IN THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PHILADELPHIA

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EDA 2018 NO. 1278

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COMMONWEALTH OF PENNSYLVANIA

V.

JOHN BLOUNT, APPELLANT

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# BRIEF OF APPELLANT

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Appeal from the March 26, 2018 Judgment of Sentence
in the Court of Common Pleas, Philadelphia County,
Docket CP-51-CR-0124901-1990.

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October, 2018

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### FEDERAL CASES



### STATE CASES

## I. STATEMENT OF JURISDICTION

This Court's jurisdiction to hear an appeal from an order from the judgment of sentence of Philadelphia 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.

## II. SCOPE AND STANDARD OF REVIEW

On March 26, 2018, John Blount was sentenced to 35 years to life. There are multiple issues before this Court. Three of those issues present questions of constitutionality and of law; therefore, the standard of review is *de novo*. These issues are: whether the sentencing court erred by denying recusal, whether the sentencing court erred by imposing a sentence in violation of Miller v. Alabama, 567 U.S. 460 (2012) and the 8th Amendment to the United States Constitution and whether the sentencing court erred by imposing upon a juvenile a mandatory lifetime parole tail. The other two issues, whether the sentencing court improperly considered matters from outside the record that were actually false and whether the sentencing court imposed an excessive sentence, are reviewed under an abuse of discretion standard.

The scope of review is the entire record.

## III. STATEMENT OF QUESTIONS INVOLVED

1. Must the sentencing judge recuse herself where the judge did not accept the sentence agreed upon by the parties?

(Suggested answer: Yes)

2. Did not the sentencing court err when imposing sentence by considering matters without support in the record that were actually false, here that John Blount would live into his 90s and that he had desecrated the bodies of the decedents?

(Suggested answer: Yes)

3. Did not the sentencing court unconstitutionally err and violate Miller v. Alabama, 567 U.S. 460 (2012) where, at the resentencing of a juvenile lifer, the court relied exclusively upon the facts of the homicide in imposing an additional six more years of incarceration beyond the twenty-eight years already served and by doing so ignored the total rehabilitation demonstrated by John Blount?

(Suggested answer: Yes)

4. Is not a sentence of an additional six years of incarceration beyond the twenty-eight years already served excessive where the sentencing judge agreed that the evidence established that John Blount was rehabilitated?

(Suggested answer: Yes)

5. Is it unconstitutional to impose a mandatory lifetime parole tail on all juvenile lifers being resentenced?

(Suggested answer: Yes)

## IV. STATEMENT OF THE CASE

Appellant John Blount was convicted of a double murder in 1991 at CP-51-CR-0124901-1990. At the time of the crime, Mr. Blount was 17 years old. Because his original trial was tainted by improper jury instructions, Mr. Blount had to be retried. He was found guilty at his retrial in 1996 of two counts of first degree murder and given a mandatory sentence of life imprisonment. Because the United States Supreme Court in Miller v. Alabama, 567 U.S. 460 (2012) and Montgomery v. Louisiana, 136 S.Ct. 718 (2016) held such sentences to be unconstitutional, Mr. Blount came before the Honorable Barbara McDermott on March 26, 2018[1] to be resentenced.[2] Prior to

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[1] "N.T. 3/26/18" refers to the notes of testimony from the resentencing hearing before Judge McDermott on March 26, 2018. "N.T. 4/26/18" refers to the notes of testimony from the hearing on post-sentence motions.

[2] The facts upon which Mr. Blount's resentencing was based was put into the record by the prosecutor at sentencing. He noted that:

> [O]n the night of September 28, 1989, the defendant shot to death [Andre] Ramsey and Robert Robertson . . ., each with a single gunshot wound to the head at close range in Ramsey's bedroom.
>
> The defendant's girlfriend, Tahara Underwood, was in the next room, heard the shots, went to go see what's going on, heard -- the defendant told her, "Don't go in there. I dropped something." But she saw blood coming from under the door. After the killings, the defendant took Ramsey's money and jewelry, Ramsey's car, which he later got rid of, hid the murder weapon in his mother's room and then was aided by a friend by the name of Stackhouse, moved the bodies to a pit in the garage of the house. And after that, the defendant and family members
>
> cleaned up the blood in the bedroom and threw the evidence of the crime, including the bedding.

continue...

the sentencing hearing, the Commonwealth offered, and the defense has accepted, a negotiated sentence of two counts of 29 years to life for the murder convictions, sentences to run concurrently (N.T. 3/26/18, 46, 47; 4/26/18, 5-6).

The sentencing judge began the hearing by describing the sentencing options available to her. After describing the Miller factors, the court noted that the factor in

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[2]...continue

. . .

> After that, the defendant hired two people known as Travis and Beetle to dispose of the corpses accompanied by the defendant's girlfriend, Ms. Underwood. He told them he killed them and put their bodies in a hole in the basement. After that, the defendant told Ms. Underwood to get a car to move the bodies and went inside.
>
> . . .
>
> On October 3rd, police discovered the victims' bodies decomposing on 69th Avenue between 11th and 12th Streets. They were wrapped in drapes. Neither had a wallet or jewelry, no identification. They went to the defendant's home as part of the investigation, didn't make any arrests at that time. It was a couple days after finding the bodies. But on October 24th, he went back to the house and they noticed furniture was moved in the house from where it was a couple of weeks before. The bed, the television, the radio were all gone.
>
> On the stairs of the basement, there had been new paint -- a fresh coat of paint. The police saw splotches of blood inside on -- what appeared to be blood on the basement walls. Inside the pit in the garage, which was covered by a sheet of metal, they found pieces of plastic, cardboard with red stains, testing later to be blood. Later that day they arrested the defendant . . . And after reading Miranda Warnings, he confessed, committed he shot both in Ramsey's room, moved their bodies downstairs, cleaned the room to conceal the crime, hired two men to get rid of the bodies. And he's claimed in his statement that he shot them because he thought Ramsey was reaching for a gun.
>
> As the Court already indicated, a jury in 1990 returned a verdict of guilty. They did find aggravators and sentenced them to death, which that was overturned subsequent for a faulty jury instruction, if I'm understanding what happened correctly. And that is the sum of the facts of the case.

