

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

MICHAEL J. DUNCAN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 541 WDA 2012

Appeal from the Judgment of Sentence Entered March 2, 2012
In the Court of Common Pleas of Washington County
Criminal Division at No(s): CP-63-CR-0000357-2011

BEFORE: BENDER, P.J.E., OLSON, J. and FITZGERALD, J.*

CONCURRING STATEMENT BY FITZGERALD, J.: **FILED OCTOBER 30, 2014**

I respectfully concur in the majority's determination that Appellant waived all of his direct appeal claims based on his counseled Pa.R.A.P. 1925(b) Statement. I write separately to observe that I do not reach this conclusion based solely on the length of Appellant's Statement or number of issues raised. Instantly, the Statement *sub judice* frustrated meaningful appellate review because it also scattered subsidiary arguments throughout its fifty-seven paragraphs without any logical organization, contained frivolous and waived issues, and was prolix. Thus, despite the trial court's best efforts to address all claims presented in the Statement, I agree that waiver of Appellant's issues on appeal is appropriate under the

* Former Justice specially assigned to the Superior Court.

circumstances of this case.¹ **See** Pa.R.A.P. 1925(b)(4)(iv), (vii).

Moreover, I do not join footnote 5 of the majority's memorandum, which suggests an alternative basis to affirm based on the trial court's opinion. I believe that footnote 5 is *dictum* that does not constitute the law of the case for the purposes of a proceeding under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. **See generally Commonwealth v. Reed**, 971 A.2d 1216, 1260 (Pa. 2009).

Judge Olson joins this concurring statement.

¹ I would further observe that even if Appellant did not waive his claims based on his defective Rule 1925(b) Statement, his counseled brief fares no better than his Statement at preserving his intended issues and arguments.