

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

No. 558 WDA 2022

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

DEREK MARSHALL,

Appellant.

**Brief of Amicus Curiae the ACLU of Pennsylvania in
Support of Appellant Derek Marshall**

Appeal from the Judgment of Sentence Entered April 8, 2022 in the Court of
Common Pleas of Allegheny County in CP-02-CR-0003258-2016

Andrew Christy
Pa. I.D. No. 322053
AMERICAN CIVIL LIBERTIES UNION
OF PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102
(215) 592-1513 x138
achristy@aclupa.org

Counsel for Amicus Curiae ACLU of Pennsylvania

Table of Contents

Statement of Interest of Amicus Curiae.....	1
Introduction.....	1
Argument.....	3
A. Effective and lawful collections require pragmatic approaches based on reasonable payment plans rather than reflexive punishment in the form of indefinite probation.....	3
B. The trial court unlawfully revoked Mr. Marshall’s probation and imposed a new period of probation without considering his ability to pay or finding that he willfully refused to pay.....	10
Conclusion	15

Table of Authorities

Cases

<i>Bearden v. Georgia</i> , 461 U.S. 660 (1983),	10
<i>Commonwealth ex rel. Powell v. Rosenberry</i> , 645 A.2d 1328 (Pa. Super. Ct. 1994)	2, 5, 12
<i>Commonwealth ex rel. Wright v. Hendrick</i> , 312 A.2d 402 (Pa. 1973).....	14
<i>Commonwealth v. Ballard</i> , 814 A.2d 1242, 1246 (Pa. Super. Ct. 2003)	11
<i>Commonwealth v. Bolds</i> , No. 163 EDA 2021, 2022 WL 71879 (Pa. Super. Ct. Jan. 7, 2022) (unpublished).....	2, 6
<i>Commonwealth v. Carver</i> , 923 A.2d 495 (Pa. Super. Ct. 2007)	11
<i>Commonwealth v. Eggers</i> , 742 A.2d 174 (Pa. Super. Ct. 1999)	13
<i>Commonwealth v. Fuqua</i> , 407 A.2d 24 (Pa. Super. Ct. 1979)	5
<i>Commonwealth v. Heilman</i> , 876 A.2d 1021 (Pa. Super. Ct. 2005).....	11
<i>Commonwealth v. Holmes</i> , 155 A.3d 69 (Pa. Super. Ct. 2017) (en banc)	7
<i>Commonwealth v. Mauk</i> , 185 A.3d 406 (Pa. Super. Ct. 2018).....	7
<i>Commonwealth v. Petrick</i> , 217 A.3d 1217 (Pa. 2019)	15
<i>Hudak v. Pennsylvania Board of Probation and Parole</i> , 757 A.2d 439 (Pa. Commw. Ct. 2000)	13
<i>Miller v. Pennsylvania Board of Probation and Parole</i> , 784 A.2d 246 (Pa. Commw. Ct. 2001)	13

Statutes

18 Pa.C.S. § 1106.....	2, 5, 7
42 Pa.C.S. § 9728.....	6

Other Authorities

Administrative Office of Pennsylvania Courts, “Collection Rates Over Time,” http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts	3
---	---

Board of Governors of the Federal Reserve, *Economic Well-Being of U.S. Households in 2021* (2022)4

Allison Frankel, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States*, Hum. Rts. Watch (July 31, 2020), <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states>.8

Sharon Brett, Neda Khoshkhoo, & Mitali Nagrecha, *Paying on Probation: How Financial Sanctions Intersect with Probation to Target, Trap, and Punish People Who Cannot Pay*, Harv. L. Sch. Crim. Just. Pol’y Program 16 (June 2020)8

Jeffrey T. Ward, et al., *Imposition and Collection of Fines, Costs, and Restitution in Pennsylvania Criminal Courts: Research in Brief*, ACLU of Pennsylvania 2-3 (Dec. 18, 2020), www.aclupa.org/courtdebt4

STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Pennsylvania (“ACLU of Pennsylvania”) is an affiliate of the American Civil Liberties Union, a century-old nationwide, nonprofit, nonpartisan membership organization with over 1.5 million members. The ACLU of Pennsylvania is dedicated to defending and expanding individual rights and personal freedoms throughout the Commonwealth and has particular expertise with respect to the assessment and collection of fines, costs, and restitution in criminal cases. We submit this brief in support of Appellant Derek Marshall to provide the Court with a more complete picture of the standards governing probation revocation proceedings and what is required of a trial court before finding that nonpayment constitutes a violation of probation that supports revocation.¹

INTRODUCTION

The central problem in this case is that the trial court treated Mr. Marshall’s inability to pay *in full* before the end of probation as a strict liability probation violation, without any consideration of why he has only been able to pay about \$2,500 of the \$68,000 that he owes in restitution. Yet in all cases involving alleged technical violations of probation or parole, only willful noncompliance can lead to revocation. At least three published and binding opinions from this Court, as well

¹ No other person or entity paid, in whole or in part, for the preparation of this brief.

as two published opinions from the Commonwealth Court, have also expressly made this point in the context of fines, costs, and restitution. In cases like *Commonwealth ex rel. Powell v. Rosenberry*, this Court has unequivocally instructed that only the “willful refusal to pay” a financial obligation “may be considered a technical parole violation” that can lead to revocation. 645 A.2d 1328, 1331 (Pa. Super. Ct. 1994). Accordingly, the trial court must make a finding of willfulness to hold Mr. Marshall in violation and revoke probation.

Moreover, this Court recently suggested that trial courts cannot revoke supervision for nonpayment where, as here, that restitution order has been reduced to a civil judgment in favor of the Commonwealth. *Commonwealth v. Bolds*, No. 163 EDA 2021, 2022 WL 71879, at *1 (Pa. Super. Ct. Jan. 7, 2022) (unpublished) (discharging defendant from parole for nonpayment of restitution where the restitution had already been reduced to a civil judgment). Such an approach makes sense because, even when probation ends, the Commonwealth can still choose to collect if the defendant refuses to pay, either through civil means or by pursuing contempt of court proceedings in the trial court. *See* 18 Pa.C.S. § 1106(f) (requiring contempt proceedings for nonpayment of restitution).

The reason for these limitations on revocation is straightforward in light of the economic realities of collecting large sums of money from defendants who do not have those funds. Data from AOPC shows that most defendants cannot afford

to pay even \$500 in restitution in full after 10 years (Mr. Marshall has paid \$2,500 over the past five years). Rather than reflexively punishing these defendants for their poverty, decades of case law consistently prohibits a two-tiered system of justice that keeps defendants on probation indefinitely merely because of their limited financial resources.

The ACLU of Pennsylvania urges this Court to vacate Mr. Marshall’s sentence and clarify for the trial court that this Court’s precedents prohibit keeping indigent defendants under court supervision indefinitely.

ARGUMENT

A. Effective and lawful collections require pragmatic approaches based on reasonable payment plans rather than reflexive punishment in the form of indefinite probation.

Across Pennsylvania, trial courts face the reality that few defendants can quickly pay restitution to crime victims. According to public figures from AOPC’s website, Pennsylvania courts struggle to collect restitution (and fines and costs).

This table shows the financial obligations imposed in 2012 and 2017, and the percentages collected as of December 2022:²

Year	Fines Imposed	Percent Collected	Costs Imposed	Costs Collected	Restitution Imposed	Restitution Collected
2012	\$56 million	45%	\$238 million	58%	\$133 million	26%
2017	\$42 million	38%	\$263 million	51%	\$104 million	24%

² AOPC, *Collection Rate of Payments Ordered by Common Pleas Courts* <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts>.

