

283 A.3d 275  
Supreme Court of Pennsylvania.

COMMONWEALTH of Pennsylvania, Appellee

v.

**Jquan HUMPHREY**, Appellant  
Commonwealth of Pennsylvania, Appellee

v.

**Jquan Humphrey**, Appellant

No. 81 MAP 2021, No. 82 MAP 2021

|

Argued: May 18, 2022

|

Decided: September 29, 2022

### Synopsis

**Background:** Defendant, who was a state inmate serving a sentence of incarceration, was charged with two counts of aggravated harassment by prisoner. After initially finding that defendant was incompetent to stand trial, the Court of Common Pleas of Centre County, Criminal Division at Nos. CP-14-CR-2008-2017 and CP-14-CR-0260-2018, [Brian K. Marshall, J.](#), dismissed the charges pursuant to the Mental Health Procedures Act (MHPA). Commonwealth appealed. The Superior Court, Nos. 582 MDA 2020 and 583 MDA 2020, reversed the dismissal. Defendant petitioned for allowance of appeal.

**[Holding:]** The Supreme Court, Nos. 81 MAP 2021 and 82 MAP 2021, [Baer](#), Chief Justice, held that the MHPA authorizes dismissal of criminal charges where the defendant remains incompetent and does not limit the trial court's authority to dismiss criminal charges to circumstances where the defendant has regained his competency; abrogating [Commonwealth v. Hazur](#), 372 Pa.Super. 306, 539 A.2d 451; and [Commonwealth v. McGargle](#), 378 Pa.Super. 559, 549 A.2d 198.

Vacated and remanded.

[Brobson, J.](#), concurred and filed opinion.

[Dougherty, J.](#), dissented and filed opinion, which [Mundy, J.](#), joined.

**Procedural Posture(s):** Appellate Review; Pre-Trial Hearing Motion.

West Headnotes (5)

- [1] **Criminal Law** 🔑 Scope of Inquiry  
**Criminal Law** 🔑 Review De Novo

The Supreme Court's standard of review of a question of law is de novo and its scope of review is plenary.

- [2] **Statutes** 🔑 Plain Language; Plain, Ordinary, or Common Meaning

The best indication of legislative intent is the plain language of the statute. 1 Pa. Cons. Stat. Ann. § 1901 et seq.

- [3] **Statutes** 🔑 Natural, obvious, or accepted meaning

**Statutes** 🔑 Context

When considering the plain language of a statute, courts examine the text of the statute in context and give the words and phrases their common and approved usage. 1 Pa. Cons. Stat. Ann. § 1901 et seq.

- [4] **Criminal Law** 🔑 Liberal or strict construction; rule of lenity

Strict construction of a penal provision in favor of the defendant does not require that words of the penal provision be disregarded, but only that if an ambiguity exists, such language should be interpreted in the light most favorable to the accused. 1 Pa. Cons. Stat. Ann. § 1928(b)(1).

- [5] **Criminal Law** 🔑 Determination; acquittal

Mental Health Procedures Act's (MHPA) provision that authorizes a trial court to dismiss criminal charges filed against a defendant who is incompetent, and will likely remain so, under circumstances where

the passage of time and its effect upon the criminal proceedings render it unjust to resume the prosecution authorizes dismissal of criminal charges where the defendant remains incompetent; the section does not limit the trial court's authority to dismiss criminal charges to circumstances where the defendant has regained his competency; abrogating [Commonwealth v. Hazur](#), 372 Pa.Super. 306, 539 A.2d 451; and [Commonwealth v. McGargle](#), 378 Pa.Super. 559, 549 A.2d 198. 50 Pa. Stat. Ann. § 7403(e).

[1 Cases that cite this headnote](#)

\*276 Appeal from the Order of the Superior Court dated April 26, 2021 at No. 582 MDA 2020 Reversing the Order of the Centre County Court of Common Pleas, Criminal Division, dated February 19, 2020 at No. CP-14-CR-0002008-2017. [Marshall](#), Brian K., Judge

Appeal from the Order of the Superior Court dated April 26, 2021 at No. 583 MDA 2020 Reversing the Order of the Centre County Court of Common Pleas, Criminal Division, dated February 19, 2020 at No. CP-14-CR-0000260-2018. [Marshall](#), Brian K., Judge

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[BAER](#), C.J., [TODD](#), [DONOHUE](#), [DOUGHERTY](#), [WECHT](#), [MUNDY](#), [BROBSON](#), JJ.

## OPINION

CHIEF JUSTICE [BAER](#)

\*277 This appeal presents the issue of whether Section 7403(e) of the Mental Health Procedures Act (“MHPA” or “Act”), 50 P.S. § 7403(e), authorizes a trial court to dismiss criminal charges filed against a defendant who is incompetent, and will likely remain so, under circumstances where the passage of time and its effect upon the criminal proceedings render it unjust to resume the prosecution. Following established intermediate appellate court precedent, the Superior Court held that [Section 7403\(e\)](#) authorizes dismissal of criminal charges only under circumstances where the defendant has regained his competence, and not where he remains incompetent. [Juan Humphrey](#) (“Appellant”) challenges this settled statutory interpretation.

For the reasons set forth herein, we respectfully reject the Superior Court's interpretation of [Section 7403\(e\)](#) and hold that the MHPA does not limit the trial court's authority to dismiss criminal charges to circumstances where the defendant regained his competency. Instead, [Section 7403\(e\)](#) authorizes a trial court to dismiss criminal charges filed against an incompetent defendant where the court finds that it would be unjust to resume the prosecution due to the passage of time and its effect upon the criminal proceeding. Accordingly, we vacate the judgments of the Superior Court and remand for further proceedings consistent with this opinion.

### *I. Background*

On September 13, 2017, while serving a state sentence on an unrelated matter at State Correctional Institution Benner Township (“SCI Benner Township”) in Centre County, Pennsylvania, Appellant allegedly threw a bag of urine on a corrections officer. A few months later, on November 11, 2017, Appellant allegedly spat on a corrections officer at that institution. As a result of these incidents, the Commonwealth charged Appellant with two counts of aggravated harassment by prisoner pursuant to [18 Pa.C.S. § 2703.1](#). Preliminary hearings were conducted on these charges on December 6, 2017, and February 7, 2018, respectively, and the charges were bound over for trial.

Upon defense counsel's request and with the agreement of the Commonwealth, the trial court entered an order on September 21, 2018, directing a psychiatric evaluation and competency examination of Appellant. Scott J. Scotilla, Psy. D., evaluated Appellant on November 7, 2018, and prepared a report, dated December 5, 2018. *See* Commonwealth Exhibit 7 to Commonwealth's Answer to Defendant's Motion to Dismiss. In his report, Dr. Scotilla indicated that when he personally attempted to interview Appellant at the Centre County Courthouse Annex, Appellant was unresponsive and asked questions of a paranoid nature. Report of Dr. Scotilla, 12/05/2018, at 1. He explained that Appellant insisted that the color of the doctor's folder signified that he had come from Russia to obtain secret information from him due to his status as a prince in a Jamaican tribe. *Id.* Appellant further indicated that the CIA and the Russian mob likewise sought similar information from him.

Dr. Scotilla noted that Appellant jumped from topic to topic regarding conspiracy theories and was unable to be redirected to participate in the interview, notwithstanding being informed that any inability to answer questions was akin to a refusal to participate in the evaluation. *Id.* He opined that Appellant "showed frequent \*278 derailment and delusions, and he was tangential, paranoid, grandiose and perseverative in the manner with which he spoke."<sup>1</sup> *Id.* at 2. Dr. Scotilla referenced his review of several Department of Corrections ("DOC") Mental Health Contact Notes, spanning from June through September of 2017, which indicated that Appellant had previously engaged in behavior similar to that exhibited by him during the evaluation.

Dr. Scotilla asserted that while Appellant's mental health diagnoses had changed throughout that period, the latest reference indicated that he suffered from [antisocial personality disorder](#) and mild intellectual disability. *Id.* at 4. Observing that Appellant was being treated with antipsychotic medication without the diagnosis of [schizophrenia](#) spectrum disorder or a [bipolar disorder](#) with psychotic features, Dr. Scotilla opined that Appellant previously displayed symptoms of [bipolar disorder](#). *Id.* at 4-5. Based on his personal observation of Appellant's behavior and his review of DOC's records, Dr. Scotilla concluded that Appellant should be evaluated at Torrance State Hospital's Regional Forensic Psychiatric Center which, he opined, was uniquely suited to evaluate Appellant and provide restoration of competency services should they be deemed necessary.<sup>2</sup> *Id.* at 4. Dr. Scotilla offered no opinion in his report regarding whether Appellant's competency could be restored or whether

treatment options within the DOC could address Appellant's competency issues.

