[J-52A&B-2021][M.O. – Dougherty, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 19 MAP 2021
	:	
Appellant	:	Appeal from the Order of the Superior Court at No. 2088 MDA 2018 dated 11/2/20 quashing the order of the
v.	:	Centre County Court of Common Pleas, Criminal Division at Nos. CP-14-CR-0001389-2017, CP-14-CR-0000784-2018 & CP-14-CR-0001540-2018 dated 11/21/18
BRENDAN PATRICK YOUNG,	:	
	:	
Appellee	:	ARGUED: September 21, 2021
COMMONWEALTH OF PENNSYLVANIA,	:	No. 20 MAP 2021
	:	
Appellant	:	Appeal from the Order of the Superior Court at No. 2089 MDA 2018 dated 10/28/20 quashing the order of the
v.	:	Centre County Court of Common Pleas, Criminal Division at Nos. CP-14-CR-0001377-2017, CP-14-CR-0000781-2018 & CP-14-CR-0001536-2018 dated 11/21/18
DANIEL CASEY,	:	
	:	
Appellee	:	ARGUED: September 21, 2021

CONCURRING AND DISSENTING OPINION

JUSTICE SAYLOR **DECIDED: December 22, 2021**

I support the majority's holding that the exception embodied in *Always Busy Consulting, LLC v. Bradford & Co.*, ___ Pa. ___, 247 A.3d 1033 (2021), to the policy of dismissal announced in *Commonwealth v. Walker*, 646 Pa. 456, 185 A.3d 969 (2018), is inapplicable, as well as the associated reasoning. I respectfully dissent, however, with

respect to the determination that Rule of Appellate Procedure 902 applies to effectively eviscerate *Walker*.

The majority cites *Commonwealth v. Williams*, 630 Pa. 169, 106 A.3d 583 (2014), as evidencing this Court's previous reliance on Rule of Appellate Procedure 902 to alleviate the harsh effect of a quashal where a litigant has failed to file separate notices of appeal. *See* Majority Opinion, *slip op.* at 23. *Walker*, however post-dated Williams. Thus, the *Walker* Court was well aware that there was a long line of prior decisions, such as *Williams*, favoring remedial measures over quashal. *See Walker*, 646 Pa. at 468-69, 185 A.3d at 976-77. This is why, when the *Walker* Court departed from those cases by mandating quashal, it provided for only prospective enforcement of the rule. *See id*. at 469, 185 A.3d at 977.

Indeed, were *Walker*'s quashal requirement to be subordinated to the discretionary, safe-harbor approach of Rule 902, the decision's vestige would remain only in cases in which a litigant neglected to reference Rule 902. This, however, is contrary to *Walker*'s unqualified pronouncement that the failure to file separate notices of appeal, when a single order resolves issues arising on more than one lower court docket, "will result in quashal of the appeal." *Id*. at 470, 185 A.3d at 977. Along these lines, it is difficult to conceive why the Court would have pronounced a bright-line rule in the first instance if it were to be subject to an exception stripping it of the prescribed effect.

I personally see little difference between the discretionary latitude that was available under the common law -- which was explicitly rejected in *Walker* -- and that which is available under Rule 902. For this reason and otherwise, it seems to me to be incongruous to differentiate Rule 902 from the common-law approach for the purpose of obviating *Walker* but nevertheless to accept the Commonwealth's generic (*i.e.*, non-rule-

based) overture to the Superior Court seeking latitude to amend as sufficient to implicate Rule 902 as such. *See* Majority Opinion, *slip op.* at 22 n.18.

Justice Donohue joins this concurring and dissenting opinion.