The data reinforces what everyone involved in the criminal justice system already knows: defendants struggle to pay even comparatively small amounts of restitution. The median amount of restitution that defendants must pay following sentencing is about \$500, yet most public defender clients have been unable to pay it in full after 10 years.³ Mr. Marshall has paid far more—about \$2,500—but it is no surprise that he has been unable to pay the nearly \$68,000 in full restitution

This leaves courts with the question of what to do at the end of probation when defendants, despite good-faith efforts, prove unable to pay the entire balance. This is a particularly critical issue given that one third of Americans cannot readily afford an unexpected expense of even \$400.⁴ The approach taken by the trial court here would see thousands of Pennsylvanians, who AOPC data show have been unable to pay restitution (and fines and costs), automatically violated and re-sentenced to longer terms of probation without consideration of their financial ability or good-faith effort to pay in full.

The better approach, which is mandated by Pennsylvania case law, statutes, and court rules, is patience and pragmatism. Defendants like Mr. Marshall are

³ Jeffrey T. Ward, et al., *Imposition and Collection of Fines, Costs, and Restitution in Pennsylvania Criminal Courts: Research in Brief*, American Civil Liberties Union of Pennsylvania 5 (2020), www.aclupa.org/courtdebt.

⁴ Board of Governors of the Federal Reserve, *Economic Well-Being of U.S. Households in 2021* (2022), <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm>.

required to pay restitution for the harm they have caused, but both the law and common sense lead to the conclusion that punishing them for their life circumstances will not result in the faster repayment of their debt. To the contrary, this Court has explained that if someone faces punishment because “the amount of restitution imposed exceeds the defendant’s ability to pay, the rehabilitative purpose of the order is disserved.” *Commonwealth v. Fuqua*, 407 A.2d 24, 26 (Pa. Super. Ct. 1979). Thus, the payment structure in Pennsylvania mandates that defendants not be punished for paying what they are *able* to pay while working towards that goal of fulfilling their obligations. *See Commonwealth ex rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973) (requiring that defendants be permitted to pay in “reasonable installments” rather than punishing them for an inability to pay in full); 18 Pa.C.S. § 1106(c)(2)(ii) (authorizing courts to set payment plans when a defendant cannot pay restitution in a lump sum). This is the only approach that is consistent with the reality of impoverished and low-income defendants.

Courts can comply with the law by not keeping defendants like Mr. Marshall on probation or parole indefinitely, while still ensuring compliance with a restitution order. While the trial court here thought that there would be “more incentive to pay if [Mr. Marshall is] on probation,” this Court rejected that exact position in *Rosenberry*. N.T. 4/8/2022 at 5; 645 A.2d at 1331. As the Court explained in that case:

Powell need not be on parole to pay his fine, and the Commonwealth need not keep him on parole to insure payment. The Commonwealth could have collected the fine in any manner provided by law, *see* 42 Pa.C.S. § 9728(a), including holding Powell in contempt for failure to pay his fine. *See Commonwealth v. Rosser*, 268 Pa.Super. 116, 407 A.2d 857 (1979). While it may be convenient to threaten Powell with re-incarceration should he not pay, it is hardly necessary. And if maintaining that leverage means modifying Powell's sentence two years after it was originally imposed, it is illegal as well.

645 A.2d at 1331. The same holds true today, and there is simply no reason for why a trial court must disregard this Court's precedents in service of increasing perceived leverage over a defendant to collect restitution he is unable to pay.

Following the reasoning from *Powell*, this Court held earlier this year that a court could not revoke and impose a new period of parole in a case where restitution had previously been reduced to a civil judgment. *See Bolds*, 2022 WL 71879, at *1 (discharging defendant from parole for nonpayment of restitution where the restitution had already been reduced to a civil judgment). The record here shows that Mr. Marshall's restitution, too, was reduced to a civil judgment following his original sentencing in 2017, as was required by law. *See* 42 Pa.C.S. § 9728(b)(1) (requiring orders to pay more than \$1,000 to be entered as civil judgments).

