

**[J-45-2021] [MO: Saylor, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 30 WAP 2020
	:	
Appellee	:	Appeal from the Order of the
	:	Superior Court entered May 20,
	:	2020 at No. 1203 WDA 2019
v.	:	affirming in part and vacating in part
	:	the Order of the Court of Common
	:	Pleas of Allegheny County entered
DUWAYNE A. DIXON, JR.,	:	August 2, 2019 at No. CP-02-CR-
	:	0016492-2008.
Appellant	:	
	:	SUBMITTED: April 21, 2021

CONCURRING OPINION

JUSTICE DOUGHERTY

DECIDED: AUGUST 6, 2021

I agree with the majority’s holding that the requirement of 18 Pa.C.S. §4952(b)(2) is an element of the first-degree felony graded offense of witness intimidation and the trial court’s instruction directing the jury to find such fact violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). I write separately to make clear that inherent in this holding is a finding that appellant’s underlying PCRA claim has arguable merit and the Superior Court erred when it affirmed the PCRA court by concluding “[a]ppellant is not entitled to relief because there is no merit to his claim[.]” *Commonwealth v. Dixon*, 1203 WDA 2019, 2020 WL 2554617 at *7 (Pa. Super., May 20, 2020) (unpublished memorandum). For my part, I anticipate correction of this error would be the Superior Court’s starting point upon remand.

Chief Justice Baer joins this concurring opinion.