

IN THE  
SUPERIOR COURT OF PENNSYLVANIA

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3339 EDA 2018

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COMMONWEALTH OF PENNSYLVANIA

APPELLEE,

V.

JAMES HENRY COBBS,

APPELLANT.

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REPLY

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On Appeal from the Order of October 23, 2018 Dismissing Amended PCRA  
Petition in the Court of Common Pleas, Montgomery County,  
Docket CP-46-CR-0000287-1979.

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## INTRODUCTION

Mr. Cobbs' life sentence is the direct result of a proven violation of his Constitutional rights. The Commonwealth predicated his conviction of Assault by a Life Prisoner, 18 Pa.C.S.A. § 2704, on an unconstitutional sentence of life without parole. When the sentence of life without parole was invalidated, Mr. Cobbs' sentence of assault by a life prisoner should also have been invalidated. All of the Commonwealth's arguments fail.

### **I. MR. COBBS FILED A TIMELY POST-CONVICTION RELIEF PETITION**

Relief under the Post-Conviction Relief Act ("PCRA") is warranted when the challenged conviction results from "[a] violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S.A. § 9543(a)(2)(i). Mr. Cobbs' claim is exactly that: a violation of his Eighth Amendment rights under the United States Constitution resulted in his wrongful designation as a life prisoner; that unconstitutional sentence alone caused the subsequent life sentence for actions that would otherwise only have given rise to a felony-two aggravated assault charge. *See* Bills of Information; *see also* Dkt. as Appealed 11/13/86.

Mr. Cobbs' claim here cannot be severed from the rulings of U.S. Supreme Court in *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), and the related Pennsylvania Supreme Court ruling in *Commonwealth v. Batts*, 66 A.3d 286 (Pa. 2013). His petition for relief was timely filed as provided under 42 Pa.C.S.A. § 9545(b)(1). Mr. Cobbs took every reasonable step to preserve his claim as the law changed: he raised it within sixty days of when his mandatory life sentence was invalidated by the United States Supreme Court's decision in *Miller*; he amended that petition to raise it again within sixty days of the United States Supreme Court's decision in *Montgomery*; and he amended his still-active petition once more within sixty days of his resentencing, where the court re-sentenced him to a term of forty (40) years to life but left his life without parole sentence for assault by a life prisoner unchanged. Mr. Cobbs could not have raised his claim any earlier, because his predicate life sentence was not invalidated until *Miller* and *Montgomery* were decided.

## **II. MR. COBBS DOES NOT RAISE A SUFFICIENCY OF THE EVIDENCE CLAIM**

The Commonwealth mischaracterized Mr. Cobb's claim as a "sufficiency of the evidence" argument. The PCRA "provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief." 42 Pa.C.S.A. § 9542. The retroactive application of *Miller*

to Mr. Cobbs (*see Montgomery and Batts*) establishes that he was not a life prisoner and thus was ineligible to be charged with Assault by Life Prisoner. The existence of a predicate life sentence is not simply a factual element that might fall within the ambit of a sufficiency claim; it is a legal fiction that was wiped away by *Miller* and *Montgomery*. Any analysis of the evidence that was before the jury at the time of trial is irrelevant. The jury could not have contemplated the latter-recognized constitutional rights that so dramatically changed Mr. Cobbs' status and that would have invariably led to a different result had they been known.

Mr. Cobbs' life sentence is illegal because it is the product of a proven Constitutional violation committed by the Commonwealth against Mr. Cobbs. This Court should not permit a life sentence based on a constitutional violation to stand.

Respectfully submitted,

/s/ Lee Awbrey

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**CERTIFICATE OF COMPLIANCE**

I hereby certify this 8th day of November, 2019, that the foregoing reply brief of Appellant complies with the word count limits as set forth in Pa.R.A.P. 2135.

Respectfully,

*/s/ Lee Awbrey*

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