N.T. 3/26/18, 7-11.

the "Court's mind is the fact that there's two deaths here." (N.T. 3/26/18, 13). In determining her sentence, Judge McDermott "recognizes that a life expectancy is in the 90s these days. That's where we are" (N.T. 3/26/18, 13). Judge McDermott explained that John Blount demonstrated sophistication in disposing of the bodies after the murder (N.T. 3/26/18, 26, 47). The prosecutor agreed that Mr. Blount had "done extraordinarily well in" prison (N.T. 3/26/18, 47).

Numerous family members of the two decedents testified and told Judge McDermott about the impact the murders had on their lives. Salima Ellis, Robert Robertson's aunt, told how his murder deprived him of a bright future, how he was deprived of the opportunity to attend college and to become a father and uncle (N.T. 3/26/18, 15). Jennifer Ramsey, cousin of Andre Ramsey, described how they looked for five days after he disappeared before they found his body (N.T. 3/26/18, 20-21). Her view was that the mothers of the victims were not given a second chance so why should Mr. Blount (N.T. 3/26/18, 22). Danny Ramsey, Andre Ramsey's uncle, was particularly troubled by the fact that Mr. Blount was a friend of both of the murdered victims (N.T. 3/26/18, 24). He was a part of the West Oak Lane community (N.T. 3/26/18, 23-24). Shirley Hall, Robert Robertson's grandmother, testified that they could not have an open casket funeral because of the delay in finding the bodies after the murder (N.T. 3/26/18, 31). Adrienne Robertson, Robert Robertson's mother,

testified that she could never forgive Mr. Blount (N.T. 3/26/18, 37). Deborah Ramsey, the mother of Andre Ramsey, testified that she was particularly hurt because her son was John Blount's friend (N.T. 3/26/18, 44-45).

The defense explained that John Blount had an extraordinarily difficult childhood (N.T. 3/26/18, 49). His stepfather was Robert Stackhouse, a man who was subsequently found guilty of manslaughter, a man involved in the Junior Black Mafia and the man responsible for disposing of the bodies in this case (N.T. 3/26/18, 50). Mr. Stackhouse was verbally and physically abusive; he would tie John down on the bed and beat him with a belt or an extension cord (N.T. 3/26/18, 51). When John was 7 years old his stepfather, Mr. Stackhouse, broke his jaw and knocked out several teeth (N.T. 3/26/18, 51). John Blount obtained his GED while incarcerated (N.T. 3/26/18, 55, 62). He co-founded Real Street Talk, a prison program designed to tell kids on the street about the reality of what they are doing in an attempt to get them to make better decisions (N.T. 3/26/18, 55).

The defense called three witnesses to tell the court about John Blount. Todd Faubert, currently the Unit Manager of death row at the State Correctional Institution at Graterford, had spent over 35 years in corrections and had been an officer, a sergeant, a lieutenant, a shift commander and a deputy (N.T. 3/26/18, 62). He was John Blount's counselor for five years (N.T. 3/26/18, 58). John Blount was the clerk

for C-block at Graterford (N.T. 3/26/18, 59). This was an important and trusted position because as the clerk John Blount would have access to private information about inmates; it was expected that he would keep such information confidential (N.T. 3/26/18, 59-61). Only inmates with exemplary records can become a block clerk (N.T. 3/26/18, 60). As his counselor, Mr. Faubert read Mr. Blount's entire record and was particularly impressed that while on death row Mr. Blount requested and completed prison programs, including Violence Prevention (N.T. 3/26/18, 61, 62). John Blount had a single write-up in his 28 years of incarceration and that was for having a radio while he was death row (N.T. 3/26/18, 65-66). That was unique as very few inmates would not have multiple write-ups over 28 years (N.T. 3/26/18, 66). Mr. Faubert had never testified on behalf of any inmate before; he had seen a tremendous amount of growth in Mr. Blount (N.T. 3/26/18, 67). In fact Mr. Blount had gotten married while incarcerated (N.T. 3/26/18, 64). John Blount had expressed great remorse over his involvement in the murders (N.T. 3/26/18, 68).

John Hudson, John's father, testified that he was 15 when John was born and John's mother was 14 (N.T. 3/26/18, 70-71). John Blount was raised by his mother but when John was 15, he went to live with his father because he was acting out and was selling drugs (N.T. 3/26/18, 71). He lived with his father for a year but then wanted to return to his mother's house; his father regretted permitting him to return

to his mother's house (N.T. 3/26/18, 71-72). Mr. Hudson was a captain in the Philadelphia Prison System and had retired after 25 years (N.T. 3/26/18, 72). He was also impressed that John Blount had but a single write-up in 28 years of incarceration; that was exemplary and unheard of (N.T. 3/26/18, 73).

John Blount's wife, Antoinette Haren, testified that she met John seven years ago (N.T. 3/28/18, 79). She described the positive impact that he had on her life. She had dropped out of school in the 11th grade and he encouraged her to get her GED; she did (N.T. 3/26/18, 80). He encouraged her to get her driver's license which she got when she was 43 years old (N.T. 3/26/18, 81). John had told her about the murders and had expressed to her his remorse (N.T. 3/26/18, 82). John has a place to live when he would be released and a job at a deli (N.T. 3/26/18, 83).

John Blount testified that he had been incarcerated for 28½ years and he had to live with the fact that he "deprived Rob and Andre of that promise of their future and that I deprived their families and their children, and I'm humiliated and embarrassed for the actions that I committed when I was a young man. And I regret on so many levels, firstly, that they were my friends. Secondly, that I know I was wrong" (N.T. 3/26/18, 87-88).

Judge McDermott agreed that John Blount's prison record was one of the best that she had ever seen (N.T. 3/26/18, 85). However, she explained that she was

troubled by the fact that there were two murders here (N.T. 3/26/18, 85). She was also troubled by the sophistication in the crime and the additional pain that she had put the decedents' families through by hiding and desecrating the bodies (N.T. 3/26/18, 85). Judge McDermott said that she believed every word that John Blount had said (N.T. 3/26/18, 91-92). She also agreed that if released, he would "continue to do what [he'd] been doing in prison (N.T. 3/26/18, 92).

