Received 12/4/2019 2:00:01 PM Supreme Court Middle District

Filed 12/4/2019 2:00:00 PM Supreme Court Middle District
54 MAP 2019

NO. 54 MAP 2019

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

V.

TRISTAN STAHLEY,

Appellant.

BRIEF OF APPELLANT

Appeal From The December 19, 2018 Judgment Of The Superior Court Of Pennsylvania (No. 3109 EDA 2017) Affirming The August 28, 2017, PCRA Order of the Court of Common Pleas of Montgomery County Criminal Division, No. CP-46-CR-0005026-2013.

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December 4, 2019

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STATEMENT OF JURISDICTION

This Court has jurisdiction to hear this matter pursuant to 42 Pa.C.S.A. § 724(a), which provides that orders of the Superior Court may be reviewed by this Court upon allowance of appeal. On July 24, 2019, this Court granted Tristan Stahley's Petition for Allowance of Appeal[1]. Pa.R.A.P. 1112(a).

ORDER IN QUESTION

On December 19, 2018, the Superior Court of Pennsylvania issued an opinion that concludes: "Order affirmed." [2] (*See* App. B32.) The Superior Court held that *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) (*Batts II),* did not announce a new substantive rule, nor did it establish a watershed procedural rule requiring retroactive application to Mr. Stahley's juvenile life without parole sentence. (*See* App. B27, 32.)

SCOPE AND STANDARD OF REVIEW

Tristan Stahley challenges the legality of his life without parole sentence, imposed after a proceeding that did not comport with the federal and state constitutional requirements articulated in *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter "*Batts II*"]. Issues relating to the legality of a sentence are questions of law. This Court's standard of review over such questions is *de novo* and

[1] The July 24, 2019 Order is attached hereto as Appendix "A."
[2] The Superior Court opinion is attached hereto as Appendix "B."

its scope of review is plenary. *Commonwealth v. Furness*, 153 A.3d 397, 405 (Pa. Super. Ct. 2016); *see also Batts II*, 163 A.3d at 434-35 (holding that a juvenile's challenge to state's authority to impose a life without parole sentence is a question of the sentence's legality).

STATEMENT OF THE QUESTIONS INVOLVED

I. Did the Superior Court err in concluding that *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017), did not announce a substantive rule of law, as that concept was refined in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), or a watershed procedural rule?

Suggested answer: Yes.

II. Did the trial court fail to consider Mr. Stahley's rehabilitative potential and many of the "hallmark features" of youth, as required by *Miller v. Alabama*, 567 U.S. 460 (2012), rendering his sentence of life without the possibility of parole illegal?

Suggested answer: Yes.

STATEMENT OF THE CASE

On May 25, 2013, the Commonwealth charged Appellant Tristan Stahley with the murder of his girlfriend, Julianne Siller. Mr. Stahley was only sixteen years old at the time.

Immediately after the offense, Mr. Stahley confessed to his mother about killing Ms. Siller during a heated argument about their relationship and then threatened to kill himself. (Trial Tr. 9/29/14 Exhibit C-1 at 2-3.) His parents had to restrain and disarm him to keep him from hurting himself. (*Id*. at 2) Mr. Stahley took

the police to the location of Ms. Siller's body and then gave a statement admitting what had happened. (*Id*. at 1; Trial Tr. 9/29/14 13-14.) He stated that he made the decision to stab her about two seconds before he did, saying "we were fighting and I was drunk, I just didn't know what to do". (Trial Tr. 9/29/14 15:7-12; Trial Tr. 9/29/14 Exhibit C-2 at 4.)

Prior to trial, defense counsel prepared to present a diminished capacity defense. Counsel hired experts to evaluate Mr. Stahley and collected evidence indicating that he was heavily intoxicated during the crime. However, on the day of trial (September 29, 2014), Mr. Stahley agreed to a stipulated bench trial. (PCRA Hearing Tr. 7/25/17 18:22-19:15, 34:5-7.) At this trial, he stipulated to the Commonwealth's evidence. The only question at Mr. Stahley's guilt-phase proceeding was whether he committed first- or third-degree murder. Trial counsel presented no evidence on Mr. Stahley's behalf. At the conclusion of the stipulated bench trial, the court convicted Mr. Stahley of first degree murder.