Appellant's counsel subsequently filed a petition in the trial court on March 21, 2019, alleging that Appellant was unable to understand the nature of the proceedings against him, and that, due to his mental illness, he was not criminally responsible for the offenses. The petition additionally sought a hearing on the matter. On May 16, 2019, the parties appeared before the trial court, and the Commonwealth agreed, based upon Dr. Scotilla's report, that Appellant was incompetent to proceed to trial at that time. Accordingly, on that same date, the trial court entered an order finding Appellant incompetent to stand trial and ordering Appellant "into involuntary treatment through the Department of Corrections for a period not to exceed 60 days," after which the case would be reevaluated. Trial Court Order, 5/16/2019.

Unable to comprehend fully the treatment ordered in the trial court's May 16th order purportedly due to a lack of citation to the MHPA, staff at State Correctional Institution Greene ("SCI Greene") subsequently contacted the Commonwealth for guidance. The Commonwealth conveyed the issue to the trial court, which, on July 8, 2019, entered a second order with the consent of both parties, stating that pursuant to Section 7402(b) of the MHPA, Appellant was to be committed to an inpatient treatment facility to be designated by the DOC for a period not to exceed 60 days.<sup>3</sup>

\*279 On August 14, 2019, a member of the DOC legal department informed the Commonwealth that the Department of Human Services ("DHS"), and not the DOC, was the agency responsible for providing competency restoration services. The Commonwealth was further provided with contact information regarding the referral process. At a status conference the following month, the Commonwealth relayed that information to the trial court, which directed the Commonwealth to make the referral.

On October 25, 2019, the trial court entered a third order, finding by a preponderance of the evidence that Appellant was incompetent to stand trial on the charges of aggravated harassment by prisoner, and that inpatient psychiatric/psychological treatment was required to restore Appellant's competency to stand trial. The order further stayed the criminal proceedings, ordered Appellant discharged from the state correctional facility into the custody of the DHS, and committed Appellant to Torrance State Hospital's Regional Forensic Psychiatric Center for a period not to exceed 60 days,

after which the court would review the physician's report on Appellant's competency.

By letter dated November 14, 2019, Torrance State Hospital informed the Commonwealth that Appellant had been denied admittance because he was a state inmate serving a sentence of incarceration.<sup>4</sup> At the following status conference, the trial court indicated that the parties could file motions concerning future proceedings in the event the competency issue remained unresolved.

Thereafter, on December 5, 2019, Appellant filed a motion to dismiss the two counts of aggravated harassment by prisoner. Appellant contended that while the Commonwealth pursued various avenues, it was ultimately unable to afford him the competency restoration services he required. Appellant's Motion to Dismiss, 12/5/2019, at ¶ 27. Emphasizing that approximately two years had already passed since his offenses were committed, Appellant maintained that he would not likely regain competency within the foreseeable future and it would be unjust, by virtue of the passage of time and his mental condition, for the Commonwealth to proceed on the charges against him. *Id.* at ¶¶ 33-34, 36.

In its answer to the motion to dismiss, the Commonwealth opposed the dismissal of the charges, alleging that Appellant presented insufficient evidence to establish a substantial likelihood that he would remain incompetent to stand trial or that it would be unjust or prejudicial to resume prosecution on the charges of aggravated harassment by prisoner. Commonwealth's Answer to Defendant's Motion to Dismiss at ¶¶ 41, 44. The Commonwealth averred that those criminal charges were not so old or \*280 complex that it would be burdensome to resume prosecution should Appellant's competency be restored. *Id.* at ¶ 47. Notably, the Commonwealth further sought reexamination of Appellant's competency, emphasizing that Section 7403(c) of the MHPA provides that following a determination of incompetency, "the person charged shall be reexamined not less than every 90 days by a psychiatrist appointed by the court and a report of reexamination shall be submitted to the court and to counsel." *Id.* at 47 (citing 50 P.S. § 7403(c)). Because Appellant had not been reexamined since the initial examination by Dr. Scotilla on November 7, 2018, the Commonwealth requested the trial court to order the DHS to complete another psychiatric evaluation of Appellant at SCI Forest. *Id.* at 58-59.

Attached to the Commonwealth's answer to the motion to dismiss was a special psychology assessment report

drafted on June 27, 2019, by Dr. Cynthia Wright, the regional licensed psychologist manager for the DOC. *See* Commonwealth's Exhibit 11 to Commonwealth's Answer to Defendant's Motion to Dismiss. The report indicated that although Appellant initially expressed an intent to participate in the evaluation conducted by Dr. Wright, he ultimately refused to cooperate; thus, the evaluation was based upon review of Appellant's psychiatric progress notes, individual treatment plans, medication summaries, diagnosis summaries, and physicians' notes. *Id.* at 1.

Dr. Wright asserted that Appellant had never been diagnosed with a serious mental illness, and that his current diagnosis includes [antisocial personality disorder](#), [borderline intellectual functioning](#), and [adjustment disorder with depressed mood](#). *Id.* at 2, 3. Referencing that Appellant has spent little time in the general population of inmates due to his long history of assaulting correctional staff members, Dr. Wright opined that "[m]ost of [Appellant's] behavior is not related to mental health issues and appear[s] to be more behaviorally driven in attempting to get special privileges," such as having additional time outside of his cell and the ability to watch television. *Id.* at 2. Dr. Wright also acknowledged that Appellant had previously displayed "aggression, lying, deception, manipulation for self[-]profit, [and] lack of regard for safety of self and others." *Id.* Dr. Wright concluded that Appellant should be placed in the Restricted Housing Unit, which would provide him time for reflection and allow him to engage in mental health treatment when he is ready. *Id.* at 5.

The trial court held a hearing on Appellant's motion to dismiss on February 7, 2020, during which the Commonwealth presented three witnesses. First, Jessica Penn Shires, a Human Services Program Representative for the DHS, testified that competency restoration services at Torrance State Hospital and at Norristown State Hospital are performed either when an inmate is on parole or after the inmate has served his or her maximum sentence within the DOC. N.T., 2/7/2020, at 5. She indicated that if a state inmate is currently serving a sentence, the inmate will be denied admittance into a state hospital with a forensic unit. *Id.* at 6. She explained, however, that the DHS can evaluate an inmate who is still serving a sentence to determine his or her competency to stand trial upon the issuance of a court order requesting the same. *Id.* Shires clarified that the DOC provides mental health treatment to inmates and can evaluate inmates on a periodic basis within the DOC to determine whether they have regained competency. *Id.* at 8. She asserted that because the

DOC does not have a competency restoration program, any kind of mental health treatment that an inmate receives \*281 from the DOC would be administered through its psychology staff pursuant to the MHPA. *Id.* at 9.

Second, the Commonwealth presented the testimony of Jeffrey Hoeflich, Esquire, an attorney for the DHS who provides legal guidance to DHS staff members at Torrance State Hospital regarding individuals who have been committed to receive competency restoration services there. *Id.* at 15. Attorney Hoeflich confirmed that incompetent state inmates may not receive competency restoration services at Torrance State Hospital. *Id.* He explained that the Office of Mental Health and Substance Abuse Services Bureau within the DHS, however, may send one of its contractors into the state correctional institutions to conduct competency evaluations for inmates. *Id.* at 16-17. Attorney Hoeflich further testified that the DOC has mental health pods or mental health units in at least two of its facilities in which mental health services can be provided to inmates in need. *Id.* at 17.

Finally, the Commonwealth presented the testimony of Dr. Cynthia Wright, who provided the psychological assessment report upon which the Commonwealth relied in its answer to Appellant's motion to dismiss. *Id.* at 20. Dr. Wright agreed that the DOC does not provide competency restoration services to inmates serving state sentences. *Id.* at 23. Acknowledging that Appellant would be parole eligible at the expiration of his minimum sentence on May 10, 2022, and that his maximum sentence will expire on May 10, 2033, she implied that he would be unable to obtain competency restoration services until he was released from custody. *Id.* at 27. Dr. Wright reiterated, however, that the DOC provides competency evaluations and other mental health treatments to assist in the stabilization of any mental health issues. *Id.* at 23.

Dr. Wright testified that Appellant had been receiving mental health treatment through the DOC, as he was placed in a Secured Residential Treatment Unit ("SRTU") at SCI Greene, which is "designed to provide management programming and treatment for an inmate who exhibits a serious mental illness or chronic disciplinary issues or an inability to adapt to general population." *Id.* at 24. She asserted that, due to his behavioral issues, Appellant was subsequently transferred to SCI Forest and placed on the Restricted Release List of inmates to be kept in solitary confinement indefinitely. *Id.* at 26. Without elaboration, Dr. Wright indicated that Appellant is "seen" by "psychology" at least once every 30 days, and

by "psychiatry" typically every 90 to 120 days. *Id.* at 26. Appellant presented no witnesses at the hearing.