Defense counsel requested that she recuse herself if she was "disinclined to accept the offer" made by the Commonwealth and agreed to by the defense --- a sentence of 29 years to life (N.T. 3/26/18, 92). Judge McDermott denied the recusal motion (N.T. 3/26/18, 92). She imposed two concurrent sentences of 35 years to life on the first degree murder convictions (N.T. 3/26/18, 92).

On April 4, 2018, Mr. Blount petitioned for reconsideration of sentence.[3] On April 25, 2018 counsel amended his petition for reconsideration of sentence and included transcripts from four juvenile lifer resentencing cases before Judge McDermott where she indicated that she would recuse herself if she rejected the agreed upon sentencing offer between the prosecution and defense.[4] On April 26, 2018 Judge McDermott denied the post-sentence motions.

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3 Counsel's post-sentence motion is attached hereto as Exhibit "B."

4 Counsel's amended post-sentence motion is attached hereto as Exhibit "C."

A timely notice of appeal was filed on May 3, 2018, on May 10, 2018 Judge McDermott ordered that counsel file a Statement of Errors Complained Of On Appeal and on May 18, 2018 a timely Statement of Errors Complained Of On Appeal was filed.[5]

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[5] Opinion of McDermott, J. at 2 (attached hereto as Exhibit "A"). Judge McDermott's order requiring the filing of a Statement of Errors is attached hereto as Exhibit "D" and counsel's Statement of Errors is attached hereto as Exhibit "E."

## V. STATEMENT OF REASONS FOR ALLOWANCE OF APPEAL FROM THE DISCRETIONARY ASPECTS OF SENTENCE

John Blount is challenging the constitutionality of the imposition of a sentence that included a mandatory lifetime parole tail. The challenge is to the legality of (and not the discretionary aspects of) his mandatory parole tail as such a mandatory sentence violates Miller v. Alabama, 567 U.S. 460 (2012) and Montgomery v. Louisiana, 136 S. Ct. 718 (2016). For this reason, no Pa.R.A.P. 2119(f) ("Tuladziecki") statement is required. Commonwealth v. Shaw, 744 A.2d 739, 742 (Pa., 2000) (a Tuladziecki statement is not required when the issue raised on appeal involves the legality of the sentence and not its discretionary aspects). Mr. Blount raises a claim that clearly implicates the legality of his sentence rather than its discretionary aspects,. Nevertheless, because the stakes here are so high, in an abundance of caution, a Tuladziecki statement is included in this brief.

John Blount was originally given a mandatory sentence of life imprisonment. That sentence was vacated and instead the judge imposed a mandatory sentence of lifetime parole. It was improper for the trial court to impose a mandatory lifetime parole tail. Here, the sentencing judge erroneously thought she was required to impose such a mandatory sentence so never considered any alternatives. A term other than lifetime parole was required. This question does not require a Tuladziecki statement.

In addition, based upon Miller, a judge at a resentencing hearing is required to consider how a defendant has demonstrated rehabilitation. Here, however, Judge McDermott's determination of sentence rested almost exclusively upon an improper consideration: the facts of the homicide itself. As a result, the sentence violated Miller. This question does not require a Tuladziecki statement.

Moreover, in sentencing Mr. Blount, the trial judge considered two facts that were both erroneous: that Mr. Blount's expected lifespan was 90 years and that had desecrated the bodies of the murdered victims. This Court has held that it is an abuse of discretion meriting this Court's review where the trial judge considers erroneous facts at sentencing. Commonwealth v. Archer, 722 A.2d 203, 210 (Pa.Super., 1998) (*en banc*).

Lastly, because Mr. Blount had demonstrated to Judge McDermott total rehabilitation, a sentence greater than the parties' agreed upon sentence of 29 years to life was an abuse of discretion. Allowance of appeal from the discretionary aspects of a sentence may be granted "where it appears that there is a substantial question that the sentence imposed is not appropriate" under the Sentencing Code. 42 Pa.C.S. § 9781(b); *see also* Pa.R.A.P. § 2119(f); Commonwealth v. Tuladziecki, 522 A.2d 17 (Pa., 1987). To present a "substantial question," Mr. Blount need not present all facts necessary to a determination on the merits, but must set forth at least "a plausible

argument that procedures followed by the sentencing court were either inconsistent with a specific provision of the Sentencing Code or contrary to the fundamental norms underlying the sentencing process." Commonwealth v. Goggins, 748 A.2d 721, 727 (Pa. Super., 2000). A claim of excessive sentence also presents a substantial question. Commonwealth v. Mouzon, 812 A.2d 617 (Pa., 2002). An allegation that the sentencing court relied on an impermissible factor raises a substantial question for appeal. Commonwealth v. Stewart, 867 A.2d 589, 592 (Pa. Super., 2005). Here, the sentencing court considered two such factors: that Mr. Blount's expected lifespan was into his 90s and that he had demonstrated sophistication and had desecrated the bodies. In addition, failure to address all relevant sentencing criteria, as well as sentencing in the absence of sufficient and accurate information constitute an abuse of discretion. *See* Commonwealth v. Franklin, 446 A.2d 1313 (Pa. Super., 1982).

## VI. SUMMARY OF THE ARGUMENT

The parties had agreed upon a sentence of 29 years to life in this resentencing required by Miller v. Alabama, 567 U.S. 460 (2012). Near the conclusion of the sentencing hearing, Judge McDermott suggested for the first time that she may not accept that disposition. Defense counsel immediately moved for recusal prior to the imposition of sentence. Judge McDermott should have recused herself if she was not going to accept the agreed upon disposition. In four other juvenile lifer resentencing cases she said she would grant recusal if she did not accept the agreed upon disposition.

In determining her sentence Judge McDermott explicitly relied upon two "facts" that were not only unsupported by the record, but were simply false. Judge McDermott concluded that Mr. Blount's projected lifespan was into his 90s. In reality incarcerated people lose an average of two years of their life for each year of incarceration. Mr. Blount would be lucky to live to age 60. Judge McDermott also concluded that Mr. Blount had desecrated the bodies of the decedents. The facts demonstrated that he had moved the bodies to a pit in the garage and later paid two people to remove and dispose of the bodies. There was no evidence that he had desecrated the bodies. This Court should remand this matter for resentencing because of the sentencing court's reliance on inaccurate information.