On December 17, 2014, the trial court sentenced Mr. Stahley to life without the possibility of parole, under 18 Pa.C.S. § 1102.1(a). It is undisputed that Mr. Stahley was sentenced prior to the United States Supreme Court's decision in *Montgomery v. Alabama*, 136 S. Ct. 718 (2016) or this Court's decision in

Coomonwealth v. *Batts* 163 A.3d 410 (Pa. 2017) *("Batts II").*[3] The sentencing court relied upon and considered the factors listed in 18 Pa.C.S. §1102.1(d). The Commonwealth relied exclusively on the circumstances and nature of the offense and victim impact testimony in seeking life without parole; it provided no evidence to establish that Mr. Stahley was incapable of rehabilitation and provided no expert testimony in support of its sentencing recommendation. (Amended PCRA Seeking Relief Pursuant to *Commonwealth v. Batts* at 5-6.)

On December 21, 2015, Mr. Stahley filed a timely *pro se* petition for post-conviction relief pursuant to *Miller v. Alabama*. On July 20, 2017, Mr. Stahley, through counsel, filed a timely second amended PCRA petition, seeking resentencing under the requirements set forth in *Batts II*. *See* 163 A.3d 410. On August 28, 2017, the lower court denied all requested PCRA relief.

After a timely appeal[4], the Superior Court issued its opinion on December 19, 2018, affirming the lower court's denial of PCRA relief. *Commonwealth v. Stahley*,

[3] In its Answer, the Commonwealth did not contest that the trial court failed to presume a life sentence was improper and failed to require proof of incorrigibility beyond a reasonable doubt. Instead, the Commonwealth contended that the *Batts II* requirements were not retroactive. (Commonwealth's Answer & Motion to Dismiss Defendant's Amended PCRA Seeking Relief Pursuant to *Commonwealth v. Batts* at 2.) In addition, the Commonwealth argued that "the totality of the circumstances" demonstrated Mr. Stahley's incorrigibility. The only "circumstances," though, were the "horrific murder" and his purported lack of remorse. (*Id.* at 4-5.) Even in denying Mr. Stahley's PCRA petition, the court did not contest that it failed to presume against life and failed to require proof beyond a reasonable doubt. The court simply ruled that *Batts II* "did not apply retroactively in the PCRA context." (Order, 8/28/17.)

[4] The trial court's November 15, 2017 1925(a) opinion is attached hereto as Appendix "C."

201 A.3d 200, (Pa. Super. Ct. 2018). Mr. Stahley filed a timely Petition for Allowance of Appeal which was granted by this Court on July 24, 2019.

SUMMARY OF THE ARGUMENT

Tristan Stahley's re-sentence of life without parole is unconstitutional, as it was imposed without the procedural due process requirements mandated by this Court in *Commonwealth v. Batts*, 163 A.3d 410 (Pa 2017) ("*Batts II*"). The Superior Court erred in concluding that *Batts II*, did not announce a new substantive rule of law, contrary to the U.S. Supreme Court's rulings in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), and *Teague v. Lane*, 489 U.S. 288 (1989) (as adopted by this Court in *Commonwealth v. Lesko*, 15 A.3d 345 (Pa. 2011). *Teague* established two exceptions to the general bar on retroactivity of new rules of criminal procedure: New substantive rules are to be applied retroactively, as are watershed rules of criminal procedure.

Batts II meets both of the *Teague* exceptions. In requiring trial courts to follow specific procedures in re-sentencing (or sentencing) youth convicted of murder, this Court both mandated a specific process for enforcing *Montgomery's* new substantive rule of criminal procedure and barred the imposition of life without parole sentences on a specific class of youth, those who the Commonwealth could not prove beyond a reasonable doubt are permanently incorrigible and incapable of rehabilitation.

