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1772 WDA 2016

IN THE
SUPERIOR COURT OF PENNSYLVANIA

1772 WDA 2016

COMMONWEALTH OF PENNSYLVANIA

APPELLEE,

V.

RICKY L. OLDS,

APPELLANT.

BRIEF OF APPELLANT

On Appeal from the November 21, 2016 Resentencing in the Court of Common Pleas, Allegheny County, Docket CP-02-CR-0006857-1979.

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STATEMENT OF JURISDICTION

This Court's jurisdiction to hear an appeal from a judgment of sentence of Allegheny County Court of Common Pleas is established by Section 2 of the Judiciary Act of 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S.A. § 742.

ORDER IN QUESTION

On November 21, 2016, the Allegheny County Court of Common Pleas issued an order on Docket No. CP-02-CR-0006857-1979 resentencing Mr. Olds to a sentence of twenty years to life.

SCOPE AND STANDARD OF REVIEW

The issue presented here concerns the constitutionality of imposing a maximum sentence of life on Ricky Olds. Issues concerning the constitutionality of a criminal sentence are questions of law and this Court's review is plenary. The scope of review is the entire record.

STATEMENT OF THE QUESTIONS INVOLVED

1. Did the lower court err holding that it was required to impose a life maximum on an individual who did not kill or intend to kill?

   Suggested answer: Yes.

STATEMENT OF THE CASE

Ricky Olds was fourteen years old the night of the incident that led to his convictions in the instant matter. Mr. Olds, along with his co-defendants, Todd Allen (16 years old) and Claude Bonner (18 years old) arrived at the Fort Wayne Cigar Store on the night of October 9, 1979. Mr. Allen suggested that he may commit a robbery, to which Mr. Olds sarcastically responded "yeah, right." Mr. Olds proceeded into the store, selected a bag of potato chips, and joked with the cashier. While Mr. Olds was paying for the chips inside the store, he saw co-defendant, Mr. Allen, outside the store pulling a gun on the victim. Upon seeing this, Mr. Olds ran away from the scene. The cashier, an eyewitness, and the co-defendant driver, all of whom were called by the Commonwealth at trial, corroborated this. Indeed, the eyewitness noted that he only saw one person robbing the victim – Mr. Olds was already gone.

Despite his lack of involvement in the underlying incident, Mr. Olds was convicted of second-degree murder, robbery, and conspiracy on April 2, 1980. Although trial judge Samuel Strauss urged a plea bargain even after the verdict was returned, the district attorney refused to negotiate a lower sentence for Mr. Olds. Thus, on April 28, 1981, Mr. Olds was sentenced to a mandatory life in prison without the possibility of parole for second-degree murder. No further penalties were imposed for either the robbery or the conspiracy charges.

After serving more than 35 years in prison, Mr. Olds received a new resentencing hearing pursuant to *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). At the resentencing hearing, Mr. Olds presented a letter from the trial prosecutor asking for his release; letters and certificates of his rehabilitation during incarceration; a letter of employment opportunity upon release; and evidence of re-entry program support. When imposing Mr. Olds' new sentence, Judge Cashman said to Mr. Olds, "To say that your case is compelling would be an understatement." (N.T. 11/21/16, 45.)

Defense counsel argued to the court that a life maximum was not only unconstitutional in the instant matter but also categorically unnecessary. As support, defense counsel noted a case from Tioga County where the individual was sentenced to twenty-three to forty-six years rather than a life maximum.[1] (N.T. 11/21/16, 27). Judge Cashman declared that the resentencing had "been done wrong," that "[t]he sentence is illegal," and that the judge in Tioga "had no authority to parole him." (N.T. 11/21/26, 27). This was based on the court's understanding that "[t]he statute says that the sentence has to be a minimum sentence of 20 to life and [the judge] sentenced him to 23 to 46 years. It's an illegal sentence." (N.T. 11/21/16, 28). Due

[1] In *Commonwealth v. Thompson*, CP-59-CR-0000007-1970, Thompson received a 23-46-year sentence on June 6, 2016, after spending more than 46 years in custody. He was released from the courtroom. A copy of Thompson's docket reflecting the imposed sentence is attached hereto as Appendix "A."

to the court's belief that a maximum of life is required, the trial court imposed a life maximum in resentencing Mr. Olds to twenty years to life.[2] (N.T. 11/21/16, 46).