Similarly, this Court should remand for resentencing because the sentencing court focused nearly entirely upon the facts of the instant homicide rather, as required by Miller v. Alabama, supra, and the 8th amendment, to consider Mr. Blount's demonstrated rehabilitation, growth and change.

Because of Mr. Blount's demonstrated rehabilitation, growth and change, a sentence that required six more years of incarceration beyond the 28 years he had already been incarceration was excessive.

Lastly, at his resentencing hearing John Blount was given two concurrent 35 years to life sentences. The sentencing judge believed she was required to impose a mandatory lifetime parole tail. However, the United States Supreme Court in Miller v. Alabama, 567 U.S. 460 (2012) and Graham v. Florida, 560 U.S. 48, 68 (2010) required that juveniles previously given unconstitutional mandatory life sentences must, at resentencing, be given an individualized sentence that considers all relevant factors. As a mandatory lifetime parole tail is not an individualized sentence and does not consider any relevant factors, this Court should vacate that sentence and remand for a new sentencing hearing where an appropriate, non-mandatory, maximum sentence be imposed.

## VII. ARGUMENT

1. THE SENTENCING COURT ERRED BY DENYING A RECUSAL MOTION WHERE THAT COURT DECLINED TO FOLLOW THE NEGOTIATED SENTENCE AGREED UPON BY THE COMMONWEALTH AND THE DEFENSE.

Pennsylvania law is clear that when negotiating a sentence the prosecutor has the absolute authority to waive imposition of a mandatory sentence or even a semblance of one. Here, the Commonwealth agreed to exactly that and the parties agreed to a negotiated sentence of 29 years to life. When the trial judge indicated that she would not go along with the negotiated sentence, counsel immediately moved for her to recuse herself. She denied the recusal motion and imposed sentences of 35 years to life. This was error and this Court should reverse and remand for a new sentencing hearing.

At the conclusion of the sentencing hearing but prior to the imposition of sentence, Judge McDermott indicated that she did not intend on imposing the sentence agreed upon by the parties. Counsel immediately moved for recusal (N.T. 3/26/18, 92). Counsel's motion was denied and Judge McDermott imposed two concurrent sentences of 35 years to life (N.T. 3/26/18, 92).

It has long been true that under Pennsylvania law, a negotiated sentence is the preferred manner to resolve cases. In fact, the entire criminal justice system would

break down without such a preference as the system does not have the resources were each case to require a trial and separate sentencing hearing:

> It is well recognized that the guilty plea and the frequently concomitant plea bargain are valuable implements in our criminal justice system. See Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977); Commonwealth v. Alvarado, 442 Pa. 516, 276 A.2d 526 (1971); Commonwealth v. McKee, 226 Pa.Super. 196, 313 A.2d 287 (1973). "The disposition of criminal charges by agreement between the prosecutor and the accused, ... is an essential component of the administration of justice. Properly administered, it is to be encouraged." Santobello v. New York, 404 U.S. 257, 260, 92 S.Ct. 495, 498, 30 L.Ed.2d 427 (1971) (emphasis added). In this Commonwealth, the practice of plea bargaining is generally regarded favorably, Commonwealth v. Zuber, 466 Pa. 453, 353 A.2d 441 (1976); Commonwealth v. Alvarado, *supra*, Commonwealth ex rel. Kerekes v. Maroney, 423 Pa. 337, 223 A.2d 699 (1966), and is legitimized and governed by court rule. Pa.R.Crim.P. 319(b). The desirability of disposing of criminal charges through plea bargaining is based on the premise that frequently a plea agreement is advantageous to all concerned.

Commonwealth v. Schmoyer, 280 Pa. Super. 406, 421 A.2d 786, 789–90 (1980).

While case law establishes that a negotiated resolution is advantageous to all concerned and is to be encouraged, the trial court retains the authority to reject a negotiated plea. The Sentencing Code, 42 Pa.C.S.A. §§ 9701–9799.41, obligates judges to impose a sentence "that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the

community, and the rehabilitative needs of the defendant." 42 Pa.C.S.A. § 9721(b). However, if a judge rejects such a negotiated sentence the matter should be sent to another judge for sentencing:

> Moreover, if a judge refuses to accept a plea bargain agreed to by the defense and the Commonwealth, or if plea of guilty or nolo contendere is withdrawn because the trial judge decides that his original agreement was inappropriate, then the trial should be held where practical before another judge who has no knowledge of the prior plea bargaining.

Commonwealth v. Evans, 434 Pa. 52, 57, 252 A.2d 689, 691, n. 1 (1969).

That the juvenile lifer cases coming back for resentencing should be resolved, if possible, by a negotiated sentence is mandated by the First Judicial District's rules regarding these hearings.[6] The rules require that, "Should negotiations result in a stipulation addressing all issues prior to the resentencing hearing, the case shall be slated forthwith for immediate disposition before the assigned presiding judge." General Court Regulation No. 1 of 2016, 4c.

Judge McDermott in her Rule 1925 opinion specifically notes that the First Judicial District's General Court Regulations governs the procedures to be followed in Philadelphia but notes that, "The mere fact that the Defendant negotiated with the Commonwealth for a stipulated sentence does not obligate this Court to accept the

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[6] The First Judicial District rules regarding Juvenile Lifer Resentencing procedures is attached hereto as Exhibit "F."

negotiations." Opinion of McDermott, J., Exhibit "A", at 4. Judge McDermott is correct that she is not obligated to impose the agreed upon sentence. While the Sentencing Code places an independent obligation upon a judge to impose a sentence the judge finds appropriate, 42 Pa.C.S.A. § 9721(b), the refusal of the judge to impose the stipulated sentence requires that the judge recuse herself.

Judge McDermott responds to counsel's reliance of Evans by suggesting that Evans does not apply because Mr. Blount's guilt had already been established. Opinion of McDermott, J., Exhibit "A", at 5. This suggestion ignores the reality that the guilty plea recusal protections similarly apply to sentencing because, regularly, in the criminal justice system the parties enter into a guilty plea for the sole purpose of imposing a particular sentence.