Batts II also articulated a watershed rule by adopting a higher burden of

proof—beyond a reasonable doubt—and shifting the burden to meet that standard onto the Commonwealth. Nearly 50 years ago, the United States Supreme Court held in *Ivan V. v. City of New York*, that its ruling in *In re Winship*, 397 U.S. 358 (1970), which adopted the beyond a reasonable doubt standard for delinquency proceedings, "must be applied retroactively because that change implicated fact-finding reliability under the Due Process Clause." *Ivan V. v. City of New York*, 407 U.S. 203, 205 (1972). This recognition of the profound fact-finding implications of the higher burden of proof was most recently adopted by the Delaware Supreme Court in *Powell v. State*—a case that is virtually on all fours with this case. In *Powell*, the court held that its earlier ruling in *Rauf v. State*, which required that facts supporting a sentence of death must be proven beyond a reasonable doubt, was a watershed rule that must be applied retroactively. The court stressed the vital importance of accurate factfinding in imposing the death sentence; the United States Supreme Court has analogized sentences of life without parole for children to the death sentence as it effectively sentences those children to die in prison.

Finally, the trial court erred in failing to consider Mr. Stahley's rehabilitative potential and many of the "hallmark features" of youth, as required by *Miller v. Alabama*, 567 U.S. 460 (2012). Despite uncontroverted expert testimony identifying Mr. Stahely's adolescent traits as well as the expert's opinion that Mr. Stahley was capable of rehabilitation, the sentencing court relied almost exclusively on the

circumstances of Mr. Stahley's crime and the impact on the victim's family members in reimposing a sentence of life without parole. Allowing the facts of the crime to dictate this sentence is precisely the outcome the Supreme Court sought to avoid in narrowly circumscribing the class of youth for whom a life without parole sentence could be deemed proportionate and therefore constitutional.

ARGUMENT

I. A SENTENCE OF LIFE WITHOUT PAROLE IMPOSED WITHOUT THE PROTECTIONS OF *BATTS II* IS UNCONSTITUTIONAL AND CAN BE CHALLENGED ON COLLATERAL REVIEW

After *Miller v. Alabama*, 567 U.S. 460 (2012), but before *Montgomery v. Louisiana,* 136 S. Ct. 718 (2016) and *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) ("*Batts II*"), Pennsylvania juveniles facing a life without parole sentence continued to be unconstitutionally sentenced to life without parole despite being part of the protected class, i.e., juveniles presumed to be eligible for parole and who the Commonwealth could not prove beyond a reasonable doubt were incapable of rehabilitation. *See generally Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter "Batts II"]. Mr. Stahley was one of these individuals unconstitutionally sentenced.

After Mr. Stahley's sentence became final, this Court, in *Batts II,* corrected the prevailing jurisprudence in the state and adopted specific due process protections to ensure unconstitutional sentences were not imposed. The Court established that

life without parole imposed in the absence of these key due process protections was an illegal sentence beyond the state's authority to impose, creating a substantive rule that must be applied on collateral review. More recently, in *Commonwealth v. Machicote*, this Court confirmed that "*Montgomery* announced a substantive rule of law, albeit with a procedural component," and that "a failure to impose a sentence in compliance with the substantive rule implicates the legality of the sentence." 206 A.3d 1110, 1119 (Pa. 2019) (citing *Montgomery*, 136 S. Ct. at 724). Because Mr. Stahley was neither presumed to be eligible for parole nor proven to be permanently incorrigible beyond a reasonable doubt, he was never actually placed in the class of individuals still eligible to receive a life without parole sentence.

The new sentencing statute, 18 Pa.C.S.A. § 1102.1, which was applied at Mr. Stahley's sentencing does not incorporate the requirements of *Montgomery* and *Batts II.* Specifically, Section 1102.1 does not require (1) a presumption of rehabilitation based on a child's reduced culpability; (2) that the Commonwealth carry the burden during sentencing; and (3) that the sentencer find beyond a reasonable doubt that the juvenile can never be rehabilitated and therefore is one of the rare and uncommon children for whom a sentence of life without parole is still lawful. *See Batts II*, 163 A.3d at 415-16. *See* 18 Pa.C.S.A. § 1102.1.

