[J-80-2011][M.O. – Eakin, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 621 CAP
	:	
Appellee	:	Appeal from the Judgment of Sentence
	:	entered on 5/28/09 in the Court of
	:	Common Pleas, Berks County, Criminal
v.	:	Division at No. CP-06-CR-0002456-
	:	2008 (PSM's denied on 1/31/11)
	:	
ALBERT PEREZ,	:	
	:	
Appellant	:	ARGUED: September 15, 2011

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: JUNE 16, 2014**

Appellant has raised twenty-five claims, of which seventeen should be delayed to collateral review under Commonwealth v. Grant, 572 Pa. 48, 813 A.2d 726 (2002), because they rely on an assertion that trial counsel was ineffective. Appellant also notes that an additional two issues – in which he challenges the constitutionality of the death penalty generally, as well as Pennsylvania's death-sentencing scheme – are meritless. This leaves six issues, most of which include an argument section consisting of one or two conclusory sentences with no citation to the record or to authority. For example, Issue E is entitled "Weighing of Aggravating and Mitigating Factors." The argument (if it can be called that) consists of a single sentence stating that Appellant believes the mitigating factors outweighed the aggravating factors. See Brief for Appellant at 21.

In light of this lack of development, I find the present situation comparable to Commonwealth v. Jordan, 619 Pa. 513, 65 A.3d 318 (2013), where the Court noted similar briefing deficiencies and delayed oral argument until a new, more substantial, brief was filed. See Commonwealth v. Jordan, No. 604 CAP, Order (Pa. Feb. 28, 2011) (describing the appellate brief as "inadequate for a matter of this magnitude," where it failed to supply references to the record or to authority, or to "present arguments . . . that may be capable of review").

In a similar case where re-briefing was not ordered, this Court disposed of the appeal by dismissing many of the claims as "unintelligible," underdeveloped, "vague and confusing," "waived," "incomprehensible," or "incapable of review." Commonwealth v. Walter, 600 Pa. 392, 397, 402, 404, 966 A.2d 560, 563, 566, 567 (2009).[1] The Court's opinion in the present matter reads similarly to the one in Walter. See, e.g., Majority Opinion, slip op. at 10 ("Appellant's brief is replete with beyond-boilerplate allegations containing sparse argument and even less citation to supporting authority or identification of pertinent portions of the record."). Notably, however, in Walter the defendant lodged a post-conviction petition, and, apparently based on the clear incompetence of direct appellate counsel, the post-conviction court reinstated Walter's direct-appellate rights, leading to a second appeal. See Commonwealth v. Walter, No. 645 CAP (submitted May 2, 2014).

Given the above, our present failure to require adequate briefing risks the type of serial proceedings which occurred in Walter. More broadly, this case implicates a continuing concern pertaining to the failure on the part of some advocates "to provide

[1] See also Commonwealth v. Johnson, 604 Pa. 176, 192-93, 985 A.2d 915, 925 (2009) (observing that appellate review was precluded where the argument section consisted of a single sentence followed by a list of citations to trial transcript pages without any explanation of how the content appearing at those pages supported the claim).

professional services necessary to secure appellate review on the merits of a capital defendant's or petitioner's claims." Johnson, 604 Pa. at 197-98, 985 A.2d at 928 (Saylor, J., concurring). I believe that our current ad hoc approach, whereby we dismiss most claims as unreviewable in some cases and remand for the filing of an adequate brief in others, is problematic as, for one thing, it tends to undermine the objective of treating similarly-situated litigants in a consistent manner. Overall, it seems to me that when this Court is faced with blatant ineffectiveness – particularly in a capital appeal – it ill behooves us to treat the appeal in the ordinary course rather than require at least minimally adequate advocacy as a precondition to resolution of the appeal.

As for the present case, I would conclude that Appellant's presentation is so inadequate as to trigger the need for a remand for re-briefing or substitution of counsel if necessary. That being the case, I would require such a remand rather than deciding the appeal at this juncture.