To demonstrate that Judge McDermott knew that it was legally appropriate for her to recuse herself if she rejected the negotiated sentence, counsel filed an amended post-sentence motion that included transcripts from four other juvenile lifer resentencing hearings.[7] In each case Judge McDermott indicated that she would recuse herself if the negotiated sentence was not accepted.

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[7] Counsel's amended post-sentence motion is attached hereto as Exhibit "C." The transcripts from the four other juvenile lifer resentencing hearings was attached to that exhibit.

In Commonwealth v. Ellery Little, Docket No. CP-51-CR-0517261-1991, Judge McDermott declared: "So, here's what's going to happen once I accept this, and I'm going to get some more information. I have enough information – well, I think I have enough information to tell you that I will be accepting this, because if I wasn't going to accept it, you would have the right to go back to 1105 [the homicide calendar courtroom], and then you might be able to go to another judge." (N.T. 1/17/18, 12-13).

In Commonwealth v. Rondell Carrero, Docket No. CP-51-CR-0543541-1993, Judge McDermott stated: "Do you understand that you're giving up your right to the sentencing hearing and that what will happen today is, I will still listen to people. You have a right to talk and express what's called the right of allocution. And then, if for some reason I would not accept the agreement, you would be able to withdraw your decision and go to another judge. Do you understand that?" (N.T. 1/18/18, 9-10).

In Commonwealth v. Johnny Berry, Docket No. CP-51-CR-1104081-1994, Judge McDermott declared: "Do you understand that if I do accept that sentence, you know, you would be sentenced. If for some reason I would not accept the recommendation, you could go to another judge, do you understand that?" (N.T. 2 12/18, 10).

In Commonwealth v. Neil Lyew, Docket No. CP-51-CR-0641221-1994, Judge McDermott declared: "So if for some reason I was not to accept this recommended sentence, then you would go to another judge." (N.T. 2/21/18, 18).

These four cases cited above demonstrate that Judge McDermott knew that while she did not have to accept the parties' agreed upon sentence, if she were to reject that agreed upon sentence she should recuse herself and the matter would go before another judge for resentencing. There is nothing that distinguishes Mr. Blount's matter from the other four cases except that in Mr. Blount's case Judge McDermott refused to follow her well-established procedure outlined in those other four cases. To not follow that process in Mr. Blount's case deprived him of due process of law and equal protection under the Federal Constitution and the parallel provisions under the Pennsylvania Constitution. U.S.CONST., Amend. XIV; PA.CONST., Art. 1, Sec. 1, 9.

Judge McDermott in her §1925 opinion ignores the import of these cases and suggests instead that it was counsel's burden to demonstrate that she was acting "with bias or prejudice necessitating recusal." Opinion of McDermott, J. at 6. Not following Pennsylvania and federal law and ignoring her own recognition of that law in other cases demonstrates that recusal was mandated here.

The Commonwealth and the defense had agreed prior to Mr. Blount's resentencing hearing before Judge McDermott upon a negotiated sentence of 29 years to life. When Judge McDermott indicated that she was disinclined to follow that negotiation, counsel moved for recusal. Judge McDermott erred by denying recusal. Well established Pennsylvania and federal law demonstrate that recusal was legally warranted. The First Judicial District's General Court Regulation demonstrates that when the parties come to a sentencing agreement, the matter should be immediately disposed of predicated upon that agreement. Even Judge McDermott recognized, as her statements in four other juvenile lifer resentencing cases demonstrate, that recusal was mandated if she were to reject the negotiated sentence. This Court should vacate Mr. Blount sentence and remand the matter for a new sentencing hearing before a different judge.

2. IT WAS AN ABUSE OF DISCRETION FOR THE SENTENCING COURT TO CONSIDER IN FASHIONING HER SENTENCE TWO "FACTS" THAT WERE PALPABLY FALSE: THAT JOHN BLOUNT HAD DESECRATED THE BODIES OF THE MURDERED VICTIMS AND THAT JOHN BLOUNT HAD A EXPECTED LIFESPAN OF 90 YEARS.

While a trial judge has wide discretion in fashioning an appropriate sentence, Pennsylvania law is clear that in arriving at the appropriate sentence the judge cannot consider erroneous and false "facts." "If a sentencing court considers improper factors in imposing sentence upon a defendant, although the sentence thereby imposed is not rendered illegal, the court has committed an abuse of discretion. Commonwealth v. Archer, 722 A.2d 203, 210 (Pa.Super., 1998) *(en banc)*." Commonwealth v. McAfee, 849 A.2d 270, 274 (Pa. Super., 2004). Here, the sentencing judge considered as facts two conclusions that were palpably false. For this reason, this Court should remand for resentencing.

In fashioning her sentence, Judge McDermott considered as a fact that John Blount had not only committed murder but had engaged in sophistication by disposing of the bodies in a particular way and desecrating them (N.T. 3/26/18, 47, 85). There were no facts introduced before the Court that supported that Mr. Blount had engaged in any sophistication in disposing of the bodies. According to the facts recited by the

prosecutor, after the murder Mr. Blount and his step-father moved the bodies to a pit in the garage to hide them, cleaned up the blood, and later paid two people to move the bodies (N.T. 3/26/18, 8-9). John Blount gave a statement to the police at the time of his arrest that established the same set of facts and demonstrated his step-father's primary involvement in moving the bodies.[8] There was nothing sophisticated about a 17 year old boy getting help from an adult to hide the bodies, to clean up and then to pay someone to move the bodies, particularly here where the ideas came from his step-father, a man who had previously been found guilty of manslaughter and was a member of the Junior Black Mafia (N.T. 3/26/18, 50). Judge McDermott asserted that the bodies were "desecrated" when there was no evidence in the record to support that there was any desecration or that Mr. Blount had done anything more than assist in hiding the bodies and paying someone to move them away (N.T. 3/26/18, 85). John Blount's sentence improperly included an element of punishment for something that had not occurred.

Similarly, the judge in fashioning the sentence, concluded that the current life expectancy for Mr. Blount would be in the 90s (N.T. 3/26/18, 13). Not only was there was no evidence introduced at Mr. Blount's resentencing hearing regarding life expectancy, the judge's assertion that Mr. Blount would be expected to live into his

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[8] That statement of John Blount was attached to his amended post-sentence motion which, in turn, is attached to this brief as Exhibit "C."