A. *Batts II* Creates A New Substantive Rule By Placing A Life Without Parole Sentence Beyond The Commonwealth's Authority To Impose For A Certain Class Of Individuals

To apply retroactively on collateral review, new constitutional rules must be either substantive or a watershed rule of criminal procedure. *See Teague v. Lane*, 489 U.S. 288, 307 (1989) (plurality opinion) (adopted by the Pennsylvania Supreme Court in *Commonwealth v. Lesko*, 15 A.3d 345 (Pa. 2011); *see also Schriro v. Summerlin*, 542 U.S. 348, 351-52 (2004). *Teague* held that, as a general matter, "new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced." *Teague*, 489 U.S. at 310. Nevertheless, *Teague* and its progeny recognize two exceptions to the general bar to retroactivity. First, "[n]ew substantive rules generally apply retroactively." Second, new "watershed rules of criminal procedure," which are procedural rules "implicating the fundamental fairness and accuracy of the criminal proceeding," will also have retroactive effect. *Summerlin*, 542 U.S. at 351-52. The *Teague* Court originally characterized the first exception as "plac[ing] 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.'" *Teague*, 489 U.S. at 307 (quoting *Mackey v. United States*, 401 U.S. 667, 692 (1971). The Supreme Court has expanded that exception to also include new rules which "carry a significant risk that a defendant . . . faces a punishment that the law cannot impose upon him." *Summerlin*, 542 U.S. at 352 (quoting *Bousley v.*

United States, 523 U.S. 614, 620 (1998).

Batts II establishes a new substantive rule as it forbids a life without parole sentence for a defined class of individuals. Under this new rule, a life without parole sentence can only be imposed on individuals whom the Commonwealth has proven beyond a reasonable doubt are incapable of rehabilitation. *Batts II*, 163 A.3d at 455. For all others convicted of homicide, "a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose." *Id.* at 435.

A new rule is substantive when it "set[s] forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose." *Montgomery v. Louisiana*, 136 S. Ct. 718, 729 (2016). The "substantive categorical guarantees" prohibit a punishment "regardless of the procedures followed" as "the Constitution itself deprives the State of the power to impose a certain penalty." *Penry v. Lynaugh*, 492 U.S. 302, 329-30 (1989), *overturned in part by Atkins v. Virginia*, 536 U.S. 304 (2002); *see also Montgomery*, 136 S. Ct. at 729. If a sentence is prohibited by a substantive rule, it "is not just erroneous but contrary to law and, as a result, void." *Montgomery*, 136 S. Ct. at 731. The fact that the sentence became final prior to the new rule is irrelevant as "[t]here is no grandfather clause that permits States to enforce punishments the Constitution forbids." *Id.*

> To hold a governmental Act to be unconstitutional is not to announce that *we* forbid it, but that the *Constitution* forbids it; and when, as in this

> case, the constitutionality of a state statute is placed in issue, the question is not whether some decision of ours 'applies' in the way that a law applies; the question is whether the Constitution, as interpreted in that decision, invalidates the statute. Since the Constitution does not change from year to year; since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense.

Danforth v. Minnesota, 552 U.S. 264, 286 (2008) (quoting *American Trucking Associations, Inc. v. Smith*, 496 U.S. 167, 201 (Scalia, J., concurring) (1990)).

The Supreme Court held in *Miller* and *Montgomery* that mandatory life without parole sentences are unconstitutional as they "pos[e] too great a risk of disproportionate punishment." *Montgomery*, 136 S. Ct. at 733 (alteration in original) (quoting *Miller v. Alabama*, 567 U.S. 460, 479 (2012)). Specifically, in determining that the rule announced in *Miller* was substantive, the Court reasoned:

> Because *Miller* determined that sentencing a child to life without parole is excessive for all but "the rare juvenile offender whose crime reflects irreparable corruption," it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—*i.e.*, juvenile offenders whose crimes reflect the transient immaturity of youth. . . . Like other substantive rules, *Miller* is retroactive because it "necessarily carr[ies] a significant risk that a defendant"—here, the vast majority of juvenile offenders—"faces a punishment that the law cannot impose upon him."