In these circumstances, courts retain ongoing authority to *enforce* compliance with restitution orders, even after supervision ends. As this Court has repeatedly explained, the obligation to pay restitution imposed under Section 1106

does not expire with the end of supervision and instead remains owed until fully paid. *See, e.g., Commonwealth v. Holmes*, 155 A.3d 69, 87 (Pa. Super. Ct. 2017) (en banc) (opinion of four judges) (“Restitution as a part of a sentence is not satisfied until paid in full,” even past the end of probation.). And a court need look no further than Section 1106 itself to see that it can continue to use its contempt authority to punish a defendant who willfully refuses to pay restitution. As the statute sets forth, the court’s collections staff—in Allegheny County, part of the Department of Court Records, Criminal Division—“shall notify the court within 20 days of such failure” to pay restitution, i.e. when the defendant falls behind on a payment plan. 18 Pa.C.S. § 1106(f). Upon that notification, “the court shall order a hearing to determine if the offender is in contempt of court *or* has violated his probation or parole.” *Id.* (emphasis added).⁵

While courts routinely use their contempt powers to enforce payment of restitution, they must still determine in the context of contempt proceedings whether the nonpayment has been willful. *See, e.g., Commonwealth v. Mauk*, 185 A.3d 406, 411 (Pa. Super. Ct. 2018) (invalidating finding of contempt where the

⁵ To avoid any confusion, it is worth noting that the reference to magisterial district judges (“MDJ”) in Section 1106(f) is a reference to the procedures that occur when an MDJ imposes restitution, as set forth in Section 1106(e). It is not the case that nonpayment of restitution imposed by a common pleas judge is handled by first sending it to the MDJ for adjudication.

trial court did not inquire into the reasons for nonpayment and did not make findings on the record regarding willfulness).

Moreover, the trial court’s approach here—trying to maximize payments to a victim while keeping a defendant on court supervision—is actually counter-productive to the stated goal. Employment opportunities for a person currently on probation or parole are significantly limited, making it even harder for a person on supervision to earn the money necessary to pay restitution. Even if employers are willing to hire an individual who is under active court supervision, the demands of supervision make it harder to maintain employment. Supervision conditions “often conflict” with a person’s ability to work if a person is required “to attend frequent meetings and treatment programs—typically held during standard work hours.”⁶ As a recent report from the Harvard Law School Criminal Justice Policy Program explained, individuals on supervision “must take time off work” to check in with probation officers: “Hourly workers lose income and salaried employees might be required to take unpaid leave, and they may also risk losing their job for repeated requests for time off—making it harder for those who are already struggling with financial sanctions to make payments.”⁷ This also limits work opportunities for

⁶ Allison Frankel, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States*, Hum. Rts. Watch (2020), <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states>.

⁷ Sharon Brett, Neda Khoshkhoo, & Mitali Nagrecha, *Paying on Probation: How Financial Sanctions Intersect with Probation to Target, Trap, and Punish People Who Cannot Pay*, Harv. L. Sch. Crim. Just. Pol’y Program 16 (June 2020),

individuals on supervision, who “report that it is hard to find a job that will accommodate their probation reporting schedules.” *Id.* at 16-17. When a defendant owes restitution, what is bad for the defendant’s ability to obtain employment is also bad for the victim.

If the trial court’s goal is to ensure maximum repayment to a victim in the shortest period of time—which certainly should be the goal—then there is no point in keeping a defendant on supervision solely to extract payments. Instead, allowing the defendant to complete probation is a win-win scenario for the defendant, the victim, *and* the court. The defendant can pursue better work opportunities while being free of court supervision, the significant restrictions that are attendant to it, and the ever-present threat of arrest and re-incarceration due to minor technical violations. The victim receives restitution payments faster because the defendant has better and higher-paying work opportunities. And the court saves time and resources by not having its probation officers waste their limited capacity on defendants who remain on probation, not because of any risk to the public or need for further rehabilitation, but only because they are slowly paying off restitution. Instead, collections can be turned over to the court’s dedicated collections staff in

https://mcusercontent.com/f65678cd73457d0cbde864d05/files/f05e951e-60a9-404e-b5cc-13c065b2a630/Paying_on_Probation_report_FINAL.pdf.

Department of Court Records—and private debt collection agencies—to let them collect the money and inform the court of any failure to pay.⁸

B. The trial court unlawfully revoked Mr. Marshall’s probation and imposed a new period of probation without considering his ability to pay or finding that he willfully refused to pay.

