

**[J-8-2008]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 24 WAP 2007
	:	
Appellant	:	Appeal from the order of the Superior
	:	Court entered January 29, 2007, at No.
	:	1236 WDA 2005, vacating the judgment of
v.	:	sentence of the Court of Common Pleas of
	:	Allegheny County, entered July 7, 2004, at
	:	No. CP-02-CR-0011794-2002 and
RANDY JAMES HOUCK,	:	remanding.
	:	
Appellee	:	
	:	
	:	ARGUED: March 3, 2008

**CONCURRING OPINION**

**MR. CHIEF JUSTICE CASTILLE**

**DECIDED: JUNE 16, 2008**

I join the Court's mandate, and I agree with much of the reasoning in the Majority Opinion. As the Majority notes, to be valid, a jury waiver need not say anything about sentencing; sentencing is not relevant to the right being waived in this matter. Therefore, in my judgment, a criminal defendant should not be permitted to extricate himself from an otherwise valid jury trial waiver premised upon a sentencing issue unless he can prove that his jury waiver was part of an **explicit agreement** for a sentencing concession. Otherwise, the defendant should be bound by his jury waiver. Hopes and after-the-fact inferences should be irrelevant. Thus, the rule I would adopt would be narrower, and less subjective, than the "reliance" rule announced by the Majority. Because no such promise or inducement was made to secure appellee's jury waiver here, the Majority correctly reverses the Superior Court.

With respect to the reliance rule that the Majority would adopt, I would also emphasize that counsel's role is not passive. At the early stage of proceedings when a jury waiver colloquy occurs, defense counsel is better informed than the trial judge as to which, if any, statutory sentence enhancements might ultimately apply in his client's particular case. Counsel should not be encouraged to sit silently by and thereby "plant" claims of error to be raised in the event the client is unhappy with his sentence.

Mr. Justice McCaffery joins this concurring opinion.