90s is factually incorrect. That error was particularly prejudicial because in fashioning her sentence Judge McDermott concluded that if Mr. Blout would be paroled after 35 years of incarceration and lived into his 90s he would have maybe four decades of freedom before his death. However, that was statistically unlikely.

On average among all prisoners including for those released there is a two year decline in life expectancy for each year of incarceration. Casiano v. Comm'r of Correction, 317 Conn. 52, 57-58, 115 A.3d 1031, 1035 (2015), *cert. denied sub nom.* Semple v. Casiano, 136 S. Ct. 1364, 194 L. Ed. 2d 376 (2016). Of course, juveniles who are not subject to release are a special case, and "[t]he risk was highest upon release from prison and declined over time." Evelyn J. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, 103 AM. J. OF PUB. HEALTH 523 (2013)(abstract). This law review article which is cited in Casiano places this study in its appropriate context when it states:

> A person suffers a two-year decline in life expectancy for every year locked away in prison. Evelyn J. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, 103 AM. J. OF PUB. HEALTH 523, 526 (2013). The high levels of violence and communicable diseases, poor diets, and shoddy health care all contribute to a significant reduction in life expectancy behind bars. See United States v. Taveras, 436 F. Supp. 2d 493, 500 (E.D.N.Y. 2006) (finding "persistent problems in United States penitentiaries of prisoner rape, gang violence, the use of excessive force by officers, [and] contagious diseases" that lead to a lower life expectancy in prisons in

> the United States), *aff'd in part, vacated in part sub nom.* United States v. Pepin, 514 F.3d 193 (2d Cir. 2008); JOHN J. GIBBONS & NICHOLAS DE B. KATZENBACH, CONFRONTING CONFINEMENT 11 (2006). Entering prison at a young age is particularly dangerous. Youth incarcerated in adult prisons are five times more likely to be victims of sexual or physical assault than are adults. GIBBONS & KATZENBACH, supra note 142, at 11; Deborah LaBelle, Michigan Life Expectancy Data for Youth Serving Natural LifeSentences, http://fairsentencingofyouth.org /wp-content/ uploads/2010/02/Michigan-Life-Expectancy-Data-Youth -Serving-Life.pdf (last visited Dec. 12, 2013).

N. Straley, *"Miller's Promise: Re-Evaluating Extreme Criminal Sentences for Children,"* 89 Wn. L.Rev. 963, 986 n. 142 (2014) (cited in Casiano v. Comm'r of Correction, 317 Conn. 52, 78, 115 A.3d 1031, 1046 (2015)).

The judge fashioned her sentence in reliance upon her belief for which there was no evidence presented (and was in fact incorrect) that John Blount would live into his 90s. The judge also considered as a fact that John Blount had desecrated the bodies of the murder victims when the evidence suggested only that he had hid the bodies after the murder and paid two others to remove the bodies. As the trial judge in sentence must rely upon demonstrable facts and not erroneous assertions, this Court should remand for resentencing.

3. THE SENTENCING COURT VIOLATED MILLER V. ALABAMA, 567 U.S. 460 (2012) AND THE 8TH AMENDMENT TO THE UNITED STATES CONSTITUTION BY FOCUSING ENTIRELY UPON THE FACTS OF THE INSTANT HOMICIDE RATHER THAN FULLY CONSIDERING THE REHABILITATION, GROWTH AND REMORSE THAT JOHN BLOUNT HAD DEMONSTRATED DURING HIS 28½ YEARS OF INCARCERATION.

In Miller v. Alabama, 567 U.S. 460 (2012), the United States Supreme Court held that in sentencing a juvenile convicted of murder the judge must consider the defendant's age, his diminished capacity, his capacity for change, his participation in the crime, his family and neighborhood, the impact of familial and peer pressure, past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history and his potential for rehabilitation. Here the sentencing judge gave scant attention to those factors, focusing instead focused on the facts of the homicide. Roper v. Simmons, 543 U.S. 551, 573 (2005) held that if "the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course" then there was a violation of the 8th Amendment. U.S.CONST. Amend VIII, XIV. Such a violation occurred here.

The evidence that John Blount produced at sentenced demonstrated that he had undergone a remarkable transformation while incarcerated and had, after 28½ years of incarceration, demonstrated complete rehabilitation as even Judge McDermott recognized.

Todd Faubert, currently the Unit Manager of death row at the State Correctional Institution at Graterford, testified on John Blount's behalf. He had spent over 35 years in corrections and have moved up the ranks, starting as officer and then becoming a sergeant, a lieutenant, a shift commander and a deputy (N.T. 3/26/18, 62). He was John Blount's counselor for five years (N.T. 3/26/18, 58). John Blount was the clerk for C-block at Graterford (N.T. 3/26/18, 59). This was an important and trusted position because as the clerk John Blount would have access to private information about inmates; it was expected that he would keep such information confidential (N.T. 3/26/18, 59-61). Only inmates with exemplary records can become a block clerk (N.T. 3/26/18, 60). As his counselor, Mr. Faubert read Mr. Blount's entire record and was particularly impressed that while on death row, Mr. Blount requested and completed prison programs, including Violence Prevention (N.T. 3/26/18, 61, 62). John Blount had a single write-up in his 28 years of incarceration and that was for having a radio while he was death row (N.T. 3/26/18, 65-66). That was unique as very few inmates would not have multiple write-ups over 28 years (N.T. 3/26/18, 66).

Mr. Faubert had never testified on behalf of any inmate before; he had seen a tremendous amount of growth in John Blount (N.T. 3/26/18, 67). In fact, Mr. Blount had gotten married while incarcerated (N.T. 3/26/18, 64). Mr. Blount had expressed great remorse over his involvement in the murders (N.T. 3/26/18, 68).

