2006 and dated approximately a year and a half (1.5) prior to the time that the special probation was made effective (i.e. December 19, 2020 as evidenced by Commonwealth Exhibit 1).

Defendant’s argument is flawed in light of the testimony received by Defendant’s Parole Supervisor, Timothy Wolfe. Mr. Wolfe testified that the effective date for when Defendant’s special probation commences is controlled by the court order, not the date(s) affixed to the form labeled “Conditions Governing Special Probation/Parole.” In other words, the PA Probation/Parole Board will follow the October 20, 2011 Order and not the document dated May 14, 2015. Upon this Court’s review of the court file another document labeled “Conditions Governing Special Probation/Parole” was found appended to a “Court Presentation Form” authored by Luann Yohn (retired Lycoming County Adult Probation Officer) and dated October 18, 2011. The appended “Conditions Governing Special Probation/Parole” is dated April 22, 2008 on the first page and references the January 3, 2008 order (Retired Judge Richard A. Gray’s January 3, 2008 order) along with Defendant’s witnessed signature dated November 11, 2008 on the second page. If Defendant’s argument were to prevail, his period of special probation would have commenced April 22, 2008. Obviously, this did not and could not occur as Defendant had

not satisfied the incarceration portion of his January 3, 2008 sentence at the time the “Conditions Governing Special Probation/Parole” form was dated.

Moreover, the Order generated June 16, 2019 under Docket No. 1763-2006 does not convince this Court that Defendant was serving his period of special probation at the time the June 16 Order was published. It is no secret that prior to the decision in Commonwealth v. Koger (295 A.3d 699), there was little consistency within the Commonwealth as to how each County addressed probation violations and detainers.

**ORDER**

**AND NOW**, this \_\_\_\_ day of **March, 2025**, in light of the above, Defendant’s Motion to Vacate Probation is **DENIED**.

BY THE COURT

Ryan C. Gardner, Judge

RCG/kbc

cc: DA (JF)  
Robert Hoffa, Esq.