SUMMARY OF THE ARGUMENT

The sentencing court incorrectly declared "illegal" a sentence with less than a life maximum. *See* (N.T. 11/21/16, 28). This is incorrect, as there is no statute nor any appellate case law that controls sentencing for the instant case. Any reliance on the Pennsylvania Supreme Court's decision in *Commonwealth v. Batts*, 66 A.3d 286 (Pa. 2013) [hereinafter "*Batts I*"] or *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter "*Batts II*"] for this argument would be misplaced, since those decisions specifically restrict themselves to first degree murder. Furthermore, such a construction of the law requiring a life maximum even for those children who did not kill nor intend to kill violates *Graham*'s recognition that such children have twice-diminished culpability and *Graham*'s requirement, reiterated in *Miller* and *Montgomery*, that the trial court fashion an individualized sentence.

In addition, a maximum sentence of life in the instant case is cruel and excessive even if it is not imposed as a mandatory maximum, considering Mr. Olds' age at the time of the offense, his shockingly minimal involvement, his outstanding

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[2] In the opinion filed by the sentencing Court on June 27, 2017, The Honorable David R. Cashman writes: "In light of the fact that Olds has been paroled, the issues he has attempted to raise in the current appeal are moot." To the contrary, the issues raised in the current appeal are not moot precisely because Mr. Olds has been paroled. (A copy of the June 27, 2017, Opinion is attached hereto as Appendix "B.")

adjustment and exemplary record in prison, and his comprehensive release and reentry plan which has been implemented successfully.

STATEMENT OF REASONS TO ALLOW AN APPEAL TO CHALLENGE THE DISCRETIONARY ASPECTS OF A SENTENCE

Pursuant to Pennsylvania Rules of Appellate Procedure:

> An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in a separate section of the brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence.

Pa.R.A.P. 2119(f); *See also*, *Commonwealth. v. Tuladziecki*, 522 A.2d 17, 19 (Pa. 1987). However, when issues raised on appeal involve the legality of the sentence, and not its discretionary aspects, a Pa.R.A.P. 2119(f) ("*Tuladziecki*") statement is not required. *Commonwealth v. Shaw*, 744 A.2d 739, 742 (Pa. 2000), *superseded by statute on other grounds*, 75 Pa.C.S.A. 3806(a)(3).

Appellant, Ricky Olds, challenges the constitutionality of, and the legal basis for, the trial court's holding that a mandatory life maximum was required and the subsequent imposition of such sentence. Furthermore, Mr. Olds challenges his life maximum even if it was not mandatorily imposed, as it would be an improper application of *Graham*, *Miller*, and *Montgomery*, since he did not kill nor have the intent to kill. The challenges are to the ultimate legality—not the discretionary aspects—of the imposition of a maximum life sentence. Such challenges do not require a *Tuladziecki* statement. *See Commonwealth v. Mouzon*, 812 A.2d 617, 622

(Pa. 2002) (citing *Commonwealth v. Smith*, 673 A.2d 893, 895 (Pa. 1996)) ("[N]othing in the Sentencing Code precludes [an appellate court] from reviewing the . . . application of legal principles" and "whether [the court] correctly interpreted and applied the . . . case law in sentencing matters."); *see also, Commonwealth v. Vasquez*, 744 A.2d 1280 (Pa. 2000) ("whether the trial court had the authority to impose a statutorily mandated fine" constituted a legal challenge); *Commonwealth v. Shiffler*, 879 A.2d 185, 189 (Pa. 2005) (a challenge to the court's ability to impose a sentence constitutes a challenge to the legality).

ARGUMENT

I. THE LOWER COURT ERRED IN IMPOSING WHAT IT CONSIDERED TO BE A MANDATORY MAXIMUM SENTENCE OF LIFE ON AN INDIVIDUAL WHO DID NOT KILL OR INTEND TO KILL.

A. There Is No Statute nor Appellate Case Law Requiring a Life Maximum to be Imposed on an Individual Convicted of Second Degree Murder Who Did Not Kill or Intend to Kill.

Despite the trial court's holding to the contrary, there is no relevant statute or appellate case law requiring the imposition of a life maximum. Nevertheless, the trial court adopted the Commonwealth's argument that *Batts I* applies to the instant matter. *See generally*, (N.T. 11/21/16, 28). Furthermore, the Commonwealth cited *Commonwealth v. Secreti*, 134 A.3d 77 (Pa. Super. 2016) for its argument that Mr. Olds must receive a life maximum. (N.T. 11/21/16, 37-38). However, both cases are inapposite, as Mr. Olds was not convicted of first-degree murder.