As the sentencing memorandum submitted on John's behalf demonstrated, while incarcerated he had completed all relevant programming suggested by the Department of Corrections, including earning his GED, taking college classes, participating in Victim Awareness Education, Violence Prevention Moderate Intensity, Self-Esteem, Pre-Vocational, OSHA Construction training, Young Lifers, and Lifer Inc. He was chairman of the outreach committee of Lifer Inc. and the youth committee. He has served as a member of the NAACP for the past decade and the current chairman of the outreach committee. He completed Victim Awareness, Character Development, Citizenship, and a unit-based citizenship course. He is a facilitator for the Citizenship course and for the Advanced Alternatives to Violence workshop.

Judge McDermott recognized how much John Blount had accomplished while incarcerated. She agreed that John Blount's prison record was one of the best that she had ever seen (N.T. 3/26/18, 85). After hearing him exercise his right of allocution where he apologized at length to the victims' family, explained what he had learned

and accomplished while incarcerated and expounded on his goals for when he would be released, Judge McDermott said that she believed every word that he had said (N.T. 3/26/18, 91-92). She also agreed that if released, he would "continue to do what [he'd] been doing in prison" (N.T. 3/26/18, 92).

However, she said that she was troubled by the sophistication in the crime and the additional pain that she had put the decedents' families through by hiding and desecrating the bodies (N.T. 3/26/18, 85). While the sentencing judge enumerated the Miller factors, she noted that the factor in the "Court's mind is the fact that there's two deaths here." (N.T. 3/26/18, 13). Judge McDermott explained that John Blount demonstrated sophistication in disposing of the bodies after the murder (N.T. 3/26/18, 26, 47).

It was the sentencing judge's diminution of John Blount's accomplishments of the past 28½ years, while focusing instead upon the static factors of the homicide itself, that violates the 8th Amendment to the United States Constitution. By this misbalance, the sentencing judge demonstrated that the facts of the case overwhelmed any other factor or combination of factors in her determination of sentence. The Supreme Court in Roper v. Simmons, 543 U.S. 551, 573 (2005) held that if "the brutality or cold-blooded nature of any particular crime would overpower mitigating

arguments based on youth as a matter of course" then there was a violation of the 8th Amendment.

By concluding that the facts of the homicide completely overwhelmed the rehabilitation, growth and remorse demonstrated by John Blount, the sentencing judge violated Roper and Miller. This Court should reverse his sentences and remand for a new sentencing hearing.

4. THE SENTENCING COURT ERRED BY IMPOSING AN EXCESSIVE SENTENCE WHERE EVEN THE SENTENCING COURT AGREED THAT THE EVIDENCE ESTABLISHED THAT JOHN BLOUNT HAD, DURING HIS 28½ YEARS OF INCARCERATION, DEMONSTRATED THAT HE WAS FULLY REHABILITATED.

John Blount appeared before the Judge Barbara McDermott for sentencing. He had demonstrated remorse, growth and rehabilitation during his 28½ years of incarceration. In fact, he had demonstrated them to such an extent that the prosecutor had offered, and the defense had agreed, on a sentence of 29 years to life. Judge McDermott agreed that Mr. Blount had completed the appropriate prison programming, had one of the best prison records that she had seen, and allocuted credibly about his remorse and plans for his future when released. Yet the judge

imposed a sentence that would require an additional 6½ years of incarceration. As a result, the sentence imposed was excessive. This Court should vacate the sentence and remand for resentencing.

The evidence before the sentencing court established that Mr. Blount had demonstrated remorse for his actions. He had fully demonstrated rehabilitation. There is nothing more that could be accomplished by his incarceration for an additional 6½ years. There was no legal justification for that sentence. The sentence imposed was "unreasonable" and "manifestly excessive."

While the sentencing judge has wide discretion at sentencing, Pennsylvania law provides both guidance and constraint. Pennsylvania law requires that the sentencing judge consider the rehabilitative needs of Mr. Blount. 42 Pa. C.S.A. § 9721(b). It is clear that the sentencing judge agreed that Mr. Blount had demonstrated rehabilitation. As Judge McDermott noted at the hearing on Mr. Blount's post-sentencing motion: "I will agree that he's demonstrated rehabilitation. I thought I made it clear and part of the reason is because I do appreciate the efforts he's made in prison" (N.T. 4/26/18, 26-27). Judge McDermott also noted that Mr. Blount "has done everything that's expected of him and beyond" (N.T. 4/26/18, 27).

The sentencing judge also failed to consider the protection of the public. 42 Pa. C.S.A. § 9721(b). The record demonstrated that Mr. Blount no longer posed a danger

to the community. He had a single misconduct during his entire period of incarceration — and that was for having an unauthorized radio while he was on death row (N.T. 3/26/18, 66). He had no misconducts for assaultive behavior. The absence of misconducts is stunning. Todd Faubert, who was Mr. Blount's counselor at the State Correctional Institution at Graterford and had read Mr. Blount's entire prison file, described his record as "exemplary" (3/26/18, 61, 66). Mr. Faubert said he knows of lifers who had 100, 200 or even 300 misconducts (N.T. 3/26/18, 66). Judge McDermott acknowledged that Mr. Blount had one of the best prison records she had seen (N.T. 3/2618, 85). Judge McDermott also acknowledged that Mr. Blount was "absolutely, unequivocally sincere and [had] acted in [his] belief, in [his] attempts to change [his] life" (N.T. 3/26/18, 13-14).

While ignoring factors she was required to consider, the sentencing judge considered factors that should not have been considered. As discussed in Argument 2, *supra*, in deriving her sentence Judge McDermott considered that Mr. Blount had a life expectancy of at least 90 years. Not only was there no evidence to support the judge's assertion, as discussed in Argument 2, *supra*, this was factually incorrect. At least one study determined that a prisoner loses approximately two years of life for each year of incarceration. Evelyn J. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, 103 AM. J. OF PUB. HEALTH

523, 526 (2013) (cited in Casiano v. Comm'r of Correction, 317 Conn. 52, 78, 115 A.3d 1031, 1046 (2015)).