Montgomery, 136 S. Ct. at 734 (alteration in original) (citations omitted). Similarly, in *Batts II*, the Pennsylvania Supreme Court protected a class of individuals from a discretionary life without parole sentence by placing the punishment beyond the

Commonwealth's authority to impose. *Batts II*, 163 A.3d at 435, 452, 457. This Court held life without parole sentences unconstitutional for individuals presumed to be parole eligible and who the Commonwealth could not prove were irreparably corrupt beyond a reasonable doubt. *Id*. at 452, 455.

The substantive nature of the *Batts II* holding is apparent from the Court's characterization of the appeal as "challenging a sentencing court's legal authority to impose a particular sentence." *Id*. at 435. This Court further highlighted:

> [I]n the absence of the sentencing court reaching a conclusion, supported by competent evidence, that the defendant will forever be incorrigible, without any hope for rehabilitation, *a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose*. As stated by the *Montgomery* Court, "when a State *enforces a proscription or penalty barred by the Constitution, the* resulting conviction or *sentence is, by definition, unlawful.*"

Batts II, 163 A.3d at 435 (emphasis added) (citations omitted). This conclusion follows from the Pennsylvania Supreme Court's recognition that

> for a sentence of life without parole to be proportional as applied to a juvenile murderer, the sentencing court . . . must find that there is no possibility that the offender could be rehabilitated at any point later in his life, no matter how much time he spends in prison and regardless of the amount of therapeutic interventions he receives.

Id. at 435.

In *Summerlin*, the United States Supreme Court explained the difference between substantive and procedural rules. The Court wrote, "a rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the

law punishes. . . In contrast, rules that regulate only the manner of determining the defendant's culpability are procedural." 542 U.S. 348, 353. The *Summerlin* Court found the statutory requirement that an aggravating factor be found by a jury prior to imposing the death penalty was procedural, and distinguishable from the Supreme Court requiring a specific aggravating factor before the death penalty could be imposed:

> [The] Court's holding that, *because Arizona* has made a certain fact essential to the death penalty, that fact must be found by a jury, is not the same as [*the*] *Court's* making a certain fact essential to the death penalty. The former was a procedural holding; the latter would be substantive.

Id. at 354. Likewise, in implementing *Miller* and *Montgomery*, the Pennsylvania Supreme Court made certain factors "essential to" imposing life without parole. *Batts II* narrowed the class of individuals eligible for life without parole, which is a substantive ruling requiring retroactive application. The fact "that an offender is capable of rehabilitation and that the crime was the result of transient immaturity[ ] is connected to the basic fact [ ]that the offender is under the age of eighteen." *Batts II*, 163 A.3d at 452 (citing *Commonwealth v. Childs*, 142 A.3d 823, 830 (Pa. 2016). The sentencing court must also find that the Commonwealth has met its burden to prove beyond a reasonable doubt "that the juvenile offender is permanently incorrigible and that rehabilitation would be impossible." *Id.* at 459. Without these "essential" determinations, life without parole remains an unconstitutional sentence

beyond the court's legal authority to impose.

The fact that new procedures may be required to enforce the new substantive rule does not alter the substantive nature of the rule, as two judges improperly held below. *Commonwealth v. Stahley*, 201 A.3d 200, 218-19 (Pa. Super. Ct. 2018). *Montgomery* specifically recognized that while "[t]here are instances in which a substantive change in the law must be attended by a procedure," "[t]hose procedural requirements do not, of course, transform substantive rules into procedural ones." 136 S. Ct. at 735. A procedural rule, such as that articulated in *Summerlin*, did not create a protected class of persons, rather, it "regulate[s] only the *manner of determining* the defendant's culpability." *Summerlin*, 542 U.S. at 353. Like *Miller* and *Montgomery*, *Batts II* exempted a specific class of persons (juveniles presumed to be capable of rehabilitation and who the Commonwealth cannot prove are permanently incorrigible beyond a reasonable doubt) from eligibility for a life without parole sentence.[5].

