

**[J-196-2002]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, JJ.**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 34 MAP 2002
	:	
Appellee	:	
	:	Appeal from the Order of the Superior
	:	Court entered on December 26, 2000 at
v.	:	No. 1511 MDA 1999, which affirmed the
	:	Order of the Court of Common Pleas of
	:	Dauphin County, Criminal Division,
RASHEED LA-QUN WILLIAMS,	:	entered on August 6, 1999 at No. 339 CD
	:	1997.
Appellant	:	
	:	ARGUED: December 5, 2002

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: June 19, 2006**

I support the majority's decision to remand for an evidentiary hearing on Appellant's claim that his trial counsel rendered deficient stewardship by failing to secure DNA testing as Appellant avers that he requested. I respectfully disagree, however, with the majority's determination that the arguable merit of such claim is established on the present record, see Majority Opinion, slip op. at 6, since there has been no evidentiary hearing as of yet, and I believe that fact finding is implicated relative to the arguable-merit assessment, particularly in the context of Appellant's allegation that he asked trial counsel to secure DNA testing. I have previously expressed my position that the courts should more affirmatively and consistently distinguish between

situations in which the appeal proceeds from the dismissal of a claim without an evidentiary hearing (in which case the relevant inquiry generally should be whether the factual averments and supporting materials, if believed, would establish a cause for relief, see Pa.R.Crim.P. 908(A)(2)), and actual merits review of a fully-developed post-conviction record.