Justice Saylor noted that *Batts I* was restricted to first degree murder defendants:

> [D]espite the broad framing of the questions at hand, Appellant has *confined his arguments to the context of first-degree murder*; hence, the issues identified by Justice Breyer in his *Miller* concurrence . . . (discussing additional constitutional concerns connected with the imposition of life-without-parole sentence on juveniles . . . who have neither killed nor intended to kill), are not implicated in the present matter.

66 A.3d at 128. Therefore, the Pennsylvania Supreme Court's analysis suggesting 1102.1 as guidance is irrelevant for purposes of Mr. Olds' sentencing. Even if it were relevant, though, the Court in *Batts II* recognized that it could only be guidance and its "instruction to seek guidance from the statute is not intended to intrude upon a sentencing court's discretion to determine an appropriate, individualized sentence for a given offender." 163 A.3d at 457-58. Similarly, the analysis in *Secreti* is not dispositive as the court was analyzing a first-degree murder case and made no reference to individuals who did not kill or intend to kill. *See generally*, 134 A.3d 77.[3]

Finally, in its subsequent analysis of the life maximum in *Batts II*, the Pennsylvania Supreme Court relied on the failure of the legislature to create a

[3] Since the grant of this appeal, *Commonwealth v. Seskey*, ___ A.3d ____, 2017 WL 3667543 (Pa. Sup. 2017), was published. However, the appellate court impermissibly attempted to expand *Batts I* and *Batts II* by altering the quotations to include second degree murder despite the explicit exclusion of juvenile who did not kill or intend to kill. In addition, *Seskey* also involved a conviction of first degree murder.

retroactive sentencing scheme as evidence that it properly interpreted the Court's construction:

> Despite the passage of four years since we issued our decision in *Batts I*, the General Assembly has not passed a statute addressing the sentencing of juveniles *convicted of first-degree murder* pre-*Miller*, nor has it amended the pertinent provisions that were severed in *Batts I*. . . . [T]he General Assembly is quite able to address what it believes is a judicial misinterpretation of a statute, and its failure to do so . . . gives rise to the presumption that the General Assembly is in agreement with our interpretation.

Batts II, 163 A.3d at 445. Once again, the Court restricted its analysis to first-degree murder and recognized that its decision was only valid to the extent that the new statutory constructions had failed to be constitutionally challenged.

As there is neither a valid sentencing scheme for second-degree murder nor case law constructing a sentencing scheme, there is no mandate for the imposition of a maximum sentence of life.

B. A Mandatory Maximum of Life Constitutes Cruel and Unusual Punishment When Imposed on Children Who Did Not Kill or Intend to Kill.

A mandatory life maximum for those children who did not kill or intend to kill is unconstitutional considering their diminished culpability, the lack of legitimate penological justifications for such a maximum, the risk of a life of incarceration for other conduct, and its failure to provide the constitutionally required individualized sentence. The "ban on cruel and unusual punishments is the 'precept of justice that punishment for crime should be graduated and proportioned

to [the] offense." *Graham v. Florida*, 560 U.S. 48, 59 (2012) (citing *Weems v. United States*, 217 U.S. 349, 367 (1910)). In making such determinations, "courts must look beyond historical conceptions to the evolving standards of decency that mark the progress of a maturing society." *Id.* at 58. As such, in *Roper* and *Graham*, when analyzing categorical bans of punishment on children, the Court considered "the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." *Id.* at 57 (citations omitted). "[T]he Court also considers whether the challenged sentencing practice serves legitimate penological goals." *Id.* (citations omitted). In Pennsylvania, children convicted of second-degree murder who did not kill or intend to kill cannot be constitutionally sentenced to a mandatory maximum sentence of life.

i. A mandatory maximum of life unconstitutionally negates *Miller*'s requirement that a child receive an individualized sentence under the *Miller* factors.

In *Graham*, the Court recognized that sentencing juveniles in such situations "makes relevant th[e] Court's cases *demanding* individualized sentencing." *Miller*, 567 U.S. at 475. The Court has held mandatory schemes related to the harshest penalties to be flawed if they "gave no significance to the character and record of the individual offender or the circumstances of the offense, and excluded from consideration . . . the possibility of compassionate or mitigating factors." *Id.* (citations omitted) (quotation marks omitted). In attacking mandatory life without

parole in juvenile cases, the Court objected that "every juvenile will receive the same sentence as every other [despite age], the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one." *Id.* at 477. Therefore, a trial court has the obligation to fashion a sentence that appropriately reflects the individual circumstances of each juvenile and the offense. Treating each juvenile before the court the same sidesteps the obligation of the court to fashion a sentence which reflects a careful balance of the *Miller* factors.

