

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TYUAN SIMON,	:	
	:	
Appellant	:	No. 1161 EDA 2014

Appeal from the Judgment of Sentence Entered September 20, 2013
in the Court of Common Pleas of Montgomery County,
Criminal Division at No(s): CP-46-CR-0007840-2012

BEFORE: LAZARUS, MUNDY, and STRASSBURGER,* JJ.

FILED DECEMBER 12, 2014

CONCURRING MEMORANDUM BY STRASSBURGER, J.:

I join the Majority Memorandum. I write separately because the Majority has identified a conflict in Superior Court case law. Majority Memorandum at 9 n.6.

I, like the Majority, agree with the cases which hold that, if an appellant *sua sponte* files a Pa.R.A.P. 1925(b) statement, then the appellant only preserves the issues raised therein for appeal. **See, e.g., Commonwealth v. Nobles**, 941 A.2d 50, 52 (Pa. Super. 2008). However, in conflict with these cases is **Commonwealth v. Antidormi**, 84 A.3d 736, 735, 745 n.7 (Pa. Super. 2014), which concludes that the requirements of Pa.R.A.P. 1925(b) are not invoked when a trial court has not ordered an appellant to file a 1925(b) statement, but the appellant nonetheless files such a statement. In my view, this Court should review this issue *en banc* in

* Retired Senior Judge assigned to the Superior Court.

order to resolve this conflict in the law. **See *Commonwealth v. Robinson***, 931 A.2d 15, 19 (Pa. Super. 2007) (*en banc*) (“One function of *en banc* review is to harmonize or overrule prior precedent if necessary.”).

Judge Lazarus joins this concurring memorandum.