

IN THE SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : No. 217 MAL 2011
:
Petitioner : Petition for Allowance of Appeal from the
: Order of the Superior Court at No. 1991
: EDA 2009 dated 12-13-2010 reversing
v. : and remanding the judgment of sentence
: of the Bucks County Court of Common
: Pleas at No. CP-09-CR-8265-2007 dated
JOHN RUGGIANO, : 6-10-2009
:
Respondent :
:

DISSENTING STATEMENT

MR. JUSTICE SAYLOR

FILED: August 1, 2011

The allocatur stage is normally reserved for making the threshold determination of whether to grant discretionary review. See Supreme Court IOP §5C. Here, however, the majority undertakes merits review at the allocatur stage and proceeds to enter an order dispositive of factual and legal matters in this case. It does so without the benefit of briefs, or at least an answer from the respondent, and cites to cases issued by the Superior Court, in seeming contradiction to our Internal Operating Procedures governing the use of per curiam orders. See Supreme Court IOP §3(B)(5).

I maintain the concern that the Court should exercise greater restraint at the discretionary review stage. Cf. Progressive N. Ins. Co. v. Henry, ___ Pa. ___, 4 A.3d 153 (Pa. 2010) (Saylor, J., dissenting); County of Berks v. Int'l Bhd. of Teamsters Local Union No. 429, 680 Pa. 128, 129-31, 963 A.2d 1272, 1272-73 (2009) (Saylor, J., dissenting). While the sentiment appears to prevail that this type of error-review case

does not warrant full briefing and ordinary consideration by this Court on the appeal docket, I remain of the view that shortcutting such process is not a tenable alternative in the absence of concretely established facts and clearly and directly applicable law. Cf. id.; Supreme Court IOP §3(B)(5).