The Pennsylvania Supreme Court's invocation of its constitutional right to "prescribe general rules governing practice, procedure and the conduct of all courts" does not undermine the substantive nature of the Court's proscription of a

[5] The majority below failed to appreciate this critical distinction between substance and procedure. As noted by Judge Strassburger, concurring and dissenting, *Batts II* is unequivocal when it "prohibits punishment against a class of persons, *i.e.* those juveniles whom the Commonwealth has not proven beyond a reasonable doubt to be permanently incorrigible." *Stahley*, 201 A.3d at 221 (Strassburger, J., concurring and dissenting) (citing *Batts II*, 163 A.3d at 459).

punishment for this specific class of individuals. *Batts II*, 163 A.3d at 449 (quoting Pa. Const. art. V, § 10(c)). The procedures announced are required to ensure that the substantive rights of the juvenile are protected during the proceeding. *Batts II*, 163 A.3d at 457. As the *Montgomery* court noted, even the "use of flawless sentencing procedures" tcannot "legitimate a punishment where the Constitution immunizes the defendant from the sentence imposed." *Montgomery*, 136 S. Ct. at 730.

Finally, as the Court in *Montgomery* clarified, "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" *Id.* at 734 (quoting *Miller*, 567 U.S. at 479). Prior to the protections set forth in *Batts II*, Section 1102.1 only required that the sentencing court consider Mr. Stahley's age and other factors. There was no requirement that the sentencing court presume his eligibility for parole nor was the Commonwealth required to prove beyond a reasonable doubt that Mr. Stahley could never be rehabilitated. Therefore, the court never determined the threshold question—whether Mr. Stahley was among the class of individuals for whom a sentence of life without parole is constitutionally permissible. *Batts II*'s substantive rule thus requires vacatur of Mr. Stahley's sentence and remand to determine whether the Commonwealth can meet its burden of proving that he is in fact one of the exceptionally uncommon juveniles eligible for life without parole.

B. Alternatively, *Batts II* Created A "Watershed Rule Of Criminal Procedure" Requiring Retroactive Application

Batts II also satisfies *Teague*'s second exception as a "watershed rule[ ] of criminal procedure." *Teague*, 489 U.S. at 311. Under *Teague*, a new procedural rule applies retroactively if it is a new "watershed rule of criminal procedure" "(1) 'implicit in the concept of ordered liberty,' implicating 'fundamental fairness,' and (2) 'central to an accurate determination of innocence or guilt,' such that its absence 'creates an impermissibly large risk that the innocent will be convicted.'" *Summerlin*, 542 U.S. at 359, 366 (Breyer, J., dissenting) (quoting Teague, 489 U.S. at 311-13). The Supreme Court has recognized that sentencing is a critical component of the trial process, and directly affects the accuracy of criminal trials. *See, e.g.*, *Witherspoon v. Illinois*, 391 U.S. 510, 523 n.22 (1968) (retroactively applying a decision on a jury selection process that related to sentencing because it "necessarily undermined 'the very integrity of the . . . process' that decided the [defendant's] fate").

The new rules established by *Batts II* for the sentencing of juveniles convicted of homicide fundamentally altered—and enhanced—the factfinding process at sentencing. Specifically, this Court shifted the burden of proof to the Commonwealth to rebut the presumption of parole eligibility, and imposed the highest burden of proof, beyond a reasonable doubt, to the threshold finding of permanent incorrigibility. These new rules fit squarely within the "watershed rule"

test.

A recent decision of the Delaware Supreme Court, *Powell v. State*, is instructive. In *Powell*, the Supreme Court considered the retroactivity of its earlier ruling in *Rauf v. State*, 145 A.3d 430 (Del. 2016), where it held Delaware's death penalty statute unconstitutional—relying on *Hurst v. Florida*, 136 S. Ct. 616 (2016)—"because the statute improperly permitted the imposition of a death sentence based upon a judicial determination of the necessary findings that the Sixth Amendment requires a jury to make. Specifically, *Rauf* held that those necessary findings must be made by a unanimous jury and *beyond a reasonable doubt*." *Powell v. State*, 153 A.3d 69, 70 (Del. 2016) (emphasis added).

