

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JASON TORRES	:	
	:	
Appellant	:	No. 387 EDA 2015

Appeal from the Judgment of Sentence of February 7, 2014,
In the Court of Common Pleas of Montgomery County,
Criminal Division at No.: CP-46-CR-0000790-2012

BEFORE: PANELLA, J., WECHT, J., and STRASSBURGER, J.*

DISSENTING MEMORANDUM BY STRASSBURGER, J.: **FILED DECEMBER 04, 2015**

I respectfully dissent.

Appellant contends that the lower court abused its discretion in sentencing him to 7 ½ to 20 years of incarceration for attempted involuntary deviate sexual intercourse. In support of this contention, Appellant argues that, *inter alia*, the court stated it was sentencing Appellant within the aggravated range of the guidelines, when it in fact sentenced him in excess of that range by two years. Because I agree with Appellant on this point, I would vacate Appellant’s judgment of sentence and remand for resentencing. ***See Commonwealth v. Byrd***, 657 A.2d 961 (Pa. Super. 1995) (vacating Byrd’s judgment of sentence and remanding for resentencing where the trial court stated on the record that it was sentencing Byrd within the aggravated range and provided its reasons for

* Retired Senior Judge assigned to the Superior Court.

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doing so, but the record reflected that the trial court actually sentenced Byrd in excess of that range).