By order dated February 19, 2020, the trial court granted Appellant's motion to dismiss the criminal charges pursuant to Section 7403(e) of the MHPA, which provides:

**(e) Resumption of Proceedings or Dismissal. - -**

When the court, on its own motion or upon the application of the attorney for the Commonwealth or counsel for the defendant, determines that such person has regained his competence to proceed, the proceedings shall be resumed. If the court is of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution, the court may dismiss the charge and order the person discharged.

50 P.S. § 7403(e).<sup>5</sup> Referencing only the second sentence of that provision, the trial \*282 court relied upon the Superior Court's decision in [Commonwealth v. McGargle](#), 378 Pa.Super. 559, 549 A.2d 198 (1988), for the proposition that "[w]hen there is a substantial probability that competency will not be restored for the foreseeable future, dismissal is appropriate." Trial Court Opinion, 2/19/2020, at 4.

Noting both parties' agreement that Appellant was incompetent to stand trial, the trial court further relied upon the expert testimony establishing that the DOC does not offer competency restoration services and that Appellant would not be eligible to receive such services in a state hospital for the next 2.5 to 13.5 years, until he served either his minimum term of incarceration and was paroled, or served his maximum sentence. *Id.*, at 4. The trial court observed that assuming Appellant regained his competency upon receipt of competency restoration services after he was paroled in 2.5 years when his minimum sentence expired (on May 10, 2022), his criminal charges would then be at least 5 years old. Finding it highly unlikely that Appellant would be able to recall the circumstances of the offenses for which he was charged and given the severity of his incompetence, the trial court concluded that Appellant would be unjustly prejudiced by the Commonwealth's resumption of the prosecution at that time. *Id.*

The Commonwealth subsequently filed an appeal of the trial court's dismissal of criminal charges, raising the following three issues: (1) whether the trial court's dismissal of criminal charges violated [Section 7403](#) and the case law interpreting

that provision; (2) whether the evidence was insufficient to support the trial court's finding that Appellant would be prejudiced by the resumption of the criminal proceedings; and (3) whether the trial court erred in dismissing the charges, rather than ordering another competency evaluation by the DHS.

Agreeing with the Commonwealth that the trial court erred by interpreting Section 7403(e) as authorizing dismissal of criminal charges where the defendant remained incompetent, the Superior Court reversed the trial court's dismissal of criminal charges in a memorandum opinion. Rather than conduct its own statutory analysis of Section 7403(e), however, the Superior Court reached this conclusion by finding itself bound by case law interpreting that provision, particularly *Commonwealth v. McGargle, supra*. Superior Court Memorandum, 4/26/2021, at 5.

Contrary to the trial court, the Superior Court interpreted *McGargle* as holding that Section 7403(e) did not authorize dismissal where the defendant has not and would not, in all likelihood, regain competency. Superior Court Memorandum at 5. The Superior Court reiterated *McGargle*'s sentiment that “[w]e are not directed to, nor have we been able to find, either statutory or case law which provides for the dismissal of charges where the accused is incompetent and expected to remain so forever, as appears to be the case here.” *Id.* (citing *McGargle*, 549 A.2d at 199). The Superior Court further cited *Commonwealth v. Hazur*, 372 Pa.Super. 306, 539 A.2d 451 (1988), which held that “[d]ismissal of the charges [pursuant to Section 7403(e)] is only appropriate when a defendant is found incompetent and then regains competency but too much time has lapsed in the interim making it unjust to continue the prosecution.”

Superior Court Memorandum at 6 (citing *Hazur*, 539 A.2d at 454). Based on these decisions, the Superior Court held that the trial court lacked statutory authority to dismiss Appellant's \*283 charges while he remained incompetent. Superior Court Memorandum at 6.

The Superior Court acknowledged the “pointlessness of reinstating charges for which the defendant may never stand trial,” a view also espoused by the court in *McGargle*. Superior Court Memorandum at 6. Recognizing that there is no established procedure for providing competency restoration services to a state inmate, the Superior Court

nevertheless found itself bound to adhere to the interpretation of Section 7403(e) as set forth in *McGargle* and *Hazur*, because the statutory provision has not been amended since those cases were adjudicated. *Id.* at 7.

Germane to this appeal, because the Superior Court concluded that the trial court lacked authority under Section 7403(e) to dismiss the criminal charges while Appellant remained incompetent, the Superior Court did not examine the Commonwealth's remaining two issues, relating to the sufficiency of the evidence supporting the trial court's finding that the resumption of criminal proceedings would be unjust and the purported need for an additional competency evaluation of Appellant.

This Court subsequently granted Appellant's petition for allowance of appeal to address whether the Superior Court erred by reversing the trial court's dismissal of criminal charges filed against him because: (1) Section 7403(e) authorizes the trial court to dismiss Appellant's criminal charges when the resumption of the prosecution would be unjust; (2) there was sufficient evidence to establish that Appellant's severe incompetence and the passage of time rendered the resumption of prosecution unjust; and (3) there was no need to order another competency evaluation, as the trial court had concluded in 2020 that sufficient time had passed to render unjust the prosecution of Appellant on the charges of aggravated harassment by prisoner. *Commonwealth v. Humphrey*, 266 A.3d 1063 (Pa. 2021).<sup>6</sup>

## II. The Parties' Arguments

### A. Issue I

Relating to the first issue for which allowance of appeal was granted, Appellant argues that the Superior Court erred in holding that Section 7403(e) authorizes dismissal of criminal charges only where the defendant regains his competence and the resumption of the prosecution would be unjust, and not where the defendant remains incompetent. He initially submits that the text of Section 7403(e) is unambiguous, as its plain language provides for dismissal whenever the court is “of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution.” 50 P.S. § 7403(e). Appellant emphasizes that there is simply no requirement

in [Section 7403\(e\)](#) that the person must regain competency before charges can be dismissed.


Even if this Court were to find the statute ambiguous, he posits, application of the rules of statutory construction leads to a finding that the Legislature intended to authorize a trial court to dismiss charges where the prosecution would be unjust, regardless of whether the defendant's competency has been restored. To conclude otherwise, Appellant contends, would lead to an absurd, unreasonable result because a trial court would have to wait, potentially for years, to enter an order of dismissal relating to charges filed against a defendant who remains incompetent where, as in this case, the court has already determined that a prejudicial amount of time has elapsed since the offenses \*284 were committed. At the same time, he submits, the trial court would have authority to dismiss criminal charges against a defendant who was similarly prejudiced by the passage of time, but who regained competency. Appellant opines that there is nothing in the statutory text evidencing that the Legislature intended such disparate treatment of incompetent defendants.

Additionally, in support of his proffered construction of subsection (e), Appellant directs this Court to subsection (f) and submits that the two provisions, when read in context, refute the Commonwealth's contention that [Section 7403](#) only authorizes dismissal of charges after the defendant has regained competence.<sup>7</sup> He emphasizes that both subsections address the circumstances under which criminal proceedings may be sustained against an incompetent defendant and should be read *in pari materia*. Appellant avers that subsection (f) sets a mandatory limit on how long criminal charges may be stayed against an incompetent defendant, thereby implicitly acknowledging that a trial court has authority to dismiss criminal charges against defendants who remain incompetent.

Thus, Appellant concludes, the only reasonable interpretation of [Section 7403\(e\)](#)'s dismissal authority is that the Legislature intended to leave dismissal of charges, even against a defendant who remains incompetent, to the discretion of the trial court. This construction of subsections (e) and (f), he posits, furthers the clear legislative intent to preclude a trial court from unfairly and indefinitely prolonging criminal charges against an incompetent criminal defendant who is unlikely to ever be restored to competency.

As applied here, Appellant observes that his charges were each felonies of the third degree, carrying a maximum

sentence each of 7 years. He maintains that under subsections (e) and (f), the trial court could exercise discretion to stay the criminal charges for 7 years, but could also, as it did here, exercise its discretion under subsection (e) and dismiss the charges upon finding that resumption of the prosecution would be unjust.

Finally, Appellant relies upon the canon of constitutional avoidance which, in his view, dictates that [Section 7403\(e\)](#) should be construed to permit the trial court to dismiss charges against an incompetent defendant so as to avoid the violation of a defendant's fundamental constitutional rights to due process and a speedy trial.<sup>8</sup> See Brief for Appellant at 46 (citing  *Jackson v. Indiana*, 406 U.S. 715, 740, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972) (providing that “[dismissal] of charges against an incompetent accused has usually been thought to be justified on grounds not squarely presented here: particularly, the Sixth-Fourteenth Amendment right to a speedy trial, or the denial of due process ...”).<sup>9</sup>, <sup>10</sup>

\*285 In response, the Commonwealth contends that the Superior Court properly limited the scope and application of [Section 7403\(e\)](#)'s authority to dismiss criminal charges to circumstances where a person was deemed incompetent and then regained competency. In holding to the contrary, it contends, the trial court looked only to the second sentence of [Section 7403\(e\)](#), and ignored the first sentence, which requires the court to render a finding that the defendant has gained competency prior to dismissing any charges due to prejudice arising from the passage of time.