This was even recognized by the Pennsylvania Supreme Court in *Batts I* "as a policy matter" when it held "that *Miller*'s rationale – emphasizing characteristics attending youth – militates in favor of individualized sentencing for those under the age of 18 both in terms of minimum and maximum sentences." 66 A.3d at 132. United States District Court Judge Savage also emphasized the inherent contradiction of a mandatory maximum in *Songster v. Beard:*

> Routinely fixing the maximum of each sentence at life contradicts a sense of proportionality and smacks of categorical uniformity. A sentencing practice that results in every juvenile's sentence with a maximum term of life, regardless of the minimum term, does not reflect individualized sentencing. Placing the decision with the Parole Board, with its limited resources and lack of sentencing expertise, is not a substitute for a judicially imposed sentence. . . . If the sentencing court finds that the defendant is not corruptible and not incorrigible, it must impose a maximum sentence less than life to reflect that finding. . . . No one can doubt that there are defendants who should be released immediately after a weighing of all the factors. There are those whose rehabilitation will be beyond question. . . [These individuals], some now graying adults, should not be required to suffer delay and another proceeding before gaining the freedom they already deserve had the

sentencing judge conducted a thorough sentencing hearing applying the principles prescribed by *Miller* and *Montgomery*.

201 F.Supp.3d 639, 642 (E.D. Pa. 2016).

ii. The culpability of children convicted of second-degree murder in Pennsylvania who did not kill or intend to kill is akin to the non-homicide defendants covered in *Graham*.

Juveniles who did not kill or intend to kill "are categorically less deserving of the most serious forms of punishment than are murderers." *Id.* at 69. Therefore, children who do not kill or intend to kill cannot be sentenced alongside their counterparts convicted for their direct involvement in the homicide as if their culpability is the same. Not only does adolescent development diminish their culpability, but their actual conduct does not reflect the same culpability as one who personally took a life. Under a mandatory maximum sentence of life, though, they would be treated as if they were just as culpable, contrary to established law.

Particularly when analyzing Pennsylvania's second-degree murder statute, it is clear that the culpability of convicted children cannot be compared to those convicted of first-degree murder. Intent to kill is not an element of the offense; rather, intent is imputed based on the defendant's participation in the underlying felony because the defendant, "as held to a *standard of a reasonable man*, knew or should have known that death might result from the felony." *Commonwealth v. Legg*, 417 A.2d 1152, 1154 (Pa. 1980) (emphasis added). The *Graham* majority emphasized, though, that a juvenile is developmentally different from the adult

"reasonable person"[4] in constitutionally relevant ways. *See generally*, 560 U.S. at 69-70. Therefore, it contradicts *Miller*'s recognition that a child does not have an adult's reasoning skills to then impute the intent to kill based on an adult's ability to recognize possible negative consequences. As Justice Breyer's concurrence in *Miller* emphasized, "without [a determination that the defendant killed or intended to kill], the Eighth Amendment as interpreted in *Graham* forbids sentencing Jackson to such a [life without parole] sentence, regardless of whether its application is mandatory or discretionary under state law." *Miller*, 567 U.S. at 490. Justice Breyer was joined by Justice Sotomayor. Pennsylvania's second-degree murder statute does not require such a determination, though, and in any case where such determination is not made, the constitutional restrictions are notably different.

As repeatedly recognized in *Roper*, *Graham*, and *Miller*, a child lacks that foresight and ability to understand the possible consequences of their actions. In *Miller* itself, the Court stated that even though Jackson knew his friend was armed with a gun, "his age could well have affected his calculation of the risk that posed." 567 U.S. at 478. Thus, where a child does not kill or intend to kill, the starting point of the analysis must begin with *Graham*'s recognition that they have

[4] *J.D.B.*, 564 U.S. 261 (2011), is instructive here. Following one year after the *Graham* case, *J.D.B.* applies the concept of a reasonable child rather than a reasonable adult. In the instant example of second degree murder, the proper analysis would require asking whether a 14-year-old child would know that death might result from the commission of a felony.