Finding the new *Rauf* rule to be retroactive, *Powell* readily distinguished *Summerlin*, where the United States Supreme Court declined to hold *Ring v. Arizona*, 536 U.S. 584 (2002), retroactive. As the court explained, *Ring*—which required that aggravating factors under the Arizona death penalty statute must be found by a jury, rather a judge—did not implicate the Due Process Clause because the statute already required the factors to be established beyond a reasonable doubt.[6] *Powell*, 153 A.3d at 73-74. *Rauf*, on the other hand, overruled prior Delaware precedent, following *Hurst*, and replaced the lesser standard of preponderance of the evidence with the

[6] *Hurst*, like *Ring*, also implicated only the right to trial by jury, not due process, because the Florida death penalty statue also already required the beyond a reasonable doubt burden of proof. *Powell*, 153 A.3d at 73-74.

higher beyond a reasonable doubt burden. *Id*. at 74. As the court stressed, "*Summerlin* only addressed the misallocation of fact-finding responsibility (judge versus jury) and not, like *Rauf* the applicable burden of proof." *Id*. at 74 (citing *Summerlin*, 542 U.S. at 351 n.1).

The *Powell* court held that *Rauf*'s requirement of the higher burden of proof fell "squarely within the second exception set forth in *Teague* requiring retroactive application of 'new rules' of criminal procedure 'without which the likelihood of an accurate [sentence] is seriously diminished.'" *Powell*, 153 A.3d at 74 (alteration in original) (quoting *Teague*, 489 U.S. at 313). The court noted that the burden of proof has both procedural and substantive ramifications, *id*. at 74, 74 n.42, and that substantive due process compelled the higher burden of proof in capital cases: "[T]here is no circumstance in which it is more critical that a jury act with the historically required confidence than when it is determining whether a defendant should live or die." *Id*. at 75 (quoting *Rauf v. State*, 145 A.3d 430, 481 (Del. 2016) (Strine, J., concurring)).

Importantly, *Powell* recognized that the retroactivity of a new rule imposing a higher burden of proof is well settled. *Powell*, 153 A.3d at 75. Indeed, almost 50 years ago, "in *Ivan V. v. City of New York*, 407 U.S. 203 (1972), the Supreme Court held that the new rule announced in *In re Winship*, 397 U.S. 358 (1970), changing the burden of proof for fact-finding from the 'preponderance of evidence' standard

to a 'beyond a reasonable doubt' standard, must be applied retroactively because that change implicated fact-finding reliability under the Due Process Clause." *Powell*, 153 A.3d at 75 (citing *Ivan V. v. City of New York*, 407 U.S. 203, 205 (1972)). *Winship*, of course, imposed this higher standard on juvenile delinquency proceedings. *In re Winship*, 397 U.S. 358, 359, 368 (1970). *Winship* held that the reasonable-doubt standard "is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of criminal law.'" *Id*. at 363 (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895)).

The elevation of the burden of proof by this Court in *Batts II* is indistinguishable from the rulings in W*inship* and *Rauf*, and likewise constitutes a watershed rule of criminal procedure. *Batts II* is particularly analogous to *Rauf*, where the higher burden was required before the most severe sentence of death could be imposed on a criminal defendant. *Rauf*, 145 A.3d at 433-34. Like the death penalty, life without parole is the most severe sentence that can be constitutionally imposed on a child; the United States Supreme Court has explicitly likened juvenile life without parole to the death penalty. *See Graham v. Florida*, 560 U.S. 48, 69, 78 (2010); *Miller v. Alabama*, 567 U.S. at 470, 475, 477. Just as the *Rauf* court recognized that "[t]here is no circumstance in which it is more critical that a jury act

with the historically required confidence than when it is determining whether a defendant should live or die," *Rauf*, 145 A.3d at 481 (Strine, J., concurring), there is no more critical decision for children than determining whether they shall be eligible for parole or sentenced to die in prison. As *Batts II* held, the Commonwealth must prove irreparable corruption beyond a reasonable doubt to "protect youthful offenders from erroneous decisions that foreclose their ability to ever be released from prison." 163 A.3d at 455. The Court selected the highest burden of proof due to its assessment that the "risk of an erroneous decision against the offender would result in the irrevocable loss of that liberty for the rest of his or her life," which outweighed the minimal risk of a parole-eligible sentence. *Id.* at 454. This standard "bespeaks the 'weight and gravity' of the private interest affected, society's interest in avoiding erroneous convictions, and a judgment that those interests together require that 'society impose almost the entire risk of error upon itself.'" *Id.* at 454.

