

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

MATTHEW MENCHYK

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1885 WDA 2011

Appeal from the Order November 8, 2011
In the Court of Common Pleas of Butler County
Criminal Division at No(s): CP-10-CR-0001892-2009

BEFORE: BENDER, J., DONOHUE, J., and STRASSBURGER, J.*

CONCURRING MEMORANDUM BY BENDER, J.: Filed: February 4, 2013

I join the Majority's disposition. I write separately only to distinguish my position from the Majority Memorandum in the disposition of Appellant's first claim, as I am concerned that the Majority Memorandum might be interpreted too broadly. It may be read to suggest that a sentencing court has the authority to order restitution for criminal offenses that do not require proof of a causal nexus between the criminal conduct and the resultant injuries. Except in the limited circumstances presented by this case, I believe that no such authority exists pursuant to 18 Pa.C.S. § 1106.

Thus, I generally agree with the Dissenting Memorandum's narrow reading of the plain language of 18 Pa.C.S. § 1106. However, I would

* Retired Senior Judge assigned to the Superior Court.

recognize a limited exception where, as was the case here, a defendant negotiates a plea agreement wherein he agrees to compensate the victim for injuries, thus satisfying the language of § 1106(a) that authorizes restitution if “the victim suffered personal injury ***directly resulting*** from the crime.” 18 Pa.C.S. § 1106(a) (emphasis added).

To hold otherwise would deprive *both* prosecutors and defendants of a powerful negotiating tool in the plea bargaining process. Prosecutors would be reluctant to withdraw more serious charges in order to obtain a defendant’s plea, despite potential pitfalls in proving causation, in order to preserve an opportunity to acquire restitution for a victim. Defendants, likewise, would be deprived of the opportunity of offering financial compensation as part of a deal to escape more seriously graded charges.

These pragmatic implications, however, are not in conflict with the principle of the matter. When a defendant agrees to compensate the victim as an explicit term of a negotiated plea, I have little concern that the issue of causation has been established beyond a reasonable doubt for purposes of § 1106(a). In contrast, in the absence of a negotiated plea, or when a plea agreement does not contain terms explicitly requiring a defendant to pay restitution for injuries incurred by a victim, causation for purposes of § 1106(a) cannot be said to have been established by the fact-finder beyond a reasonable doubt.

With this limited caveat, I join the Majority Memorandum.