

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

TYLER J. FESTA

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 899 WDA 2012

Appeal from the Order of June 5, 2012
In the Court of Common Pleas of Erie County
Criminal Division at No(s): CP-25-0000469-2012

BEFORE: DONOHUE, J., SHOGAN, J., and WECHT, J.

CONCURRING MEMORANDUM BY WECHT, J.: FILED: May 3, 2013

I agree with the learned majority's legal reasoning and resolution of this case. I write separately to note my respectful disagreement with an aspect of the holding. Like the majority, I would reverse the trial court order. Unlike the majority, I would not provide any ruling on the portion of the trial court order that was not appealed.

The majority holds that the trial court order is "reversed in part and affirmed in part." Maj. Mem. at 15. The portion of the trial court order that the majority affirms is the denial of Appellee's petition for *habeas corpus* relief on the meeting or overtaking school bus charge. *Id.* at 15 & n.1. But, as the majority acknowledges, *this aspect of the trial court order was not challenged on appeal. Id.* at 15 n.1.

This Court lacks authority to review questions not asked by the litigants. **See** Pa.R.A.P. § 2116 (“No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.”); **see also Steiner v. Markel**, 968 A.2d 1253, 1257 (Pa. 2009). The Pennsylvania Supreme Court has reversed our Court where we considered issues not raised by litigants: “Where the parties fail to preserve an issue for appeal, the Superior Court may not address that issue *sua sponte*.” **Steiner**, 968 A.2d at 1257 (Pa. 2009) (citing **Knarr v. Erie Ins. Exch.**, 723 A.2d 664, 666 (Pa. 1999) (holding that the Superior Court exceeded its authority by raising an issue that was not preserved for appellate review)).

Neither party in this case asked our Court to review the aspect of the trial court order that denied Appellee’s petition for relief as to the meeting or overtaking a school bus charge. The issue was not preserved, and was not raised on appeal. Our Court has no jurisdiction to affirm that aspect of the trial court’s order. I would reverse the trial court order for the reasons stated, and stated well, by the majority. I would not affirm the portion of the trial court order that was not appealed. There is no cause to do so. We neither affirm nor reverse something that is not placed before us.

For clarity, I would have emphasized that the trial court’s ruling on the meeting or overtaking school bus charge simply was not the subject of appeal and that, as such, our Court did not consider that charge on appeal. Appellee remains bound over for trial on that charge, and would have

remained so under any and all circumstances, and regardless of our disposition of this appeal.