

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JOSEPH PHILLIPS,	:	
	:	
Appellant	:	No. 854 WDA 2012

Appeal from the Judgment of Sentence Entered May 9, 2012,
In the Court of Common Pleas of Allegheny County,
Criminal Division, at No. CP-02-SA-0000361-2012.

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

DISSENTING MEMORANDUM BY SHOGAN, J.: Filed: February 19, 2013

In its opinion, the trial court acknowledges that Appellant was not represented by counsel at the May 9, 2012 hearing and did not waive his right to counsel. Trial Court Opinion, 7/16/12, at 1. The trial court then concedes that Appellant was entitled to representation and proffers that the matter may be remanded "for appointment of counsel and a new *de novo* hearing." *Id.* at 2. Pursuant to Pa.R.Crim.P. 454(A), a defendant in a summary case "shall be advised of the right to counsel" if "there is a reasonable likelihood of a sentence of imprisonment or probation." Appellant herein was convicted of violating 75 Pa.C.S.A. § 1543(b)(1) under which there was a reasonable likelihood of imprisonment.

*Retired Senior Judge assigned to the Superior Court.

As the record fails to reflect that Appellant was advised of his right to counsel, I would remand, per the trial court's suggestion. Thus, I respectfully dissent.