

[J-151-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 475 CAP
	:	
Appellee	:	
	:	Appeal from the Judgment of Sentence
	:	entered on 2/22/05 in the Court of
v.	:	Common Pleas, Criminal Division of
	:	Northumberland County at No. CR-04-226
	:	
JAMES EUGENE FREY, JR.,	:	
	:	
Appellant	:	ARGUED: December 6, 2005

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: August 22, 2006

I join the majority opinion and write primarily to comment concerning how the Court will accomplish its self-imposed obligation to review the sufficiency of the evidence in capital cases, now that it has approved the practice of accepting pleas of guilt to the charge of first-degree murder. See Commonwealth v. Singley, 582 Pa. 5, 868 A.2d 403 (2004).

In implementing the sufficiency review in this case, the majority follows the logical course of relying on the only evidentiary record that there is, namely, that of the penalty hearing. In other cases, however, the penalty-hearing record may not be adequate to serve as a basis for sufficiency review, since a number of aggravating circumstances do not pertain directly to, or require only consideration of limited aspects of, the killing underlying the first-degree murder conviction. See, e.g., 42 Pa.C.S. §(d)(1), (16), (17)

(pertaining to victim characteristics, such as age, occupation, and pregnancy); 42 Pa.C.S. §(d)(9) (significant history of felony convictions involving violence); 42 Pa.C.S. § (d)(10), (11) (conviction of another murder or offense implicating a life sentence or the death penalty).

For this reason, I believe that a logical corollary of the Court's decision to approve the acceptance of pleas of guilt to first-degree murder is the understanding that it simply may not always be possible to conduct traditional sufficiency review relative to the underlying conviction in the plea cases. Accordingly, in such cases it should be appropriate to center the obligatory review on the factual basis for the plea as developed during the course of the plea colloquy, in line with the general approach for reviewing pleas to other offenses, see generally Commonwealth v. Hines, 496 Pa. 555, 437 A.2d 1180 (1981). Traditional sufficiency review should apply, however, concerning aggravating circumstances developed on the record at the penalty hearing.

Finally, on the policy question raised by Appellant of whether a defendant should be allowed to effectively stipulate to the imposition of the death penalty, while I have previously expressed reservations concerning whether, and under what circumstances, this should be permitted, see, e.g., Commonwealth v. Michael, 562 Pa. 356, 375-78 & n.1, 755 A.2d 1274, 1284-86 & n.1 (2001) (Saylor, J., dissenting), I find Appellant's one-paragraph argument on the subject in this case insufficient to support a reevaluation of the Court's existing precedent.