In Mr. Marshall’s revocation proceedings, the trial court erred by treating nonpayment as a strict liability offense that automatically constitutes a technical violation of probation. That, however, is not the law in Pennsylvania, as set forth in multiple opinions by both this Court and the Commonwealth Court.

When a court makes payment of restitution a condition of probation (or parole), the threshold question at a violation hearing for nonpayment is whether the defendant *willfully* refused to pay. This Court issued a definitive ruling more than three decades ago that answered the question of “whether parole or probation may be revoked for less than willful conduct.” *Commonwealth v. Dorsey*, 476 A.2d 1308, 1311 (Pa. Super. Ct. 1984). Looking to the basic framework used by the U.S. Supreme Court in *Bearden v. Georgia*, 461 U.S. 660, 672 (1983), this Court determined that it cannot.

Thus this Court set forth that, as in all other revocation proceedings, the burden is on the Commonwealth to “prove by a preponderance of the evidence a

⁸ Every court must have either dedicated staff to collect fines, costs, and restitution or must have a contract with a private debt collection agency to do so. *See* 42 Pa.C.S. § 9728(a)(2).

violation of such parole”—and one of the elements that the Commonwealth must prove is that the defendant willfully refused to pay. *Dorsey*, 476 A.2d at 1311. In the decades since *Dorsey*, this Court has repeatedly held that one of the elements of every technical violation is whether there was a “‘wilful or flagrant disrespect’ for the terms of probation on the part of the defendants” to revoke probation.

Commonwealth v. Heilman, 876 A.2d 1021, 1027 (Pa. Super. Ct. 2005) (quoting *Commonwealth v. Ballard*, 814 A.2d 1242, 1246 (Pa. Super. Ct. 2003)) (court could not revoke probation for failure to attend treatment where there was no evidence of willful noncompliance); *see also, e.g., Commonwealth v. Carver*, 923 A.2d 495, 499 (Pa. Super. Ct. 2007) (probation cannot be revoked for a failed drug test “based solely upon technical violations because there was no willful or flagrant disrespect for probationary terms evidenced by defendant”); *Commonwealth v. Allshouse*, 969 A.2d 1236, 1242 (Pa. Super. Ct. 2009) (reversing revocation based on no-contact order when there “was no basis for the trial court's finding that the Commonwealth demonstrated by a preponderance of the evidence that Appellant willfully violated the no-contact order”).

If the *Dorsey* decision somehow left any ambiguity that these principles apply equally to alleged technical violations for nonpayment of fines, costs, and restitution, ten years after *Dorsey* this Court again held in *Rosenberry* that only the “willful refusal to pay a fine may be considered a technical parole violation for

which a parolee may be re-incarcerated.” 645 A.2d at 1331. The defendant in *Rosenberry* was *not* incarcerated for nonpayment. Instead, as here, the trial court gave the defendant an additional period of supervision (there parole), and he was later incarcerated for an unrelated violation that occurred while he was on that illegal parole. *Id.* at 1329. This Court vacated that additional sentence of parole and “discharged [him] from all obligations arising subsequent to the expiration of his original parole period.” *Id.* at 1331.

The takeaway from those cases is that, absent a finding of willfulness, a defendant simply has not committed a technical violation due to nonpayment. This places the evidentiary burden on the Commonwealth to prove willfulness, but it also places an obligation on the trial court to avoid erroneous revocation of a defendant who cannot pay. As this Court explained, even when a defendant facing revocation did not “offer any evidence concerning his indigency,” the trial court nevertheless has acted unlawfully if it did “not inquire into the reasons for appellant’s failure to pay [n]or . . . make any findings pertaining to the willfulness of appellant’s omission as required by *Bearden*.” *Dorsey*, 476 A.2d at 1312. This Court reiterated the need for such findings fifteen years later, explaining that a “proper analysis should include an inquiry into the reasons surrounding the probationer’s failure to pay, followed by a determination of whether the

probationer made a willful choice not to pay, as prescribed by *Dorsey*.”

Commonwealth v. Eggers, 742 A.2d 174, 176 (Pa. Super. Ct. 1999).

