

**[J-61-2009] [MO- Eakin, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 83 MAP 2007
	:	
Appellee	:	Appeal from the Order of Superior Court at
	:	No. 1255 MDA 2005 entered 09-15-2006,
	:	reargument denied 11-22-2006, vacating
v.	:	and remanding the judgment of sentence
	:	of the Court of Common Pleas, Dauphin
	:	County, Criminal Division, at No. 180 CR
	:	2004 dated 06-30-2005.
MATTHEW WAYNE DIETRICH,	:	
	:	
Appellant	:	ARGUED: May 12, 2008
	:	RESUBMITTED: May 1, 2009

DISSENTING OPINION

MR. JUSTICE SAYLOR

Decided: May 27, 2009

I respectfully differ with the majority's position that the original restitution order contained within the judgment of sentence was lawful. See Majority Opinion, slip op. at 5-6.

As the Commonwealth explains, a plain reading of Section 1106 requires the sentencing court to: consider a recommendation for restitution presented by the district attorney's office, 18 Pa.C.S. §1106(c)(2)(i), (4); direct "full restitution," 18 Pa.C.S. §1106(c)(1); and specify the amount and method of this full restitution, 18 Pa.C.S. §1106(c)(2). This simply did not occur in this case.

Initially, the district attorney apparently fulfilled his obligation of making a recommendation by presenting the sentencing court with three claims, totaling approximately \$660,000. See N.T., December 15, 2004, at 2. However, there was no on-the-record discussion of the support for such an amount. The \$10,000 figure selected by the court appears to derive from an oblique reference by Appellant’s attorney to the limits of a policy of automobile insurance pertaining to one of the accident vehicles. See N.T., December 15, 2004, at 5-6, 9. Such figure, viewed in the abstract (as it was at the sentencing proceedings here), obviously bears no meaningful relation to the subject of Section 1106, namely, the “fullest compensation” to victims for their losses. 18 Pa.C.S. §1106(c)(1)(i). In the absence of some record explanation supporting the victims’ claims, the sentencing court does not appear to have been in a position to accomplish its statutory duty to evaluate the district attorney’s recommendation, and the \$10,000 figure appears essentially to have been used as little more than a placeholder. See, e.g., N.T. December 15, 2004, at 9 (reflecting the sentencing court’s explanation that, “[r]estitution to be payable . . . in the amount of \$10,000 for today’s purposes only, subject to my request that you each provide me with the statement . . . to what restitution should actually be” (emphasis added)).¹

Given the above, I am unable meaningfully to distinguish the restitution directive in this case from the sort of pure open-ended ones which the Superior Court previously has disapproved. See, e.g., Commonwealth v. Mariani, 869 A.2d 484, 486-87 (Pa. Super.

¹ In these circumstances, the majority’s understanding that “an open issue remained at sentencing as to whether \$10,000 constituted full restitution,” Majority Opinion, slip op. at 7, appears to be an understatement. Even so, in my view, this perspective alone evidences the tension between the majority’s reasoning and Section 1106(c)’s requirement that a sentencing court provide for “full restitution.” 18 Pa.C.S. §1106(c)(1).

2005) (explaining that “an order of restitution to be determined later is ipso facto illegal”).² Indeed, permitting the common pleas courts to use a placeholder methodology based on the kind of minimal information garnered by the sentencing court here would substantially undermine: the enforceability of the obligation of district attorneys to make informed recommendations; the courts’ obligations to undertake a meaningful assessment at sentencing; and the prohibition against open-ended orders. Cf. Commonwealth v. Ortiz, 854 A.2d 1280, 1283 (Pa. Super. 2004) (commenting that elements of Section 1106 “would be rendered meaningless if the Commonwealth could just come up with any figure and then move to modify it later”).³

I recognize the difficulties confronting the Commonwealth and the common pleas courts in determining appropriate restitution. Nevertheless, since the relevant statutory directives are clear, I can find no fault in the Superior Court’s handling of this and the numerous similar matters which continue to arise.⁴

² The majority does not disturb the intermediate appellate court decisions holding that open-ended restitution orders are unlawful. Thus, they presently embody the prevailing law of the Commonwealth.

³ The majority aptly highlights that, particularly in cases involving personal injury, the victims’ full losses may not yet have accrued as of the time of sentencing. Therefore, there are situations in which full restitution cannot be determined. See Majority Opinion, slip op. at 6. As the Superior Court has recognized, however, this does not excuse common pleas courts from making the best assessment possible of the losses accrued to date. Similarly, the Legislature’s prescription from modification of restitution orders at any time, see 18 Pa.C.S. §1106(c)(3), which may be primarily to account for later-accruing losses, does not alter the statutory directives plainly requiring a meaningful assessment of existing losses.

In the present case, no representation was made to the sentencing court that the \$10,000 figure represented the best available assessment of victim losses incurred prior to sentencing.

⁴ Indeed, in the absence of an adequate record developed in the common pleas courts, the Superior Court is confronted with its own set of difficulties in accomplishing the essential (continued...)

Thus, I would affirm the Superior Court's order in this case.

Mr. Chief Justice Castille and Mr. Justice Baer join.

(...continued)

appellate review. I support its effort to address those difficulties by requiring better development in the common pleas courts in the first instance.