

[J-34-2012][M.O. – Castille, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 54 EAP 2011
	:	
Appellant	:	Appeal from the Judgment of Superior
	:	Court entered on 12/31/09 at No. 3193
	:	EDA 2008, (reargument denied on
	:	3/8/10) vacating and remanding the
v.	:	Judgment of Sentence entered on
	:	10/7/08 in the Court of Common Pleas,
	:	Philadelphia County, Criminal Division
	:	at Nos. CP-51-CR-0012637-2007, CP-
	:	51-CR-0012638-2007 and CP-51-CR-
SHONDA SPRUILL,	:	0012639
	:	
Appellee	:	SUBMITTED: February 15, 2012

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: November 22, 2013

I join the majority opinion for the most part, although I differ with the notion that the legality of a sentence is wholly independent of the legality of the underlying conviction. See Majority Opinion, slip op. at 14-15. Since a conviction is the essential supporting infrastructure for a sentence, I suggest that “illegality” with respect to the former extends to the latter as well. Cf. Fiore v. White, 531 U.S. 225, 228-29, 121 S. Ct. 712, 714 (2001) (per curiam) (holding that a conviction for conduct which was not prohibited by a statute, as properly interpreted by a subsequent decision, violates due process, despite previous litigation of claim on direct appeal). The alternative is for courts to accept as legal a sentence which is grounded upon an illegal conviction.

From my point of view, the difficulty in this line of inquiry lies in establishing an appropriate understanding of the use of the term “illegality,” for the relevant purposes. See generally Commonwealth v. Foster, 609 Pa. 502, 539-41, 17 A.3d 332, 355-57 (2011) (Saylor, J., concurring) (favoring a return to the concept of “per se” illegality as the appropriate litmus). Certainly, I support the majority’s explanation that routine claims of trial-court error and fact-bound challenges cannot qualify; otherwise, the public interest in the finality of judgments of sentence would be wholly undermined. Accord id. Furthermore, in the present case, I am in agreement with the majority that Appellee’s grievance as vindicated by the Superior Court is of a type which is fairly subordinated to ordinary rules of issue preservation.