

**THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 120 Capital Appeal Docket
	:	
Appellee	:	Appeal from the Judgment of Sentence
	:	entered September 6, 1995 in the Court of
	:	Common Pleas of Lackawanna County.
v.	:	
	:	
	:	
RICHARD YOUNG,	:	ARGUED: February 4, 1998
	:	
Appellant	:	
	:	
	:	

CONCURRING OPINION

MR. CHIEF JUSTICE FLAHERTY

DECIDED: JANUARY 22, 1999

I join the majority's opinion, but write separately to express the view that in addition to the error of admitting victim impact testimony in this case, it was also error to fail to instruct the jury that appellant would be statutorily ineligible for parole if sentenced to life in prison. It is true that we have held in prior cases that this instruction need not be given except where the appellant's future dangerousness is at issue; however, I would reverse those cases and require the instruction in any case in which the Commonwealth seeks the death penalty.

If we require juries to take responsibility for deciding between life imprisonment and death, we have the duty to instruct the juries fully on the options from which they

must choose. There can be no harm in instructing juries that in Pennsylvania appellant would be statutorily ineligible for parole if sentenced to life in prison, and that this sentence, nonetheless, may be commuted by the governor. On the other hand, if we do not so instruct, a jury, erroneously believing that a prisoner sentenced to life may be paroled within a period of years, may impose the death penalty for reasons which are not based in law.

Mr. Justice Zappala joins this concurring opinion.