

**[J-130-2003]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA, : No. 369 CAP

Appellee

v.

BILLY BROOKS,

Appellant

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:  
: Appeal from the Order of the Court of  
: Common Pleas, Philadelphia County, at  
: Information No. 2847, January Term,  
: 1991.

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:  
: ARGUED: October 21, 2003

**CONCURRING OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: December 30, 2003**

I agree counsel's failure to meet with appellant prior to his murder trial comprises ineffectiveness, but make this conclusion under the traditional and long-standing Pierce<sup>1</sup> test; a separate analysis is not necessary solely because this is a capital case. In all cases, capital or not, counsel is presumed effective and it is up to a defendant to prove otherwise by showing: (1) the underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and, (3) but for counsel's ineffectiveness, there exists a reasonable probability that the outcome of the challenged proceeding would have been different. Pierce, at 194-95.

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<sup>1</sup> Commonwealth v. Pierce, 645 A.2d 189, 194-95 (Pa. 1994); see also Commonwealth v. Pierce, 527 A.2d 973 (Pa. 1987).

The majority may be read as establishing a standard in capital cases that differs from that of other cases, a distinction which is unnecessary, in my judgment. Failing to meet with a client in a capital case may be ineffective in nearly every scenario; failing to meet on a disorderly conduct charge may be more easily explained. Either situation, however, may be evaluated under Pierce. It is important that the law be consistent; the constitution does not afford some lesser right to effective counsel on those charged with non-capital crimes. The right to counsel inures to the capital defendant, the felon, and the misdemeanor alike. Stewardship of capital counsel is always the most carefully scrutinized conduct of all, and rightly so, but proper scrutiny is available under the prevailing standards of Pierce; ignoring the Pierce factors in favor of a per se rule is unnecessary. Insofar as it suggests different standards of scrutiny for capital cases, it will be only the first entry on a list of per se rules we will be asked to create, a concept that seems unwise as well as unneeded.