

[J-61-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

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

COMMONWEALTH OF PENNSYLVANIA,	:	No. 42 EAP 2005
	:	
Appellee	:	Appeal from the Memorandum Opinion
	:	and Order of the Superior Court entered
	:	on June 16, 1999 at No. 1857 Philadelphia
v.	:	1998 which affirmed the Order of the
	:	Philadelphia Court of Common Pleas
	:	entered on June 5, 1998 at Criminal No.
MARCUS ELLISON,	:	97-09-1318.
	:	
Appellant	:	ARGUED: April 4, 2006

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: July 19, 2006

Appellant's claim based on an inadequate voir dire was not preserved for review and is therefore waived, as the Superior Court correctly found. Commonwealth v. Ellison, No. 1857 Philadelphia 1998, unpublished memorandum at 4 (Pa. Super. filed June 16, 1999). That court nevertheless reached the merits. The majority opinion also recognizes this claim was not properly preserved, but likewise reviews the merits. See Majority Slip Op., at 2. I believe this is a dangerous path for our appellate courts to travel. See Commonwealth v. Metz, 633 A.2d 125, 126 (Pa. 1993) ("However, because we find that Appellant waived this issue, we do not reach it. Nor do we find it appropriate for the Superior Court to have reached it.") Accordingly, while the claims are likely meritless, I find no basis on which to reach them at all.