twice diminished culpability, even if a reasonable adult could have foreseen a life being lost. Children "cannot be viewed simply as miniature adults," *J.D.B.*, 564 U.S. at 274, but that is precisely how Pennsylvania's second-degree murder statute treats them. Thus, the sentencing of those who did not kill or intend to kill cannot proceed as if they are as culpable as those who did.[5]

Their culpability, rather, is akin to a juvenile whose offense was a non-homicide. Children are more likely to engage in risky behavior, are more susceptible to peer influence such as those who commit the homicide during the offense and are less capable of foreseeing the outcome of actions. *Miller*, 567 U.S. 477. This overall diminished culpability is further heightened when one considers the actions that are considered when analyzing a case where the child did not kill or intend to kill. The child who does not take a co-defendant's statement seriously, who does not foresee how an unarmed robbery could lead to a death, or who sits in a car unknowingly or unaware cannot constitutionally be resentenced under the same sentencing structure as one who took a life himself. Putting these individuals in such a situation negates the acknowledgement of their diminished culpability as a matter of law.

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[5] Furthermore, even for adults, the United States Supreme Court has recognized the diminished culpability of non-principals precludes the application of death penalty sentencing schemes to individuals who may have participated in but did not commit a murder. *See Tison v. Arizona*, 481 U.S. 137, 151 (1987) (upholding defendants' death sentences when they acted with "reckless indifference" and their participation in the crime was "major"); *Enmund v. Florida*, 458 U.S. 782, 798, 801 (1982) (limited culpability for the felony crime because homicide crimes are morally different.) When sentencing a child, this reasoning applies with greater force. *Miller*, 567 U.S. at 481 ("[A] sentencing rule permissible for adults may not be so for children."]

iii. A mandatory life maximum is a severe sentence that also risks unconstitutionally incarcerating a child for the rest of their life despite their diminished culpability.

In Pennsylvania, as in any state, an individual is not entitled to release on parole. Rather, parole eligibility is a procedure through which an individual can be granted release in exchange for continued supervision on the outside. A mandatory life maximum sentence invariably provides the parole board with the ability to effectively impose a life without parole sentence by the denial of parole. A court, though, would not be capable of forcing the parole board to release an individual even if the individual has demonstrated consistent rehabilitation. Rather, imposing a mandatory life maximum sentence "reflects an abdication of judicial responsibility" by "[p]assing off the ultimate decision to the Parole Board in every case." *Songster*, 201 F.Supp.3d at 642. Thus, "[L]ife without parole remains a possibility regardless of the individual's peculiar situation." *Id.*

The denial of parole in such cases would effectively punish a juvenile for a status offense, i.e. being an inmate who fails to conform to prison rules. It is not hard to conceive of a prison record that would continuously prohibit the possibility of parole despite other evidence of rehabilitation. This would lead to the child being punished as an adult not for their original involvement in the underlying offense but rather for being a non-conforming inmate, a status that can be arbitrarily assigned to them. *See generally Robinson v. California*, 370 U.S. 660, 666 (1962). Thus, a

mandatory life maximum sentence creates the very real possibility that a child who does not kill or intend to kill but fails to conform to prison rules will actually serve a life without parole sentence. Such a result would surely offend Due Process and the Eighth Amendment.

Even if an individual is granted parole, though, he is still subjected to extensive monitoring that is not warranted. Such restrictions are the inability to travel outside of their home county without permission, a curfew that impedes complete reentry, and the risk of serving time for minor or technical parole violations that would not otherwise demand incarceration[6].

iv. There is no penological justification for a mandatory life maximum to be imposed on an individual who did not kill or intend to kill.

The Court has long recognized that "[a] sentence lacking any legitimate penological justification is by its nature disproportionate to the offense." *Graham*, 560 U.S. at 71 (citing *Ewing v. California*, 538 U.S. 11, 25 (2003) (plurality opinion)). In non-homicide and homicide offenses involving juvenile defendants, the Court has already recognized that every penological justification for a mandatory life without parole sentence collapses in light of a child's attendant characteristics. *Montgomery*, 136 S. Ct. at 734. Retribution and deterrence are substantially weaker

[6] Specifically, Mr. Olds is currently on an 8:00 P.M. curfew. He must have permission to leave Allegheny County. He cannot drink alcohol, nor can he go to a restaurant that serves alcohol. He must pay $1.00 per day for his parole costs.

justifications for imposing the harshest sentence on children; the goal of rehabilitation is simply swallowed up by these sentences.

