

**[J-140-1998]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 213 Capital Appeal Docket
	:	
Appellee	:	Appeal from the Order of the Court of
	:	Common Pleas of Fayette County,
	:	Criminal Division, entered December 22,
v.	:	1997, at No. 331 of 1987, denying the
	:	Petition for Post-Conviction Relief
	:	
MARK DAVID BREAKIRON,	:	
	:	
Appellant	:	SUBMITTED: July 20, 1998

**DISSENTING OPINION**

**MR. JUSTICE ZAPPALA**

**DECIDED: April 9, 1999**

When the Appellant's judgment of sentence came before this Court on direct appeal, Commonwealth v. Breakiron, 571 A.2d 1035 (Pa. 1990) (Breakiron I), Mr. Chief Justice Nix authored a Dissenting Opinion, which I joined, in which he concluded based solely on the existing record that trial counsel "was blatantly remiss" in his handling of issues regarding the Appellant's mental status and evaluation under the Mental Health Act. He characterized it as "a grievous failure to provide effective representation in a capital case." Id. at 1046. Because the question of ineffective assistance of counsel had not been raised by the parties, however, it was not specifically addressed in the Opinion of the Court.

A challenge to counsel's stewardship has now been squarely presented in the context of the Appellant's petition under the Post-Conviction Relief Act. The majority concedes "it appears that trial counsel did mishandle the competency evaluation in a number of respects," and in his testimony at the PCRA hearing "trial counsel was unable

to articulate a reasonable basis for failing to comply with the [Act].” Slip Opinion at 20. Nevertheless, the majority determines that these errors were not prejudicial at either the guilt or the sentencing phase of the trial. Because I continue to believe that “we cannot say with certainty that appellant was competent to stand trial or that an insanity defense was inappropriate,” Breakiron I, 571 A.2d at 1046, (Nix, C.J., dissenting), I respectfully dissent.