[J-86-2012][M.O. – Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 52 EAP 2011
	:	
Appellant	:	Appeal from the Order entered on
	:	7/15/11 in the Court of Common Pleas,
	:	Criminal Division, Philadelphia County
v.	:	at No. CP-51-CR-0006247-2007
	:	
	:	
EMMA TURNER,	:	
	:	
Appellee	:	ARGUED: September 11, 2012

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: November 22, 2013**

In Commonwealth v. Grant, 572 Pa. 48, 813 A.2d 726 (2002), this Court expressed a strong preference for deferral of claims of ineffective assistance of counsel to post-conviction review. See id. at 67-68, 813 A.2d at 738. In the interceding years, the Court obviously has been divided concerning whether, and to what degree, flexibility should attend the Grant rule. Compare, e.g., Commonwealth v. Liston, 602 Pa. 10, 17-20, 977 A.2d 1089, 1093-95 (2009), with id. at 20-30, 977 A.2d at 1095-1101 (Castille, C.J., concurring, joined by Saylor and Eakin, J.J.), with id. at 30-33, 977 A.2d at 1101-03 (Baer, J.). Given the palpable uncertainty in this regard, I fail to see how a post-conviction petitioner should be penalized for adhering to the Court's stated (and, for post-Grant cases, potentially inflexible) preference.

I also incorporate here, by reference, the thoughts concerning short-sentence scenarios expressed in my concurrence in Commonwealth v. Holmes, ___ Pa. ___, ___

A.3d ___, 2013 WL 5827027, at *22 (Oct. 31, 2013). Although the majority correctly observes that Appellee has not set forth a claim under Article V, Section 9 of the Pennsylvania Constitution, I find that the due process and right-to-counsel concerns that she has asserted overlap with the concern that she should be permitted at least one opportunity to present her constitutional challenges to her judgment of sentence.