Retribution is a penological justification that cannot drive the sentencing outcome, particularly in situations of children who did not commit a homicide. "[A]s *Roper* observed, . . . the case for retribution is not as strong with a minor as with an adult," and [t]he case becomes even weaker with respect to a juvenile who did not commit homicide." *Graham*, 560 U.S. at 71 (citations omitted). Therefore, it does not logically follow that a juvenile homicide offender and a juvenile who did not kill or intend to kill can receive the same maximum sentence. Subjecting an individual to a life maximum does little to serve retribution and places the same burdens on the nonhomicide offender as the homicide offender – namely, the possibility of never being paroled or spending the rest of one's life under state supervision with the risk of re-incarceration for non-criminal behavior ever present.

Deterrence is inapplicable as a penological justification precisely because "the same characteristics that render juveniles less culpable than adults . . . suggest that juveniles will be less susceptible to deterrence." *Roper*, 543 U.S. at 571. This is particularly true in situations where it is more difficult for juveniles to foresee the events that may lead to someone's death and their overall inability to logically think through consequences of their decisions.

Incapacitation is important to the extent that it prevents recidivism. However, the concept is premised upon the idea that society will need to be protected from the incapacitated individual, a finding that directly contradicts the immense capacity for change associated with youth. *Miller*, 567 U.S. at 473. A mandatory life maximum risks lifetime incapacitation despite it being counter to the natural development of youth to adulthood. Nor does a lifetime of parole incapacitate an individual. Therefore, the concept of incapacitation does not justify a maximum life sentence.

Finally, a maximum sentence of life assumes that the individual will never be fully rehabilitated despite the overwhelming likelihood that as children become adults they will naturally rehabilitate themselves and desist from further criminal conduct. A lifetime of parole does little to promote rehabilitation and instead risks trapping individuals in minor violations that are not indicative of future crime but rather more indicative of technical challenges in state supervision. Since the vast majority of individuals can and will be rehabilitated, subjecting all of them to a lifetime of parole makes a judgment contrary to that reality.

C. Ricky Olds' Case Highlights the Disproportionate Nature of a Mandatory Life Maximum for Those Who Did Not Kill or Intend to Kill.

Mr. Olds' case perfectly illustrates both the folly and the unconstitutionality of a mandatory maximum of life. He served 37 years in prison for essentially purchasing a bag of potato chips and failing to take an older co-defendant seriously

when he made a loose-lipped threat. The original trial judge explicitly recognized that he was not an individual who required a life in prison, and his demonstrated rehabilitation negates any need for continued supervision. Yet at sentencing and re-sentencing, he was treated the same as an individual who knowingly engaged in a conspiracy to commit murder. Furthermore, there is no penological justification for his supervision after serving 37 years. He has demonstrated his ability to reenter society successfully and now is burdened with an array of daily restrictions for the rest of his life -- restrictions that impede his ability to be a full member of society and to move forward with his life despite serving almost two decades more than the Commonwealth and the trial court agree he should have been required to serve.

CONCLUSION

For the foregoing reasons, this Honorable Court should vacate Ricky Olds' unconstitutional life maximum and remand the instant matter for resentencing to impose a maximum term of years.

Respectfully submitted,

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COUNSEL FOR APPELLANT

DATED: October 23, 2017

APPENDIX A

Commonwealth v. Thompson,

CP-59-CR-0000007-1970 Docket

COURT OF COMMON PLEAS OF TIOGA COUNTY

DOCKET

Docket Number: CP-59-CR-0000007-1970

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
Jackie Lee Thompson

CASE INFORMATION

Judge Assigned:
Date Filed: 01/02/1970
Initiation Date: 01/02/1970
OTN: R 079234-1
LOTN:
Originating Docket No:
Initial Issuing Authority:
Final Issuing Authority:
Arresting Agency: PSP - Mansfield
Arresting Officer: Affiant
Complaint/Incident #:
Case Local Number Type(s)
Case Local Number(s)

STATUS INFORMATION

Case Status: Closed

Status Date	Processing Status
06/06/2016	Sentenced/Penalty Imposed
06/06/2016	Awaiting Sentencing
06/06/2016	Awaiting PSI
04/27/1970	Awaiting Sentencing
01/02/1970	Awaiting Filing of Information

Arrest Date: 12/31/1969

Complaint Date: 01/02/1970

CALENDAR EVENTS

Case Calendar Event Type	Schedule Start Date	Start Time	Room	Judge Name	Schedule Status
Guilty Plea	04/27/1970	9:00 am			Scheduled
Sentencing	06/06/2016	1:00 pm	Main Courtroom		Scheduled

DEFENDANT INFORMATION

Date Of Birth: 11/03/1954
City/State/Zip: Wellsboro, PA 16901

CASE PARTICIPANTS

Participant Type	Name
Defendant	Thompson, Jackie Lee
Probation Officer	Shedden, Jacob A.

