

IN THE
SUPERIOR COURT OF PENNSYLVANIA

3109 EDA 2017

COMMONWEALTH OF PENNSYLVANIA

APPELLEE,

V.

TRISTAN STAHLEY,

APPELLANT.

REPLY BRIEF

On Appeal from the Final Order of August 28, 2017 Dismissing PCRA Petition in
the Court of Common Pleas, Montgomery County,
Docket CP-46-CR-0005026-2013.

Carrie Allman, Homicide Chief
Office of the Public Defender
P.O. Box 311
Norristown, PA 19404
Telephone (610) 278-3320
Facsimile (267) 543-5524
callman@montcopa.org

Marsha L. Levick, 22535
Brooke L. McCarthy, 325155
JUVENILE LAW CENTER
1315 Walnut Street, 4th floor
Philadelphia, PA 19107
Telephone (215) 625-0551
Facsimile (215) 625-2808
mlevick@jlc.org

COUNSEL FOR APPELLANT

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SUMMARY OF THE ARGUMENT

The imposition of a sentence of life without parole at a hearing conducted without the protections enumerated in *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter *Batts II*], is unconstitutional, and the Commonwealth errs in arguing that such a hearing is subject to harmless error review. Since the harm of depriving Mr. Stahley of the constitutional protections under *Batts II* cannot be quantified or easily determined, it constitutes structural error. Even under a harmless error review, though, Mr. Stahley is entitled to a resentencing since there is a reasonable possibility that the failure to provide *Batts II* protections impacted the outcome of his original sentencing.

ARGUMENT

I. FAILING TO PROVIDE *BATTS II* PROTECTIONS CANNOT BE CONSIDERED HARMLESS ERROR

The failure to provide the protections enumerated in *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter *Batts II*] undermined the entire sentencing and is not harmless as the Commonwealth asserts.¹ A harmless error review cannot be

¹ Separately, the Commonwealth improperly relies on *Commonwealth v. Riggle*, 119 A.3d 1058 (Pa Super. Ct. 2015) in arguing that *Miller* is a procedural rule that does not require retroactive application. The Superior Court in *Riggle* held that requiring a jury to make a finding as to whether a factual determination triggered a mandatory minimum was procedural. *Id.* at 1067. However, the central issue was unchanged in the *Alleyne* case on appeal; as in *Ring v Arizona*, 536 U.S. 584 (2002), what changed was who made the determination. *See Schriro v. Summerlin*, 542 U.S. 348, 358 (2004) (holding *Ring*'s requirement that a jury, not a judge, find an aggravating fact for the death penalty to be a non-watershed procedural rule since neither the conduct nor class was redefined by *Ring* and judicial fact-finding did not result in a seriously diminished accuracy of the

conducted when there are “consequences that are necessarily unquantifiable and indeterminate.” *Sullivan v. Louisiana*, 508 U.S. 275, 282 (1993) (recognizing that an insufficient beyond a reasonable doubt instruction requires an appellate court to impermissibly speculate and thus cannot be subject to harmless-error review); *see also, United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) (holding that “[i]t is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings,” thereby constituting structural error). *Batts II* shifts every facet of the hearing by requiring the court to ask the more limiting question of whether the Commonwealth can overcome a presumption of parole eligibility by proving the child can never be rehabilitated beyond a reasonable doubt. Since no one prepared for or conducted a *Batts II* hearing, this Court would have to reconstruct the record and imagine a hearing that did not occur. Such a reconstruction is a “speculative inquiry into what might have occurred in an alternate universe,” which is not a permissible harmless-error analysis. *See Gonzalez-Lopez*, 548 U.S. at 150.

conviction). Here, the Pennsylvania Supreme Court has prohibited a life without parole sentence for a group of individuals, i.e., those presumed to be eligible for parole, and for whom the Commonwealth has not met their burden to establish permanent incorrigibility beyond a reasonable doubt. *Batts II* at 435. This is not a matter of process, but a question of substantive law establishing which youthful offenders may be eligible for a life without parole sentence. (*See Appellant’s Brief at Section III. A.*).

Even under a harmless error analysis, though, the Commonwealth cannot prove that the failure to provide the protections in *Batts II* was harmless beyond a reasonable doubt. See *Commonwealth v. Story*, 383 A.2d 155, 164 (Pa. 1978). The Pennsylvania Supreme Court clarified that “[w]hen there is a ‘reasonable possibility’ that an error ‘might have contributed to the conviction,’ the error is not harmless.” *Id.* (quoting *Commonwealth v. Davis*, 305 A.2d 715, 719 (Pa. 1973)). The Commonwealth would need to prove:

(1) the error did not prejudice the defendant or the prejudice was de minimis; or (2) the erroneously admitted evidence was merely cumulative of other untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted **and uncontradicted** evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict.

Commonwealth v. Fulton, 179 A.3d 475, 493 (Pa. 2018) (quoting *Commonwealth v. Burno*, 154 A.3d 764, 787 (2017)). The Commonwealth relies on the facts of the crime and Mr. Stahley’s alleged lack of remorse for its argument that the error was harmless. It did not address what additional or different evidence might have been produced had the hearing been conducted in accordance with *Batts II* protections; how counsel on both sides would have proceeded; or the analysis that the court would have undertaken with respect to the Commonwealth’s burden to prove permanent incorrigibility beyond a reasonable doubt. The facts and alleged lack of remorse alone do not address the central question that the sentencing court needed

to answer under *Batts II*, i.e., whether there is a chance that Mr. Stahley can be rehabilitated. Further, the *Miller* Court reiterated that *Miller*'s "central intuition" is "that children who commit even heinous crimes are capable of change;" thus the facts alone cannot justify a life without parole sentence. *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).² The Commonwealth points to no language suggesting that the sentencing court conducted the necessary prospective analysis to provide this Court with the confidence to know that the outcome would be the same even if the hearing were conducted in accordance with *Batts II*.

CONCLUSION

For the foregoing reasons Mr. Stahley respectfully requests that this Court find his counsel provided ineffective assistance of counsel warranting remand. Additionally, Mr. Stahley requests this Court vacate his illegal life without parole sentence and remand the instant matter for resentencing pursuant to *Batts II*.

Respectfully submitted,

/s/ Marsha L. Levick

Marsha L. Levick, (PA No. 22535)

Brooke L. McCarthy, (PA No. 325155)

JUVENILE LAW CENTER

1315 Walnut Street, 4th Floor

² The Court was aware in *Miller* that particularly heinous crimes would be before courts for resentencing and chose to include the children involved in such crimes in its protected class. For example, the defendant in *Miller*, physically assaulted his victim with a baseball bat, demonstrated pleasure in the moment of it, and took extensive steps to cover up the crime while disregarding opportunities to save the victim's life. Brief of Respondent at 6-7, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646, 10-9647).

Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (Fax)
mlevick@jlc.org

Carrie L. Allman, (PA No. 92080)
OFFICE OF THE PUBLIC DEFENDER
P.O. Box 311
Norristown, PA 19404
(610) 278-3320
(267) 543-5524 (Fax)
PGeorge@montcopa.org
CAllman@montcopa.org

COUNSEL FOR APPELLANT

DATED: June 20, 2018

CERTIFICATE OF COMPLIANCE

I hereby certify this 20th day of June, 2018, that the foregoing brief complies with the word count limits as set forth in Pa.R.A.P. 2135.

/s/ Marsha L. Levick
Marsha L. Levick, (PA No. 22535)
Brooke L. McCarthy, (PA No. 325155)
JUVENILE LAW CENTER
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
(215) 625-0551
(215) 625-2808 (Fax)
mlevick@jlc.org