When the statutory language is examined as a whole and meaning is given to all of its provisions, the Commonwealth argues, it becomes clear that [Section 7403](#) sets forth a process sufficient to protect Appellant's speedy trial rights, his due process rights, and the fundamental due process of the proceedings. Read in its entirety, it maintains, [Section 7403](#) provides that a finding of incompetency shall effect a stay of the criminal proceedings under subsection (b),<sup>11</sup> which stay may not remain in effect longer than the maximum sentence of confinement for the crime charged (here, 7 years) or 10 years, whichever is less, [50 P.S. § 7403\(f\)](#), set forth *supra* at note 7.<sup>12</sup> The Commonwealth acknowledges that the defendant has the continuing right to counsel and shall be examined by a psychiatrist at least every 90 days under subsection (c), and a report shall be submitted to the court and counsel to indicate whether competency is likely to be achieved.<sup>13</sup> Finally, it observes that subsection \*286 (d) provides, *inter alia*, that

“[w]henver a person who has been charged with a crime has been determined to be incompetent to proceed, he shall not for that reason alone be denied pretrial release.” 50 P.S. § 7403(d). The Commonwealth concludes that these statutory procedural mechanisms protect against Appellant’s indefinite detention arising from his incompetency.

With this backdrop in mind, the Commonwealth asserts, it becomes clear that Section 7403(e) provides the trial court with two options once a defendant has regained competency: resume the proceedings or dismiss the case due to prejudice. Applied here, it contends, Appellant is not being detained indefinitely due to his incompetency to stand trial. Rather, the Commonwealth submits, Appellant is serving a sentence on an unrelated matter; thus, his incompetence to stand trial is not the basis of his detention in prison.

The Commonwealth further relies on established case law supporting the view that a trial court lacks authority under Section 7403(e) to dismiss charges against an incompetent defendant. Brief for Appellee at 31-32 (citing *Commonwealth v. McGargle*, 549 A.2d at 199 (holding that Section 7403(e) does not authorize dismissal of criminal charges where the defendant is incompetent and, in all likelihood, will remain incompetent)). The Commonwealth asserts that, likewise, in *Hazur*, *supra*, the Superior Court held that the “[d]ismissal of the charges is only appropriate when a defendant is found incompetent and then regains competency but too much time has lapsed in the interim making it unjust to continue the prosecution.” *Hazur*, 539 A.2d at 454.

Further, the Commonwealth maintains, Appellant’s reliance upon subsection (f) of Section 7403 is misplaced. It submits that the trial court did not rely on that provision, presumably because it is irrelevant, as it provides merely that a stay of prosecution may not exceed a certain time period. Observing that Appellant’s maximum sentence of confinement is 7 years, the Commonwealth concedes that if Appellant does not regain competency within those 7 years, the trial court could dismiss the charges on the grounds that the conviction of a person who is legally incompetent violates due process.

The Commonwealth concludes that because Section 7403(e) requires a defendant to regain competency before a trial court may evaluate whether “[the] passage of time and its effect upon the criminal proceedings” renders prosecution “unjust,” the Superior Court properly held that such provision does

not authorize dismissal of the charges here, where Appellant remains incompetent.

In his reply brief, Appellant refutes the Commonwealth’s assertion that the trial court lacks authority under Section 7403(e) to dismiss charges against an incompetent defendant, as unsupported by the statutory language. Appellant further maintains that this Court is not bound by the Superior Court’s decisions in *McGargle* and *Hazur*, which he views as wrongly decided. Retracting somewhat from his initial contention that the language of Section 7403(e) is plain, he concedes that the statutory text may be ambiguous. Invoking the rule of lenity, however, Appellant suggests that his construction of the provision should be adopted because penal statutory provisions are to be construed strictly and any ambiguity should be interpreted in favor of the defendant. Reply Brief for Appellant at 6 (citing 1 Pa.C.S. § 1928(b)(1) (providing \*287 that penal provisions of a statute shall be strictly construed)).

#### B. Issue II

Assuming that Section 7403(e) provides a trial court with authority to dismiss criminal charges filed against an incompetent defendant, Appellant next contends that there was sufficient evidence presented to satisfy the statutory requirement that due to the passage of time and its effect upon the criminal proceedings, it would be unjust to resume the prosecution.<sup>14</sup> He views this determination as an exercise of the trial court’s discretion and asserts that the Commonwealth has failed to establish an abuse of discretion, as the record supported the trial court’s conclusion.

Appellant contends that there was ample evidence establishing that the resumption of the prosecution would be unjust including: (1) the report of Dr. Scotilla, which indicated that Appellant suffered from chronic mental illness and was delusional, tangential, and paranoid, and spoke in a grandiose and perseverative manner; (2) the Commonwealth’s concession that Appellant was incompetent and had been receiving mental health treatment for at least two years, during which he was placed in restrictive housing units due to his mental health and resultant behavioral issues; (3) the trial court’s involvement in Appellant’s case for an extensive period of time, during which the court observed both his refusal to participate and his demeanor on video on those occasions when he did participate; and (4) the evidence



presented at the hearing by both parties establishing that Appellant was ineligible to receive competency restoration services as a state prisoner, and could not avail himself of such treatment until he was paroled or served his maximum sentence, which would occur between 5 to 16 years after the offenses occurred, depending upon his parole date.<sup>15</sup>

Accordingly, considering his severe mental illness and the substantial passage of time since the offenses were committed, he argues that the Commonwealth has failed to satisfy its heavy burden of demonstrating that the trial court abused its discretion by concluding that it would be unjust to resume the criminal prosecution.

In response, the Commonwealth maintains that there is insufficient evidence establishing that Appellant would be prejudiced if the prosecution resumed at a future date because the defense presented no evidence at the hearing on the motion to dismiss. Thus, it contends, there is no evidence establishing that Appellant's competency could not be restored, that he would be unable to recall the events for which he is charged, or that he would be unable to aid in his defense if he regained his competency. The Commonwealth submits that the only evidence that Appellant presented to the trial court was the report of Dr. Scotilla, which did not address these concerns. Under the facts presented, the Commonwealth asserts, it is mere speculation to conclude that Appellant would be prejudiced by the resumption of the prosecution if his competency were restored, particularly considering that the charges of aggravated harassment by prisoner filed against Appellant are not complex, as they \*288 allege only that he threw urine and spat on corrections officers.

Additionally, the Commonwealth posits, there is no evidence or legal authority establishing that admittance into Torrance State Hospital is the exclusive manner by which to restore Appellant's competency. Brief for Appellee at 50-51, 53 (citing 50 P.S. § 7402(b) (providing that to restore the competency of a person found incompetent to stand trial, a court may order the involuntary treatment of “outpatient treatment, partial hospitalization or inpatient treatment”)). Presumably unaware that inmates serving state sentences were ineligible for competency restoration services at Torrance State Hospital, it asserts that Dr. Scotilla did not render any conclusion that Appellant's competency could not be restored by treatment options administered through the DOC. Thus, the Commonwealth concludes, the record does not support that conclusion.

Finally, the Commonwealth maintains, the report and testimony of Dr. Wright support its position that Appellant could possibly regain his competency through venues other than Torrance State Hospital's competency restoration program. It reiterates Dr. Wright's opinion that Appellant was not significantly mentally ill, that his behavior was deliberate, and that he engaged in such behavior to obtain special privileges while incarcerated. The Commonwealth further relies on Dr. Wright's testimony establishing that the goal of the DOC's mental health services is to stabilize inmates and it does so by adjusting mental health treatments and providing inpatient and outpatient services, medication management services, and competency evaluations, which are conducted in conjunction with the DHS. Thus, it posits, Dr. Wright's testimony established that the DOC is willing to assist in achieving competency restoration for its inmates with mental health issues, despite not having its own competency restoration program.

### *C. Issue III*

Appellant contends that the trial court acted within its discretion in dismissing the criminal charges, as opposed to ordering further competency evaluations. He argues that the trial court based its decision on his severe mental illness, the amount of time that had passed since the filing of the charges, the unavailability of competency restoration treatment for years to come, and the prejudice that he would suffer due to these circumstances. Appellant argues that based on the evidence, the trial court concluded that if he would regain his competency at some point in the future, resumption of the prosecution would be unjust due to the substantial passage of time since the offenses were committed; thus, further mental health evaluation is unnecessary.