CHARGES

Seq.	Orig Seq.	Grade	Statute	Statute Description	Offense Dt.	OTN
1	1	F	**18 § 4701**	Murder of the First and Second Degree	12/31/1969	R 079234-1

DISPOSITION SENTENCING/PENALTIES

Disposition
Case Event
Sequence/Description
Sentencing Judge
Sentence/Diversion Program Type
Sentence Conditions
Disposition Date
Offense Disposition
Sentence Date
Incarceration/Diversionary Period
Final Disposition
Grade
Section
Credit For Time Served
Start Date

Guilty Plea

COURT OF COMMON PLEAS OF TIOGA COUNTY

DOCKET

Docket Number: CP-59-CR-0000007-1970

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
Jackie Lee Thompson

DISPOSITION SENTENCING/PENALTIES

Disposition			
Case Event		Disposition Date	Final Disposition
Sequence/Description		Offense Disposition	Grade Section
Sentencing Judge		Sentence Date	Credit For Time Served
Sentence/Diversion Program Type		Incarceration/Diversionary Period	Start Date
Sentence Conditions			
Guilty Plea		04/27/1970	Final Disposition
1 / Murder of the First and Second Degree		Guilty Plea	F 18 § 4701
Leete, John B.		06/06/2016	
Confinement		Min of 23.00 Years Max of 46.00 Years Other	12/31/1969
Probation		Min of 24.00 Months Max of 24.00 Months 24 Months	06/06/2016

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Representing: Thompson, Jackie Lee

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1	01/02/1970		Court of Common Pleas - Tioga County
Original Papers Received from Lower Court			
1	04/27/1970		Leete, John B.
Guilty Plea			
1	06/05/2016		Tioga County Court Administration
Guilty Plea Scheduled 04/27/1970 9:00AM			

COURT OF COMMON PLEAS OF TIOGA COUNTY

DOCKET

Docket Number: CP-59-CR-0000007-1970

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
Jackie Lee Thompson

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1	06/06/2016		Tioga County Court Administration
Sentencing Scheduled 06/06/2016 1:00PM			
2	06/06/2016		Leete, John B.
Order - Sentence/Penalty Imposed			
1	06/13/2016	06/06/2016	Leete, John B.
RE-Sentence/Penalty Order Filed Tioga County District Attorney's Office 06/13/2016 Walrath, Thomas A. Jr. 06/13/2016			
1	06/27/2016		Leete, John B.
Transcript of RE-SENTENCING ON JUNE 6TH, 2016			
1	09/08/2016		Tioga County Prison
Case Correspondence Right to Know			
1	06/12/2017		Walrath, Thomas A. Jr.
Motion for Early Termination of Probation			
1	06/16/2017		Leete, John B.
Order Granting Motion for Early Termination of Probation Thompson, Jackie Lee 06/19/2017 Tioga County District Attorney's Office 06/19/2017 Walrath, Thomas A. Jr. 06/19/2017			
2	06/16/2017		Tioga County District Attorney's Office
Commonwealth's Reply to Defendant's Petition for Early Release from Supervision			

APPENDIX B

June 27, 2017, Opinion

IN THE FIFTH JUDICIAL DISTRICT OF THE COMMONWEALTH OF PENNSYLVANIA
COUNTY OF ALLEGHENY

COMMONWEALTH OF PENNSYLVANIA

vs.

