

[J-116-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 2 EAP 2005
	:	
Appellee	:	
	:	Appeal from the Judgment of Superior
	:	Court entered on 12/17/03 at 936 EDA
v.	:	2003 affirming the judgment of sentence
	:	entered on 3/5/03 in the Court of Common
	:	Pleas, Philadelphia County, Criminal
	:	Division at 0208-0378
ANDRE JONES,	:	
	:	
Appellant	:	ARGUED: October 18, 2005

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: December 28, 2006

I have no objection to the majority's approach to sentencing merger in the absence of a specific expression of legislative intent; indeed, consistent with such approach, I believe that it is sensible to treat criminal trespass as a lesser-included offense of burglary. However, I agree with Madame Justice Newman that the Legislature has now evinced an intent in Section 9765 of the Judicial Code, 42 Pa.C.S. §9765, to require a pure statutory elements approach to sentencing merger. Since, however, the enactment of Section 9765 post-dates Appellant's offenses in this case, I do not believe that it need necessarily be applied here. Thus, I am able to join in the result of the majority opinion.