Appellant posits that even if this Court would have reached a contrary conclusion had it presided over his motion to dismiss and ordered an additional mental health evaluation, that is insufficient to disturb the trial court's dismissal of the criminal charges absent an abuse of discretion. The Commonwealth failed to establish an abuse of discretion here, he maintains, as it did not demonstrate that the trial court misapplied the law or engaged in bias, ill will, or unreasonableness while exercising its discretion under Section 7403(e).



The Commonwealth refutes this contention, arguing that the trial court misapplied the law and thereby abused its




discretion when it dismissed the criminal charges filed against Appellant, rather than ordering a competency reexamination. Relying on Section 7403(c) of the MHPA (providing that following an incompetency determination, “the person charged shall be reexamined not less than \*289 every 90 days by a psychiatrist appointed by the court and report of reexamination shall be submitted to the court”), the Commonwealth asserts that Appellant has never been reexamined for competency after Dr. Scotilla's report of December 5, 2018, notwithstanding its request for another competency evaluation in its answer to Appellant's motion to dismiss.




The Commonwealth submits that this failure to reexamine Appellant periodically not only violates Section 7403(c), but also inhibits the trial court's ability to assess accurately the effect of the mental health treatment provided to him by the DOC. Reiterating its contention that there is no evidence establishing that the mental health programming within the DOC would be insufficient to address Appellant's mental health issues, the Commonwealth restates Dr. Wright's sentiments that the DOC is willing to assist in achieving competency restoration for its inmates with mental health issues, despite it not having its own competency restoration program. Finally, the Commonwealth concludes that the corrections officers who suffered harm at the hands of Appellant deserve to have the proper processes followed through to the conclusion of the case, which includes the periodic examination of Appellant to determine whether he has regained his competency.


### III. Analysis

#### A. Issue I

[1] Preliminarily, we observe that to the extent this appeal requires us to interpret the MHPA, such determination constitutes a question of law, over which our standard of review is *de novo* and our scope of review is plenary.  *Zane v. Friends Hosp.*, 575 Pa. 236, 836 A.2d 25, 30 n.8 (2003). The MHPA, enacted in 1976, governs the provision of inpatient psychiatric treatment and involuntary outpatient treatment, and its purpose is to assure the availability of adequate treatment to persons who are mentally ill, and to establish procedures to effectuate this purpose.  *Id.* at 33 (citing 50 P.S. § 7102).

[2] [3] In construing the terms of the MHPA, we are guided by the Statutory Construction Act, 1 Pa.C.S. §§ 1901, *et seq.*, pursuant to which our duty is “to ascertain and effectuate the intention of the General Assembly.” *Id.* § 1921(a). “The best indication of legislative intent is the plain language of the statute.” *Corman v. Acting Sec'y of Pennsylvania Dep't of Health*, — Pa. —, 266 A.3d 452, 472 (2021) (quoting *Crown Castle NG East LLC v. Pennsylvania Pub. Util. Comm'n.*, 660 Pa. 674, 234 A.3d 665, 674 (2020)). When considering the plain language, we examine the text of the statute in context and give the words and phrases their “common and approved usage.” *Id.* (quoting  *Commonwealth by Shapiro v. Golden Gate Nat'l Senior Care LLC*, 648 Pa. 604, 194 A.3d 1010, 1027-28 (2018)). “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”  1 Pa.C.S. § 1921(b). We further construe every statute, if possible, to give effect to all of its provisions.  1 Pa.C.S. § 1921(a).

When interpreting statutory provisions, we presume that the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable, and that the Legislature intends for the entire statute to be effective and certain.  1 Pa.C.S. § 1922(1),  (2). Also, we presume that the Legislature, in enacting the statute, does not intend to violate the state or federal constitutions.  1 Pa.C.S. § 1922(3). All penal provisions of a statute shall be strictly construed. *Id.* at § 1928(b)(1). Additionally, statutes *in pari materia*, *i.e.*, those statutes or parts of statutes that \*290 relate to the same persons or things, are to be construed together, if possible. *Id.* at § 1932.

When the words of the statute are not explicit, we may glean the intent of the Legislature by considering, *inter alia*, the occasion and necessity for the statute; the circumstances under which it was enacted; the mischief to be remedied; the object to be obtained; the former law, if any, including other statutes upon the same or similar subjects; and the consequences of a particular interpretation.  *Id.* § 1921(c).

While the crux of the instant appeal focuses upon Section 7403(e) of the MHPA, we begin with a review of other relevant provisions of the Act to give context to our inquiry. Article IV of the MHPA, 50 P.S. §§ 7401-7406, entitled “Determinations Affecting Those Charged With Crime or Under Sentence,” is particularly instructive. Section 7402(a)

provides that “[w]henver a person who has been charged with a crime is found to be substantially unable to understand the nature or object of the proceedings against him or to participate and assist in his defense, he shall be deemed incompetent to be tried, convicted or sentenced so long as such incapacity continues.” 50 P.S. § 7402(a).<sup>16</sup>

The court may order an “incompetency examination” of a criminal defendant on its own motion and also upon application by the Commonwealth or the defendant. *Id.* at § 7402(c), (d). The examination shall be conducted by at least one psychiatrist or licensed psychologist who must report to the court, *inter alia*, a diagnosis of the defendant's mental condition and an opinion regarding both the defendant's capacity to understand the nature and object of the criminal proceedings and his ability to assist in his defense. *Id.* at § 7402(e)(2), (4). The criminal defendant is entitled to have his counsel present during the examination and shall have a continuing right to counsel so long as the criminal charges are pending. *Id.* at §§ 7402(e)(3), 7403(c). Within twenty days after the receipt of the report of the examination, the court shall determine whether incompetency is established by a preponderance of the evidence. *Id.* § 7402(g), (d).

Germane to the instant appeal, the court's determination that a criminal defendant is incompetent effects a stay of the prosecution for as long as the incapacity exists, except for legal objections suitable for determination without the personal participation of the incompetent defendant. *Id.* § 7403(b). Notably, criminal proceedings generally cannot be stayed by the court's determination of incompetency longer than the period of the “maximum sentence of confinement that may be imposed for the crime or crimes charged or [10] years, whichever is less.”<sup>17, 18</sup> \*291 *Id.* at § 7403(f). Thus, criminal proceedings in cases like this one, involving charges other than first or second degree murder filed against a defendant who has been deemed incompetent, may not be stayed for longer than 10 years. Following a determination of incompetency, “the person charged shall be reexamined not less than every 90 days by a psychiatrist appointed by the court and a report of reexamination shall be submitted to the court and to counsel.” *Id.* at § 7403(c).<sup>19</sup>

Acknowledging this statutory context, we proceed to examine Section 7403(e), which was included in the 1976 enactment of the MHPA, and has never since been amended. As noted, this provision states in its entirety:

**(e) Resumption of Proceedings or Dismissal. --**

When the court, on its own motion or upon the application of the attorney for the Commonwealth or counsel for the defendant, determines that such person has regained his competence to proceed, the proceedings shall be resumed. If the court is of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution, the court may dismiss the charge and order the person discharged.

**50 P.S. § 7403(e).**

Upon careful consideration, we conclude that both of the interpretations proffered by Appellant and the Commonwealth are reasonable; thus, we find that the statutory language in Section 7403(e) is ambiguous regarding whether a trial court has authority to dismiss charges filed against an incompetent defendant.

As the Commonwealth asserts, Section 7403(e), by its subtitle, discusses the resumption of proceedings or dismissal of the criminal charges. When read together, it is reasonable to construe the two sentences of the provision as setting forth options for a trial court to pursue after a defendant has regained his competence, *i.e.*, either resume the criminal proceedings or dismiss the criminal charges. This construction, already adopted by the Superior Court in previous cases, imports the regaining of competence language in the first sentence into the second sentence authorizing the dismissal of charges. In doing so, this interpretation affords the trial court authority to dismiss criminal charges \*292 only after the defendant has regained competence where the resumption of the prosecution would be unjust.

Equally reasonable, however, is Appellant's construction of the provision, reading the two sentences of Section 7403(e) as addressing distinct situations. Under this interpretation, the first sentence requires the proceedings to resume when a defendant regains competence. The second sentence contains no qualifying language requiring the incompetent defendant to regain his competence. Instead, it merely states that “[i]f the court is of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution, the court may dismiss the charge and order the person discharged.” 50 P.S. § 7403(e). As Appellant posits, this sentence, unencumbered by the verbiage employed in the first sentence of Section 7403(e), reasonably could be construed as affording a trial court discretion to dismiss criminal charges filed against an incompetent defendant under circumstances where the

passage of time prejudiced the defendant to such an extent that to resume the prosecution would be unjust, regardless of whether the defendant has regained competence.<sup>20</sup>

While both of the parties' interpretations of the statutory language of [Section 7403\(e\)](#) are reasonable, the consequences of those interpretations are not. As Appellant cogently argues, under the Commonwealth's construction of [Section 7403\(e\)](#), the trial court lacks the authority to dismiss criminal charges filed against an incompetent defendant under any circumstances, regardless of the duration of the stay of the criminal proceedings, the likelihood of the defendant regaining competence, the lack of treatment options available to restore competency, and the prejudice suffered by the defendant due to the passage of time and its effect on the criminal proceedings.

