

[J-107-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 10 EAP 2005
	:	
Appellant	:	Appeal from the Judgment of Superior
	:	Court entered on 7/21/04 at 2178 EDA
	:	2003 (reargument denied 9/22/04)
v.	:	vacating the Judgment of Sentence
	:	entered on 6/24/03 in the Court of
TROY MULLINS,	:	Common Pleas, Philadelphia County,
	:	Criminal Division at 0001-1175 1/1
	:	
Appellee	:	ARGUED: October 17, 2005
	:	

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: March 26, 2007

I join the majority's holding that, under these facts, the matter be remanded for a new violation of probation (VOP) hearing.¹ I write separately, however, because I fear that the majority opinion can be misconstrued as enunciating a *per se* rule requiring a remand to the trial court for a new VOP hearing in each instance where the VOP hearing record is insufficient to support revocation of probation. Upon disposition of an appeal, an appellate tribunal has an array of options available. 42 Pa.C.S. §706. Accordingly, I cannot endorse the articulation of a bright-line rule that restricts those options. See e.g., Commonwealth v. Griggs, 461 A.2d 221 (Pa. Super. 1983)(Superior

¹ Although, as the majority notes, the issue of sufficiency of the evidence is not before us, I nevertheless agree with the majority's intimation that the evidence presented at the VOP hearing was, indeed, sufficient to support revocation.

Court vacated the judgment of sentence of revocation when the finding of participation in criminal activity was not substantiated at the VOP hearing).

Mr. Justice Saylor joins this concurring opinion.