[J-35-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	: No. 79 MAP 2012
	:
Appellant	: Appeal from the order of Superior Court
	: entered July 20, 2011 at No. 538 MDA
	: 2009 which Vacated and Remanded the
v.	: judgment of sentence of the Lackawanna
	: County Court of Common Pleas, Criminal
	: Division, entered January 14, 2009 at No.
MICHAEL GREENE,	: CP-35-CR-0001831-2004
	:
Appellee	: ARGUED: May 7, 2013

DISSENTING STATEMENT

MR. CHIEF JUSTICE CASTILLE **FILED: November 20, 2013**

I respectfully disagree with this disposition, which adopts the bare majority *en banc* Superior Court opinion below as the binding precedent of this Court. Although the burdens of our caseload make orders of *per curiam* affirmance an unfortunate necessity (albeit primarily on our discretionary review docket), we rarely actually adopt the opinion below. Certainly, I cannot recall an instance during my tenure on the Court when a published opinion from a lower court has been summarily adopted and made the law of this Commonwealth, without further comment, when the opinion in question was not only **not** unanimous, but represented a five-to-four bare majority of the *en banc* panel. To make matters worse, the adopted opinion in question fails to acknowledge, or even in any way comment upon, the points made in the four-judge dissenting opinion.

Acknowledgement and response to concurring or dissenting expressions oftentimes leads to greater consensus. Perhaps, if told why they were wrong, the dissenting judges might have come around to the majority view. Perhaps, if the majority

below directly engaged the dissent, the vote could have changed. For whatever reason, it appears, that effort at greater consensus was not made. Instead, we have the dissenting view of four judges dismissed without comment below, and disapproved without comment or explanation here.

My research reveals that the Court does not appear to have adopted an opinion since Karpe v. Pa. Pub. Util. Comm'n, 409 A.2d 29 (Pa. 1979), adopted a Commonwealth Court opinion. In that case, the nature of the adopted opinion is unclear and it does not appear to have been published. Nevertheless, even when adopting the opinion as its own, the Court gave some basis for its action: "[T]here was no clear legal right to the certification requested, nor was there an absence of an adequate remedy at law. We adopt the opinion of the Commonwealth Court . . . ." Id. at 29.

The Court should remain circumspect of resolving appeals in this way. Over fifty years ago, Justice Musmanno noted the basis for skepticism: "When this Court affirms a judgment on the opinion of a lower Court, it of course adopts the lower Court's opinion as its own and is thus responsible for its reasoning, conclusions, and phraseology as much as if it had come from the collective pens of the majority of the Supreme Court." Satovich v. Lee, 122 A.2d 212, 215 (Pa. 1956) (Musmanno, J., dissenting). In the circumstances here, for the reasons I have stated, I do not believe the 5-4 majority opinion below warrants summary adoption.

I respectfully dissent.