This interpretation of the statutory provision is simply unreasonable, considering that the provision does not explicitly state that the trial court's ability to dismiss criminal charges is dependent upon the defendant's resumption of competency. See [Commonwealth v. Johnson](#), 611 Pa. 381, 26 A.3d 1078, 1090 (2011) (quoting [Kmonk–Sullivan v. State Farm Mut. Auto. Ins. Co.](#), 567 Pa. 514, 788 A.2d 955, 962 (2001)) (cautioning that “although one is admonished to listen attentively to what a statute says; one must also listen attentively to what it does not say”). If the Legislature intended to condition the dismissal of criminal charges on the criminal defendant's regaining of competency, it easily could have done so by employing express statutory language. The Commonwealth requests that we infer its intended result from the ambiguous statutory language. Respectfully, we find such approach unsound.

Initially, the Commonwealth's interpretation does not give effect to all provisions of [Section 7403](#), particularly subsection (f), set forth in note 6, *supra*. As Appellant persuasively argues, subsection (f) sets forth a mandatory limit on the duration of stays of criminal prosecutions of incompetent defendants in cases involving charges other than first and second degree murder, thereby implicitly acknowledging that a trial court must dismiss charges when that maximum period has expired. Subsection (f), however, does not provide authority \*293 to dismiss the criminal charges. The exclusive authority to dismiss charges appears in subsection (e). If we construe subsection (e) as conditioning dismissal on the defendant's regaining of competency, trial courts would lack statutory authority to

dismiss charges in cases where the maximum period for the stay under subsection (f) has lapsed and the defendant remains incompetent. This interpretation of subsection (e) would effectively render subsection (f) inoperable.

[4] Moreover, we conclude that the Commonwealth's interpretation of [Section 7403\(e\)](#) contravenes the rule of lenity, which provides that penal provisions of a statute shall be strictly construed. 1 Pa.C.S. § 1928(b)(1) (providing that “[a]ll provisions of a statute of the classes hereafter enumerated shall be strictly construed: (1) Penal provisions....”). While it is clear that the MHPA itself is not a penal statute, the provision at issue is penal in nature as it governs the resumption of criminal proceedings and the dismissal of criminal charges filed against an incompetent defendant. Strict construction in favor of the defendant does not require that words of the penal provision be disregarded, but only that if an ambiguity exists, such language should be interpreted in the light most favorable to the accused.

[Commonwealth v. Fithian](#), 599 Pa. 180, 961 A.2d 66, 73-74 (2008). For the reasons explained *supra*, we find that the language of [Section 7403\(e\)](#) is ambiguous and resolve any doubts arising from interpretation of that provision in favor of Appellant.

Rather than setting forth a persuasive statutory construction analysis reaching a contrary conclusion, the primary decision relied upon by the Superior Court below, *i.e.*, [Commonwealth v. McGargle](#), acknowledges the unreasonable consequences arising from the Commonwealth's interpretation of [Section 7403\(e\)](#), yet presumes that the Legislature intended such result. As our canons of statutory construction direct us to presume that the Legislature does not intend an unreasonable result, [1 Pa.C.S. § 1922\(1\)](#), we respectfully disagree. Additionally, the basis of *McGargle*'s construction of [Section 7403\(e\)](#) was mere *dicta* expressed by the Superior Court in its previous decision in [Commonwealth v. Hazur](#), 372 Pa.Super. 306, 539 A.2d 451 (1988).

In [Hazur](#), the defendant sought a hearing pursuant to the MHPA on the day that her trial was scheduled on charges of driving under the influence. The trial court granted the hearing, and the defendant presented evidence establishing that she suffered from depression and had attempted suicide. Further evidence established that the defendant, despite her depression, acted as a supervising nurse, cared for her elderly

parents, and attended church functions. An expert opined that while the defendant could assist in her defense, the act of testifying at trial could potentially cause her to return to a suicidal state of mind.

Following the hearing, the trial court deemed the defendant incompetent to stand trial and dismissed the charges, finding that due to the passage of time and its effect upon the criminal proceedings, it would be unjust to resume the prosecution pursuant to [Section 7403\(e\)](#). The Commonwealth appealed, challenging both the trial court's finding of incompetency and its dismissal of charges pursuant to [Section 7403\(e\)](#). Significantly, the Superior Court in [Hazur](#) first examined the competency issue and held that the defendant comprehended the charges filed and was able to cooperate in preparing a defense. Thus, it concluded, the record did not support the trial court's finding of incompetency. [Hazur](#), 539 A.2d at 454.

**\*294** Due to its resolution of the competency issue, the court held expressly that there was no need to address the Commonwealth's second contention that the trial court abused its discretion by dismissing the criminal charges pursuant to [Section 7403\(e\)](#). [Id.](#) Nevertheless, in *dicta*, the [Hazur](#) court proceeded to declare: "Dismissal of the charges is only appropriate when a defendant is found incompetent and then regains competency but too much time has lapsed in the interim making it unjust to continue the prosecution. This is not the situation herein." [Id.](#) Accordingly, the Superior Court in [Hazur](#) reversed the trial court's dismissal of the criminal charges, and reinstated them.

Nearly six months after [Hazur](#) was decided, the Superior Court examined a similar issue in [McGargle](#). There, following a competency hearing, uncontradicted evidence established that the defendant was developmentally disabled and had diminished intellectual functioning to the extent that she did not understand the concept of criminal charges, sentencing, and punishment, and was unable to assist in her defense. [McGargle](#), 549 A.2d at 199. Based on this evidence, the trial court deemed the defendant incompetent and dismissed the criminal charges filed against her pursuant to [Section 7403\(e\)](#).

The Commonwealth appealed, and the Superior Court affirmed that portion of the trial court's decision that found

the defendant incompetent to stand trial, finding sufficient evidence of record to support that determination. [Id.](#) The Superior Court, however, found that the more difficult issue presented was whether the trial court erred in dismissing the charges pursuant to [Section 7403\(e\)](#) on the basis that there was a substantial probability that the defendant's incompetency would continue in the foreseeable future. Relying exclusively upon its prior *dicta* in [Hazur](#), the court reasoned that [Section 7403\(e\)](#) was inapplicable because the defendant has not, and in all likelihood will not, regain competency. [Id.](#)

The [McGargle](#) court opined, "We are not directed to, nor have we been able to find, either statutory or case law which provides for the dismissal of charges where the accused is incompetent and expected to remain so forever, as appears to be the case here." [Id.](#) Conceding the "pointlessness" of reversing the trial court's dismissal of charges and reinstating such charges for which the defendant will never stand trial, the Superior Court in [McGargle](#) found itself constrained to do so, absent what it viewed as a lack of statutory authority. [Id.](#)

Recognizing [McGargle](#)'s sentiments in this regard, the panel of the Superior Court below also reasoned, without conducting an independent statutory analysis, that "[d]espite these complications," the panel was bound to adhere to [Section 7403\(e\)](#) as construed by [McGargle](#) and [Hazur](#), and "[a]ny change in the law must come from an *en banc* panel of [the Superior Court], our Pennsylvania Supreme Court, or the Pennsylvania General Assembly." Superior Court Memorandum, 4/26/2021, at 6-7.

[5] As set forth above, having conducted an independent statutory construction analysis herein, we now hold that [Section 7403\(e\)](#) does not condition the dismissal of criminal charges on the defendant's restoration of competence. Instead, as noted, the statutory provision affords trial courts the discretion to dismiss criminal charges "[i]f the court is of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution." 50 P.S. § 7403(e). This interpretation of [Section 7403\(e\)](#) affords trial courts discretion to dismiss the criminal charges where it **\*295** would be unjust to resume prosecution, regardless of whether the defendant has regained competency, thereby placing the decision in the hands of the trial court, which is best able to render such determination on

a case-by-case basis, subject to review on appeal for an abuse of discretion.<sup>21</sup>

### B. Issues II and III

Two issues remain for adjudication: (1) whether there was sufficient evidence to support the trial court's finding that resumption of the prosecution would be unjust due to the passage of time and its effect on the criminal proceeding; and (2) whether the trial court abused its discretion by failing to order another competency evaluation of Appellant. As Appellant acknowledges, these issues were not examined by the Superior Court, as that court opined that the trial court had no discretion under [Section 7403\(e\)](#) to dismiss criminal charges against a defendant who remained incompetent. Rather than engage in appellate review of the issues without having the intermediate appellate court examine the matter, we remand to that court for disposition of these claims.<sup>22</sup>

### IV. Conclusion

Accordingly, for the reasons set forth, we vacate the judgments of the Superior Court and remand to that court for proceedings consistent with this opinion.

