

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 576 EAL 2005
	:	
Petitioner,	:	Petition for Allowance of Appeal from the
	:	Order of the Superior Court at No. 1379
	:	EDA 2004, dated 09/12/2005 vacating
v.	:	The order of the Court of Common Pleas
	:	Of Philadelphia at No. 9904-0267 1/1 and
	:	Remanding the case.
SHAWN W. FRAZIER,	:	
	:	
Respondent.	:	
	:	
	:	
	:	

ORDER

PER CURIAM

AND NOW, this 13th day of March 2007, the Commonwealth's Petition for Allowance of Appeal in the above captioned matter is **GRANTED**. The Superior Court order is **VACATED**, and the judgment of sentence is **REINSTATED**.

Respondent's claim that the trial court failed to provide sufficient reasons for the sentence imposed on the record at the time of sentencing, upon which the Superior Court granted relief, is waived as respondent did not adequately preserve it. Counsel for respondent never raised such an objection at the violation of probation proceeding and did not file a post-sentence motion preserving the claim. Therefore, because respondent raised this issue for the first time on appeal to the Superior Court, the issue is waived. See Pa.R.A.P. 302(a) (issues not raised in lower court are waived and cannot be raised for the first time on appeal). Moreover, respondent's oral outburst at the proceeding cannot be construed as a proper objection by his counsel to the trial court's alleged failure to state on

the record adequate reasons for the sentence imposed, and his ensuing assault on the trial judge and courtroom staff eliminated the court's opportunity to respond.

In addition, the Superior Court erred by *sua sponte* ordering the removal of the trial judge from respondent's resentencing. Commonwealth v. Whitmore, __ A.2d __, 2006 WL 3847624 (Pa. Dec. 29, 2006). Given this Court's reinstatement of the judgment of sentence, however, that additional error is rendered moot.