RICKY L. OLDS

CRIMINAL DIVISION
CC No. 19796857; 19797090
Superior Court No. 1772WDA2016

OPINION

JUDGE DAVID R. CASHMAN
308 Courthouse
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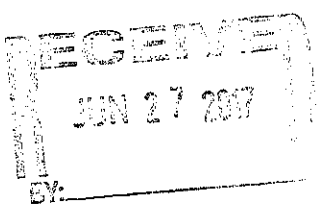

IN THE FIFTH JUDICIAL DISTRICT OF THE COMMONWEALTH OF PENNSYLVANIA
COUNTY OF ALLEGHENY
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	) CC No. 19796857; 19797090
vs.	) Superior Court No. 1772WDA2016
RICKY L. OLDS	)

OPINION

On April 2, 1980, following a jury trial, the appellant, Ricky Lee Olds, (hereinafter referred to as "Olds"), was found guilty of the charges of second-degree murder, robbery and criminal conspiracy. On April 28, 1981, Olds was sentenced to the mandatory sentence of life without the possibility of parole for his conviction of second-degree murder and no further penalties were imposed for his convictions of robbery and criminal conspiracy. Olds filed a direct appeal to the Superior Court which affirmed the judgment of his sentence and, thereafter, several petitions for post-conviction relief were filed, which were denied.

On August 20, 2012, Olds filed another petition for post-conviction relief alleging that he was entitled to relief under the United States Supreme Court decision in ***Miller v. Alabama, 132 S.Ct. 2455 (2012),*** since at the time that he was convicted, he was a juvenile, age fourteen. In light of the fact that the issue of whether or not ***Miller v. Alabama, supra.*** was retroactive had not been resolved by the Pennsylvania Supreme Court, this Court sent its notice of intention to dismiss that petition on March 11, 2014. Olds' petition for post-conviction relief was dismissed on July 15, 2014, and he filed a timely appeal from that dismissal. This Court filed its Opinion with respect to the reason why it dismissed his petition for post-conviction relief. which decision was affirmed by the decision of the

Pennsylvania Superior Court. Olds filed a petition for allowance of appeal with the Pennsylvania Supreme Court which granted that petition and ordered that the record be returned to the Trial Court in light of its decision on the retroactive effect of ***Miller v. Alabama, supra.***

In light of the decisions of the United States Supreme Court in ***Miller v. Alabama, supra.*** and ***Montgomery v. Louisiana, 136 S.Ct. 716 (2016),*** a sentencing hearing was held on November 21, 2016, at which time this Court resentenced Olds to sentence of twenty years to life for his conviction of second-degree murder and no further penalty was imposed for the convictions of robbery and criminal conspiracy. In addition, this Court ordered Olds' release on a non-monetary appeal bond since he had indicated that he wished to take an appeal from this Court's decision to impose a maximum sentence of life without the possibility of parole.

The Commonwealth filed a notice of appeal from this Court's Order permitting Olds to have an appeal bond and then filed a Motion for Reconsideration of that Order in light of the fact that this Court had no authority to allow such a bond in light of Article I, Section 14 of the Pennsylvania Constitution which provides in relevant part that: "all prisoners shall be bailable by sufficient sureties, unless for capital offense or for the offenses which the maximum sentence is life imprisonment." This Court, in reviewing the Commonwealth's motion, acknowledged that the Commonwealth was correct and then entered an Order vacating its previous Order allowing Olds an appeal bond. As a result of the entry of that Order, the Commonwealth dismissed its appeal that it had filed with respect to the decisions that occurred at Olds' resentencing hearing.

Olds, however, filed his own appeal and was directed pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), to file a concise statement of matters complained of on appeal. In that concise statement, Olds has raised three issues, all of which deal with what he believes to be the illegal imposition of a mandatory sentence of life as the maximum penalty for a conviction of first-degree or second-degree murder. Initially, Olds believes that the imposition of such a sentence is cruel and excessive. Olds also maintains that the sentence is illegal as it imposes a maximum of less than life without the possibility of parole and, finally, that the imposition of a maximum sentence of life without the possibility of parole is in violation of the United States Supreme Court's decisions in ***Miller v. Alabama, supra.*** and ***Montgomery v. Louisiana, supra.***

In February of 2017, Olds went before the Pennsylvania Parole Board which acknowledged that he had served almost forty-seven years of the sentence that was originally imposed upon him that he should be entitled to parole, since he had served more than the minimum sentence of twenty years. In light of the fact that Olds has been paroled, the issues that he has attempted to raise in the current appeal are moot.

BY THE COURT:

Cashman, A. J. A.J.

DATED: June 26, 2017

CERTIFICATE OF COMPLIANCE

I hereby certify this 23rd day of October, 2017, that the foregoing brief of Appellant contains 4,562 words and complies with the word count limits as set forth in Pa.R.A.P. 2135. 4562

/s/ Marc Bookman

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