Justices [Todd](#), [Donohue](#) and [Wecht](#) join the opinion.

Justice [Brobson](#) files a concurring opinion.

Justice [Dougherty](#) files a dissenting opinion in which Justice [Mundy](#) joins.

JUSTICE BROBSON, concurring

I join in the majority's disposition of this matter, particularly its construction of Section 403(e) of the Mental Health Procedures Act (Act).<sup>1</sup> Dismissal of charges under this provision is warranted “[i]f the court is of the opinion *that by reason of the passage of time and its effect upon the criminal proceedings* it would be unjust to resume the prosecution.” 53 P.S. § 7403(e) (emphasis added).

As I read the plain language, before a court may invoke this provision, time must have passed between the original declaration of incompetency and the court's consideration of the dismissal of charges. The court then can only dismiss the charges if this passage of time would make

resumption of criminal proceedings, previously stayed due to the incompetency declaration, unjust.

Here, the trial court declared Appellant incompetent on October 25, 2019. Appellant filed his motion to dismiss charges on \*296 December 5, 2019. On February 19, 2020, the trial court dismissed the criminal charges against Appellant, purportedly pursuant to Section 403(e) of the Act. In so doing, the trial court did not make any findings or conclusions that “the passage of time”—whether (a) the 42 days that passed between the declaration of incompetency and the filing of the motion to dismiss or (b) the 118 days that passed between the declaration of incompetency and the trial court's dismissal of the charges—so adversely affected the criminal proceedings that resumption of the prosecution of Appellant would be unjust. Instead, relying on [Commonwealth v. McGargle](#), 378 Pa.Super. 559, 549 A.2d 198 (1988), which the majority now observes misapplied statutory construction principles when interpreting Section 403(e) of the Act,<sup>2</sup> the trial court dismissed the charges solely upon its conclusion that there was a “substantial probability competency will not be restored for the foreseeable future.” Trial Court Op., 2/19/2020, at 4. Nothing in the plain text of Section 403(e) authorizes a trial court to dismiss charges based on foreshadowing.

Accordingly, while I agree with the Majority's conclusion that a declaration of competency is not a prerequisite to a Section 403(e) dismissal and support the Majority's decision to vacate the Superior Court's judgments on this basis, I remain skeptical of the trial court's application of Section 403(e) in this case for the reason set forth above. On remand, I urge the parties and the courts to “listen attentively to what the statute says, but also to what it does not say.” [Johnson v. Lansdale Borough](#), 637 Pa. 1, 146 A.3d 696, 711 (2016).

JUSTICE DOUGHERTY, dissenting

I am sympathetic to the difficult plight of appellant and other similarly situated defendants, but I nevertheless view Section 7403(e) of the Mental Health Procedures Act, 50 P.S. §§ 7101-7503, as clear and unambiguous. Titled “Resumption of Proceedings or Dismissal[.]” the subsection states as follows:

When the court, on its own motion or upon the application of the attorney for the Commonwealth or counsel for

the defendant, determines that such person has regained his competence to proceed, the proceedings shall be resumed. If the court is of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution, the court may dismiss the charge and order the person discharged.




50 P.S. § 7403(e). The learned majority determines this language is ambiguous but, respectfully, I cannot agree. In their effort to find appellant's interpretation of [Section 7403\(e\)](#) reasonable, my colleagues choose to look at the provision's second sentence “unencumbered by the verbiage employed in the first sentence[.]” Majority Opinion at 292. But this is not how we are to interpret statutes.

As this Court has long recognized, “statutory language must be read in context, that is, in ascertaining legislative intent, every portion of statutory language is to be read ‘together and in conjunction’ with the remaining statutory language, ‘and construed with reference to the entire statute’ as a whole.” *Commonwealth v. Office of Open Records*, 628 Pa. 163, 103 A.3d 1276, 1285 (2014), quoting *Bd. of Revision of Taxes, City of Philadelphia v. City of Philadelphia*, 607 Pa. 104, 4 A.3d 610, 622 (2010). When reading all of [Section 7403](#), it is crystal clear the General Assembly did not intend for criminal proceedings to be dismissed while a defendant \*297 remains incompetent, but only stayed until competency is regained. See 50 P.S. § 7403(b) (incompetency effects stay of criminal proceedings). Indeed, both sentences of subsection (e) contemplate resumption of criminal proceedings. The first sentence explains the process for resuming the prosecution after a defendant regains competency, and the second sentence provides the court with discretion to determine whether “resum[ing] the prosecution” — when and if competency is regained — would be unjust due to the passage of time. Accordingly, I read [Section 7403\(e\)](#) as providing the trial court with two options when a defendant has regained competency, just as the title of the subsection states: 1) resume the criminal proceedings; or 2) dismiss the charges and discharge the defendant if resumption would be unjust due to the passage of time.

Even if I agreed that [Section 7403\(e\)](#) is ambiguous (and I do not), I would find this interpretation best reflects

the General Assembly's intent. In its analysis, the majority finds my position is “simply unreasonable” because the General Assembly could have “employ[ed] express statutory language” if it “intended to condition the dismissal of criminal charges on the criminal defendant's regaining of competency.” Majority Opinion at 292–93. In my view, however, the General Assembly did employ express statutory language to effectuate its intent; dismissal under [Section 7403\(e\)](#) is expressly authorized only when “by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to **resume** the prosecution[.]” 50 P.S. § 7403(e) (emphasis added). The majority also finds my interpretation leads to an unreasonable consequence because it apparently believes the statutory language unfairly prevents the court from dismissing charges, “regardless of the duration of the stay of the criminal proceedings, the likelihood of the defendant regaining competence, the lack of treatment options available to restore competency, and the prejudice suffered by the defendant due to the passage of time and its effect on the criminal proceedings.” Majority Opinion at 292. These are not meaningless concerns, but the fact remains that dismissal under [Section 7403\(e\)](#) is authorized only when resuming the prosecution would be unjust “by reason of the passage of time and its effect upon the criminal proceedings[.]” 50 P.S. § 7403(e). And, requiring the court to wait for a defendant to regain competency before making the determination of whether to proceed is a perfectly reasonable legislative choice. Only at that point would the court know whether the defendant is able to recall the events for which he is charged and aid in his defense, and whether evidence and witnesses remain available. Allowing for dismissal of the charges pursuant to [Section 7403\(e\)](#) based on any other factors would thus contravene the plain legislative language and purpose.

The majority also suggests my reading of [Section 7403](#) does not give effect to subsection (f), which pertains to certain incompetent defendants who have not regained competency “for a period in excess of the maximum sentence of confinement that may be imposed for the crime or crimes charged or ten years, whichever is less.” 50 P.S. § 7403(f). The majority correctly observes [Section 7403\(f\)](#) “implicitly acknowledg[es] that a trial court must dismiss charges when th[e] maximum period has expired.” Majority Opinion at 292. This authority to dismiss charges stands alone as a separate and independent mechanism for dismissal and is in no way “render[ed] ... inoperable” by my interpretation of [Section 7403\(e\)](#). *Id.*

Lastly, the majority applies the rule of lenity to support its result. See \*298 *id.* at 292–93, citing 1 Pa.C.S. § 1928(b) (1) (penal statutes shall be strictly construed). Respectfully, this is clearly erroneous. Penal statutes define criminal offenses and specify corresponding fines and punishment. See  *Commonwealth v. Garzone*, 613 Pa. 481, 34 A.3d 67, 75 (2012); see also  *Harmon v. UCBR*, 163 A.3d 1057, 1066 n.13 (Pa. Cmwlth. 2017) (“Although the rule of lenity is not strictly confined to criminal statutes, the statute at issue must still be penal in nature in that it (a) defines an offense and (b) imposes a corresponding fine or punishment.”) (internal citation omitted), *rev'd on other grounds*,  652 Pa. 23, 207 A.3d 292 (2019). As Section 7403(e) neither defines an

offense nor imposes a fine or punishment, it is not penal in nature and thus, the rule of lenity does not apply.


I would affirm the Superior Court and hold trial courts lack the authority to dismiss charges pursuant to Section 7403(e) while a defendant remains incompetent to stand trial, and I therefore respectfully dissent.

Justice Mundy joins this dissenting opinion.