Using the same analytical framework, the Commonwealth Court has explained that there must be a “showing of fault on the part of the petitioner in a violation of either probation or parole” in order to find that a technical violation occurred. *Hudak v. Pennsylvania Board of Probation and Parole*, 757 A.2d 439, 441 (Pa. Commw. Ct. 2000). Relying on *Dorsey* and *Eggers*, that court also concluded that the Commonwealth must “meet its burden” to prove a technical violation. *Id.* at 441 and n.3. The Commonwealth Court later applied the same reasoning in holding that only a defendant who is either able to pay, or is unable and has failed to make “sufficient bona fide efforts to acquire or save the necessary resources to pay,” is in violation. *Miller v. Pennsylvania Board of Probation and Parole*, 784 A.2d 246, 248 (Pa. Commw. Ct. 2001).⁹ Both lines of cases from this Court and the Commonwealth Court are consistent that nonpayment is not a strict liability technical violation; the Commonwealth must provide additional evidence of willful nonpayment to meet its burden.

⁹ There is some tension between *Miller* and this Court’s rulings. *Miller* creates a burden-shifting framework where the defendant first has to show an inability to pay, and the Commonwealth then has to show that despite that inability, the defendant has failed to make a good faith effort to acquire the resources to pay. 784 A.2d at 248. By contrast, this Court’s opinion in *Dorsey* made it the Commonwealth’s burden at all stages to prove an *ability* to pay. 476 A.2d at 1311.

The concept of “willfulness” is already defined by case law. The Pennsylvania Supreme Court explained decades ago that, in the context of nonpayment, willful “means an intentional, designed act and one without justifiable excuse.” *Commonwealth ex rel. Wright v. Hendrick*, 312 A.2d 402, 404 (Pa. 1973). As this Court has explained, if “one’s effort to secure the funds owed was made in good faith, any nonpayment is excused,” as long as a defendant has made a bona fide effort to pay. *Mauk*, 185 A.3d at 411.

Applying those standards shows that Mr. Marshall’s violation hearing roundly disregarded and violated all five appellate decisions, from *Dorsey* to *Miller*. The only financial information on the record was that Mr. Marshall was working and hoped he would possibly be able to pay off the remaining balance within the next five years. Not only did the trial court not fulfill its obligation under *Dorsey* and *Eggers* to inquire into the reasons for nonpayment, but it did not even know Mr. Marshall’s income, let alone his expenses. Even if the trial court claimed to have made a finding of willful nonpayment, which it did not (the trial court does not use the “willful” term at all), the record would simply be insufficient to support that conclusion.

What happened here is precisely what precedent prohibits, which is court-imposed punishment of a defendant because he has not been able to afford to pay roughly \$68,000 in restitution in full over the past five years. The Pennsylvania

Supreme Court recently reiterated that Pennsylvania’s restitution laws are structured such that the legislature did not “seek to punish a defendant for his or her inability to comply. The Legislature simply placed the consideration of a defendant’s ability to pay at the more pertinent stage, when a sentencing court must assess a defendant’s compliance with the order.” *Commonwealth v. Petrick*, 217 A.3d 1217, 1225 (Pa. 2019). Yet here, the trial court missed that message and disregarded the fundamental legal requirements with which it needed to comply. This Court should ensure that the trial court comes into compliance with these legal requirements.

Conclusion

For the foregoing reasons, *Amicus Curiae* the ACLU of Pennsylvania urges this Court to find that Mr. Marshall has been subjected to an unlawful revocation of probation.

Respectfully submitted,

/s/ Andrew Christy

Andrew Christy

Pa. I.D. No. 322053

AMERICAN CIVIL LIBERTIES UNION

OF PENNSYLVANIA

P.O. Box 60173

Philadelphia, PA 19102

(215) 592-1513 x138

achristy@aclupa.org

Date: December 16, 2022

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify pursuant to Pa.R.A.P. 531 that this brief does not exceed 7,000 words.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties via PACFile.

Dated: December 16, 2022

/s/ Andrew Christy
Andrew Christy