In addition, as discussed in Argument 2, *supra*, Judge McDermott considered as a fact that John Blount had not only committed murder but had engaged in sophistication by disposing of the bodies in a particular way and desecrating them (N.T. 3/26/18, 47, 85). This was factually incorrect as there were no facts introduced before the Court that supported that Mr. Blount had engaged in any sophistication in disposing of the bodies or had desecrated the bodies. According to the facts recited by the prosecutor, after the murder Mr. Blount and his step-father moved the bodies to a pit in the garage to hide them, cleaned up the blood, and later paid two people to move the bodies (N.T. 3/26/18, 8-9). John Blount gave a statement to the police at the time of his arrest that established the same set of facts and demonstrates his step-father's primary involvement in moving the bodies.[9] There was nothing sophisticated about a 17 year old getting help from an adult to hide the bodies, to clean up and then to pay someone to move the bodies, particularly here where the ideas came from his step-father, a man who had previously been found guilty of manslaughter and was a member of the Junior Black Mafia (N.T. 3/26/18, 50). There was no "desecration" as the evidence in the record established that Mr. Blount had

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[9] That statement of John Blount was attached as an exhibit to his amended post-sentence motion which is, in turn, attached to this brief as Exhibit "C."

assisted in hiding the bodies and paying someone to move them away (N.T. 3/26/18, 85).

Here, John Blount had demonstrated over the prior 28 years of incarceration that he had grown and matured. He had accepted responsibility for his actions. He had demonstrated rehabilitation. For this reason, it was an abuse of discretion to require that he serve an additional 6 years of incarceration before even being eligible for parole. This Court should vacated his sentence and remand for a new sentencing hearing.

5. IN 1994 JOHN BLOUNT WAS ILLEGALLY SENTENCED TO MANDATORY LIFE WITHOUT PAROLE AND IN 2018 AT HIS RESENTENCING HE WAS ILLEGALLY SENTENCED TO A MANDATORY LIFETIME PAROLE TAIL SENTENCE AND MUST BE GIVEN A NEW SENTENCING HEARING .

John Blount was illegally sentenced in 1994 to a mandatory life without parole sentence. This was only corrected, in part, at his resentencing hearing in 2018. While the trial judge correctly determined that it was improper to impose a mandatory minimum sentence of life imprisonment, the trial judge incorrectly determined that she was required to impose a mandatory maximum sentence of life. This violated

Graham, Miller and Montgomery which require that a juvenile being resentenced must be given an individualized sentence reflective of who that person was at the time of sentencing. As a mandatory minimum sentence of life imprisonment is unconstitutional so is a mandatory maximum sentence of life. This Court should remand for imposition of a new maximum sentence.

Judge McDermott below held that a mandatory lifetime parole tail must be imposed at Mr. Blount's resentencing. Judge McDermott had been one of the three judges in an *en banc* panel of the Philadelphia Court of Common Pleas that resolved certain juvenile lifer resentencing issues, including requiring imposition of a mandatory lifetime parole tail. See Opinion of McDermott, J. at 12 and is attached to her opinion as Exhibit "A" at 6-8. Despite the trial court's holding to the contrary, there is no relevant statute or appellate case law requiring the imposition of a lifetime parole tail.

Judge McDermott below held that a mandatory lifetime parole tail must be imposed at Mr. Blount's resentencing. To support her position, she cited Commonwealth v. Bebout, 186 A.3d 462 (Pa. Superior, 2018) (Opinion of McDermott, J. at 11) and Commonwealth v. Seskey, 170 A.3d 1105 (Pa. Superior, 2017) (Opinion of McDermott, J. at 12). Each of those cases in term relied upon Commonwealth v. Batts, 163 A.3d 410 (Pa. 2017) ("Batts II"). However, the

Pennsylvania Supreme Court in Batts II did not consider the requirement that individualized sentencing apply to both the minimum and maximum sentence. Instead, the Batts II Court came to its conclusion about the minimum sentence purely as a reading of the Pennsylvania homicide statute in light of Miller and Montgomery. As Batts II, Bebout and Seskey never considered the argument presented here, this Court is not bound by them.

The United States Supreme Court in Graham recognized that sentencing juveniles "makes relevant th[e] Court's cases demanding individualized sentencing." Miller, 567 U.S. at 475. The Supreme 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 considering mandatory life without parole in juvenile cases, the Supreme Court found objectionable 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 the same

ignores the obligation of the court to fashion a sentence which reflects a careful balance of the Miller factors.

United States District Court Judge Savage recognized this inherent contradiction in Commonwealth v. Songster, 201 F.Supp.3d 639 (E.D.Pa. 2016):

> 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.

Songster, 201 F.Supp.3d at 642.

In Pennsylvania 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 v. Beard, 201 F.Supp.3d 639, 642 (E.D. Pa. 2016). 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, *e.g.*, being an inmate who fails to conform to prison rules. It is not hard to conceive of a prison record that would lead to parole being denied 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 fails to conform to prison rules will actually serve a life without parole sentence. Such a result would offend Due Process and the Eighth Amendment. U.S.CONST., Amend, V, VIII, XIV.

Even if an individual is granted parole, though, he is still subjected to extensive monitoring that is not warranted. Such restrictions include 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.

The Supreme 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 Supreme 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 justifications for imposing the harshest sentence on children; the goal of rehabilitation is simply swallowed up by such 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). Subjecting an individual to a life maximum does little to serve retribution and makes possible the

risk 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 v. Simmons, 543 U.S. 551, 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, something that John Blount has demonstrated through his 28 years of incarceration. 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.

Mr. Blount's case demonstrates both the folly and unconstitutionality of a mandatory maximum of life. He has served over 28 years in prison, had one of the best prison records that Judge McDermott had ever seen and had demonstrated total rehabilitation as Judge McDermott has recognized (N.T. 3/26/18, 85, 91, 92; 4/26/18, 26-27). The legitimacy of imposing a lifetime parole tail is plainly unconstitutional.

## VIII. CONCLUSION

This Honorable Court should vacate John Blount's sentences and remand the instant matter for resentencing.

Respectfully submitted,

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## CERTIFICATION OF COMPLIANCE WITH RULE 2135

I do hereby certify on this 15th day of October, 2018, that the Brief For Appellant filed in the above captioned case on this day does not exceed 14,000 words. Using the word processor used to prepare this document, the word count is 9,567 as counted by WordPerfect.

Respectfully submitted,

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## CERTIFICATION OF COMPLIANCE WITH RULE 127, PA.R.A.P.

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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