#### All Citations

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### Footnotes

- 1 Perseveration is defined as the “continual repetition of a mental act usually evidenced by speech or by some other form of overt behavior especially as a mechanism of defense;” “a spontaneous and persistent recurrence of something (as an idea, mental image, tune or word).”  *Commonwealth v. Stevens*, 559 Pa. 171, 739 A.2d 507, 512 n.4 (1999) (citing Webster's Third New International Dictionary (unabridged)).
- 2 As discussed *infra*, Dr. Scotilla did not inform the trial court or the parties that state inmates were ineligible for admittance into Torrance State Hospital, as he was presumably unaware of this fact.
- 3 Section 7402(b) provides:
 


Notwithstanding the provisions of Article III of this act, a court may order involuntary treatment of a person found incompetent to stand trial but who is not severely mentally disabled, such involuntary treatment not to exceed a specific period of 60 days. Involuntary treatment pursuant to this subsection may be ordered only if the court is reasonably certain that the involuntary treatment will provide the defendant with the capacity to stand trial. The court may order outpatient treatment, partial hospitalization or inpatient treatment.



50 P.S. § 7402(b).
- 4 The DHS letter cited Office of Mental Health and Substance Abuse Services Bulletin 16-10, which provides that persons sentenced to serve their terms of imprisonment in a SCI facility operated by the DOC are not eligible for admission to the Regional Forensic Psychiatric Center. The letter further stated that when the person does not satisfy criteria for admission, but requires inpatient care and treatment, the person “should be admitted to a community treatment setting or the civil unit of a State Hospital.” Commonwealth Exhibit 10 to Commonwealth's Answer to Defendant's Motion to Dismiss.
- 5 The trial court inadvertently cited the provision as Section 7403(d), rather than Section 7403(e).
- 6 The issues have been rephrased for purposes of clarity.
- 7 Section 7403(f) provides:





(f) Stay of Proceedings. -- In no instance, except in cases of first and second degree murder, shall the proceedings be stayed for a period in excess of the maximum sentence of confinement that may be imposed for the crime or crimes charged or ten years, whichever is less. In cases of a charge of first or second degree murder, there shall be no limit on the period during which proceedings may be stayed.

50 P.S. § 7403(f).

8 This Court has opined that “[u]nder the canon of constitutional avoidance, if a statute is susceptible of two reasonable constructions, one of which would raise constitutional difficulties and the other of which would not, we adopt the latter construction.”  [Commonwealth v. Herman](#), 639 Pa. 466, 161 A.3d 194, 212 (2017).

9 Appellant candidly acknowledges that  [Jackson](#) held that the indefinite commitment of a criminal defendant solely on account of his lack of capacity to stand trial violates due process, and that the High Court did not resolve the more relevant inquiry of whether the criminal charges should be dismissed, as the defendant in  [Jackson](#) did not raise that issue in the state court. Brief for Appellant at 46.


10 The Defender Association of Philadelphia and the Pennsylvania Association of Criminal Defense Lawyers have filed an *amicus* brief in favor of Appellant. Therein, they contend that this Court should apply the doctrine of constitutional avoidance and adopt the only reasonable and constitutional construction of [Section 7403](#), *i.e.*, that a judge has the authority to dismiss charges in appropriate circumstances because of the prolonged incompetency of a defendant to stand trial. Otherwise, it contends, the statute is in tension with speedy trial rights and substantive due process.

Additionally, the ACLU has filed an *amicus* brief in favor of Appellant, in which it urges this Court to hold that [Section 7403](#) authorizes a trial court to dismiss charges against an incompetent person. Relying upon the High Court's decision in  [Jackson v. Indiana](#), it posits that the United States Constitution prohibits indefinite detention of incompetent defendants pending competency restoration. The ACLU contends that the Superior Court's decisions below and in  [McGargle](#) should be rejected as they permit criminal charges to remain pending for an indefinite period during which the defendant may never stand trial, without consideration of the constitutional right to a speedy trial or to due process of the law.

11 [Section 7403\(b\)](#) provides:

Effect as Stay -- Exception. -- A determination of incompetency to proceed shall effect a stay of the prosecution for so long as such incapacity persists, excepting that any legal objections suitable for determination prior to trial and without the personal participation of the person charged may be raised and decided in the interim.

50 P.S. § 7403(b).

12 The Commonwealth asserts that a stay of the criminal proceedings in turn stays  [Pa.R.Crim.P. 600](#) relating to the right to a speedy trial.

13 [Section 7403\(c\)](#) provides:

(c) Defendant's Right to Counsel; Reexamination. -- A person who is determined to be incompetent to proceed shall have a continuing right to counsel so long as the criminal charges are pending. Following such determination, the person charged shall be reexamined not less than every 90 days by a psychiatrist appointed by the court and a report of reexamination shall be submitted to the court and to counsel.

50 P.S. § 7403(c).

- 14 Appellant acknowledges that the Superior Court did not address this issue due to its holding that [Section 7403\(e\)](#) does not authorize a trial court's dismissal of charges against an incompetent defendant. Reply Brief for Appellant at 19.
- 15 We reiterate that the offenses were allegedly committed in 2017, Appellant's minimum sentence on his incarceration on an unrelated conviction expired in May of 2022, and his maximum sentence expires in May of 2033.
- 16 The Act further provides that, absent a finding of severe [mental disability](#), a court may generally order the involuntary treatment of a person found incompetent to stand trial for up to sixty days where the court is "reasonably certain that the involuntary treatment will provide the defendant with the capacity to stand trial." *Id.* [§ 7402\(b\)](#). It specifies that the involuntary treatment may include "outpatient treatment, partial hospitalization or inpatient treatment." *Id.* This provision does not expressly address treatment options available to an incompetent defendant, like Appellant, who is charged with a criminal offense while he is incarcerated in a state correctional facility on an unrelated conviction.
- 17 An exception to this rule exists if the charges involve first or second degree murder. Regarding those charges, which are not at issue here, there is no limit on the period during which criminal proceedings may be stayed. *Id.* at [§ 7403\(f\)](#).
- 18 There is no language in subsection (f) authorizing the dismissal of charges after the maximum period of the stay has expired.
- 19 The remaining subsections of [Section 7403](#), namely subsections (d) and (g), address the effect of an incompetency determination on a defendant's criminal detention for the charged offense, and do not speak to the dismissal of criminal charges, as discussed in subsection (e), which is at issue here. Subsection (d) provides that an incompetent criminal defendant shall not be denied pretrial release based solely on his incompetency, and may not be "detained on the criminal charge longer than the reasonable period of time necessary to determine whether there is a substantial probability that [the incompetent defendant] will attain that capacity in the foreseeable future." [50 P.S. § 7403\(d\)](#). If the court determines there is no such probability, it shall discharge the person from detention. *Id.*

Subsection (g) provides that if the person is discharged from detention under subsection (d), but the charges remain open, the court shall order the defendant to submit to a psychiatric examination every 12 months to determine whether the person regained competency to proceed to trial. *Id.* [§ 7403\(g\)](#). Subsection (g) proceeds to set forth the procedure to follow depending on whether the examination reveals that the defendant has regained competency or remains incompetent. As noted, these provisions offer little, if any, guidance in the instant appeal because Appellant was incarcerated on an unrelated conviction at the time he committed the offenses in prison and was not detained exclusively on the criminal charges at issue here. There is no language in either subsection (d) or (g) authorizing the dismissal of criminal charges.

- 20 We observe that subsection (e) is not the only provision in [Section 7403](#) to address distinct situations. [Section 7403\(c\)](#) addresses both an incompetent defendant's continuing right to counsel, as well as the independent requirement that a psychiatrist examine an incompetent defendant not less than every 90 days and provide the court with a report.
- 21 Because we resolve this issue on the basis of statutory construction of the text of [Section 7403\(e\)](#), we need not address the constitutional arguments set forth by Appellant and *amici*. See [Renner v. Court of Common Pleas of Lehigh County](#), 234 A.3d 411, 417 n.6 (Pa. 2020) (providing that "[t]ypically, when a case raises

both constitutional and non-constitutional issues, a court should not reach the constitutional issue if the case can properly be decided on non-constitutional grounds”).

- 22 We observe additionally that notwithstanding the Commonwealth's request to have Appellant reevaluated pursuant to [Section 7403\(c\)](#) (providing that “the person charged shall be reexamined not less than every 90 days by a psychiatrist appointed by the court and a report of reexamination shall be submitted to the court and to counsel”), the trial court refrained from doing so. If it deems it necessary, the Superior Court may remand the matter to the trial court for compliance with that provision.
- 1 Act of July 9, 1976, P.L. 817, *as amended*, [50 P.S. § 7403\(e\)](#).
- 2 Majority Opinion at 293.