

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JOHN ALEXANDER TARGONSKI

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1758 MDA 2013

Appeal from the Judgment of Sentence August 27, 2013
In the Court of Common Pleas of Centre County
Criminal Division at No(s): CP-14-CR-0001453-2012

BEFORE: BENDER, P.J.E., BOWES, J., AND PANELLA, J.

CONCURRING AND DISSENTING MEMORANDUM BY BOWES, J.:

FILED SEPTEMBER 26, 2014

While I agree with the majority that the evidence was insufficient to sustain the conviction of trespass, I believe that the appropriate procedural action is for this panel to remand for a new sentencing hearing. As noted by the majority, the trial court imposed a sentence of imprisonment as to the criminal trespass and a probationary term on simple assault, which was graded as a second degree misdemeanor authorizing a sentence of up to two years imprisonment. 18 Pa.C.S. § 1104(2). When this Court vacates a conviction and our action disturbs the overall sentencing scheme, we vacate the entire judgment of sentence and remand for a new sentencing hearing. ***Commonwealth v. Williams***, 550 A.2d 579, 582-83 (Pa.Super. 1988); **see**

also *Commonwealth v. Adams*, 760 A.2d 33, 39 (Pa.Super. 2000) (sentencing enhancement was inapplicable to crime; case remanded for resentencing). Accordingly, I believe that it is improper for us to vacate the sentence imposed upon the trespass offense and affirm the one imposed as to simple assault. I would remand for a new sentencing hearing on the simple assault conviction. Hence, I dissent.