

**IN THE COURT OF COMMON PLEAS LEBANON COUNTY  
PENNSYLVANIA**

**CRIMINAL DIVISION**

**COMMONWEALTH OF  
PENNSYLVANIA**

**vs.**

**MIGUEL CRUZ**

**: NO. CR-608-2023**

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**APPEARANCES**

**JONATHAN HOLLAND, ESQ.  
DISTRICT ATTORNEY**

**For Commonwealth of Pennsylvania**

**MICHAEL LIGHT, ESQ.  
PUBLIC DEFENDER**

**For Defendant**

**OPINION BY CHARLES, J., August 20, 2025**

On May 1, 2024, we sentenced the Defendant to a term of Probation in accordance with a plea agreement entered into between defense counsel and the Commonwealth. We did so reluctantly because the Defendant was caught with drugs inside the Lebanon County Correctional Facility. Our decision to afford leniency to the Defendant was based upon his express agreement that he would do time in a State Prison if he returned to a drug-fueled lifestyle.

Unfortunately, the Defendant did not keep his promise of sobriety; he was caught no fewer than seven (7) times with cocaine and/or amphetamines in his system. Moreover, he failed to comply with drug treatment recommendations and he failed to maintain full-time employment. All of these violations were admitted by the Defendant. Nevertheless, the Defendant now argues that this Court lacks the authority to impose more than fourteen (14) days of incarceration as a sanction for his violations. He bases his argument upon what has now come to be known as “Act 44.”

Act 44 took effect on June 23, 2024. The Act is designed to take away discretion from judges when supervisees violate the terms of their Probation. Among other things, the Act declares that courts cannot sentence a first time Probation violator to more than fourteen (14) days of incarceration as a result of any “technical violation”. Generally, violations other than commission of a new criminal offense are deemed by Act 44 to be “technical”.

Until recently, many courts across the Commonwealth, including this Court, took the position that Act 44 does not apply when an original sentence was imposed prior to its effective date. In ***Commonwealth v. Kurtz***, 2025 WL1541365 (Pa. Super. May 30, 2025), Pennsylvania’s Superior Court declared several months ago that Act 44 applied even when a Defendant was sentenced in 2009, well before the idea of Act 44 was even conceived. Citing the language of the Statute that defines its application as applying to individuals “resentenced on or after its effective

date”, Pennsylvania’s Superior Court vacated a Sentencing Order imposed by the Lancaster County Court of Common Pleas and remanded with direction that no more than fourteen (14) days of incarceration be imposed. **Kurtz** was a non-precedential Opinion, but it nevertheless represents the thinking of at least one panel of Superior Court judges.

In this case, re-sentencing of the Defendant is scheduled for August 27, 2025. This is admittedly after the effective date of Act 44. Nevertheless, under the unique facts presented by this case, this Court refuses to apply the sentencing limitations set forth in Act 44 to this Defendant. Our reasons for this decision are as follows:

- (1) We sentenced the Defendant on May 1, 2024, roughly two (2) months before Act 44 became effective. We do not view **Kurtz** as binding precedent because it was published as “non-precedential”. Even if **Kurtz** could be considered precedential, it did not involve a situation remotely similar to the one currently at bar.
- (2) The Defendant was convicted for possessing drugs inside the Lebanon County Prison. Possession of illegal drugs inside a prison is a serious offense. In every prison, inmates vastly outnumber Corrections Officers. If those inmates are permitted to be influenced by illegal drugs, the jobs of Corrections Officers would be made exponentially more difficult, and lives could even be endangered. Without question, courts must recognize the reality that drugs and prisons do not mix. Almost always, drug use or possession inside a

prison warrants incarceration as a punishment. The only reason this Court acquiesced to the parties' proposed probationary sentence is because the Defendant completed inpatient drug and alcohol treatment and we believed he would honor his promise to maintain a life of sobriety.

(3) By definition, the Defendant found a way to smuggle drugs inside the Lebanon County Prison. By doing so, the Defendant proved by his conduct that he is not amenable to supervision within the Lebanon County Prison. Indeed, he has proven by his conduct that he could pose a danger to himself, other inmates and Correctional Officers if he is again permitted to serve time inside LCCF.

(4) Perhaps most important of all, the Defendant **AGREED** that he could be sentenced to incarceration in a State Correctional facility if he was found to violate the terms of his supervision. This Court stated in its May 1, 2024 Sentencing Order:

“The Defendant has affirmatively agreed that if he violates the terms of his supervision, he will be resentenced to a State Correctional sentence, the maximum of which will be three years.”

Just as important, this Court also articulated in its Sentencing Order:

***“This Court would not impose the sentence it is about to impose without such agreement.”***

Without the affirmative agreement of the Defendant to serve time in a State Correctional facility upon violation, this Court would have

rejected the parties' plea agreement and the Defendant would have been listed for a new trial. Had we known that the Defendant would seek to invoke a fourteen (14) day limitation of incarceration provision found in Act 44, we would not have imposed a probationary sentence. To call the Defendant's agreement gratuitous or unimportant is ludicrous; his agreement was an integral part of this Court's sentencing decision.

- (5) The Defendant violated his sentence seven (7) times by using cocaine and/or amphetamines. One purpose of Act 44 was to prevent draconian responses to isolated technical violations. In this case, the violations by the Defendant were neither isolated nor technical. He admitted to possessing and/or using drugs at least seven (7) times and his behavior related directly to the original charge lodged against him of possessing drugs inside the Lebanon County Prison. Moreover, the Defendant's drug-related violations occurred between December of 2024 and May of 2025.<sup>1</sup> The Defendant was obviously given multiple opportunities by his supervising Probation Officer to change his lifestyle. In other words, he was warned for months to discontinue his drug use, but he failed to do so. Although we have no record that the Defendant was subject to probation review conferences as set forth in 42 Pa.C.S.A. § 9774.1, the record is crystal-clear that the

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<sup>1</sup> According to the Supervision History provided to the Court, the Defendant first tested positive for amphetamines on September 9, 2024. He then tested positive nine (9) subsequent times. For some reason, he was only charged with violating his sentence for seven (7) occasions of possessing or using drugs.

Defendant was notified about his misbehavior and given multiple opportunities to change his behavior.

For all of the above reasons, and especially based upon the Defendant's own agreement, we will not be limited by Act 44 when we re-sentence the Defendant on August 27, 2025. We will not promise in advance that we will impose any specific sentence. There is much that we will have to consider before a final re-sentencing decision is rendered. However, we certainly reserve the ability to re-sentence the Defendant to spend time in a State Correctional facility. All we proclaim today is that when we re-sentence the Defendant, we will not be bound by the limitations set forth in Act 44.