Finally, *Batts II*'s presumption against juvenile life without parole ensures that "certain facts are held to call for uniform treatment with respect to their effect as to proof of other facts." *Childs*, 142 A.3d at 830. In sentencing juveniles to life without parole, requiring a sentencing court to presume that the attendant characteristics of youth counsel against a life without parole sentence is necessary to avoid an unacceptable risk that the facts of the case will overpower the inherent mitigation of youth. *See Roper v. Simmons*, 543 U.S. 551, 572-73 (2005) (highlighting the risks

of heinous crimes overpowering mitigation and evidence of diminished culpability). The presumption also constitutes a "bedrock procedural element" as it ensures the court conducts its analysis from the proper starting point, favoring parole-eligibility, and the presumption shifts the burden to the Commonwealth. "[A]ny suggestion of placing the burden on the juvenile offender is belied by the central premise of *Roper*, *Graham*, *Miller* and *Montgomery*—that as a matter of law, juveniles are categorically less culpable than adults." *Batts II*, 163 A.3d at 452.

C. Ensuring That No Child Is Unconstitutionally Sentenced To Die In Prison Outweighs The State's Interest In Finality In Just A Handful Of Cases

By setting narrow limits on the retroactive application of a new constitutional rule, *Teague* carefully weighed the concern for finality in criminal proceedings and held that, in some circumstances, the "principles of finality and comity 'must yield to the imperative of correcting a fundamentally unjust incarceration.'" *Sawyer v. Whitley*, 505 U.S. 333, 351 (1992), *superseded on other grounds by statute*, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, *as recognized in In Re Hill*, 777 F.3d 1214 (11th Cir. 2015) (quoting *Engle v. Isaac*, 456 U.S. 107, 135 (1982)). "[I]t must be noted that the retroactive application of substantive rules does not implicate a State's weighty interests in ensuring the finality of convictions and sentences" as "no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State

of power to impose." *Montgomery*, 136 S. Ct. at 732 (citing *Mackey*, 401 U.S. at 693).

Further, when a sentence is the subject of a new substantive rule, the concern for finality should be accorded less weight. *See Carrington v. United States*, 503 F.3d 888, 901 (9th Cir. 2007) (Pregerson, J., concurring in part and dissenting in part) ("The interest in repose is lessened all the more because we deal not with finality of a *conviction,* but rather the finality of a *sentence*. There is no suggestion that [the defendants] be set free or that the government be forced to retry these cases. The district court asks only for an opportunity to re-sentence in accordance with the Constitution."). Importantly, the State's interest in finality here is also diminished by the small number of cases affected by the retroactive application of *Batts II*. Relying on Department of Corrections records and public docket searches, counsel for Mr. Stahley can identify only three other cases in which the retroactivity of *Batts II* on collateral appeals would be applicable.[7] *Batts II* already applies to all individuals facing resentencing, and those directly appealing their life without parole

[7] *See Commonwealth v. Clark*, No. 2005 MDA 2014, 2015 WL 6828057 (Pa. Super. Ct. July 21, 2015) (non-precedential) (affirming Mr. Clark's life without parole sentence), *appeal denied*, 132 A.3d 456 (Pa. 2016); *Commonwealth v. Dekeyser*, No. 675 MDA 2016, 2017 WL 587324 (Pa. Super. Ct. Feb 14, 2017) (non-precedential) (affirming Mr. Dekeyser's life without parole sentence) (counsel cannot locate an appeal of the Superior Court's decision); *Commonwealth v. Seagraves*, 103 A.3d 839 (Pa. Super. Ct. 2014), *appeal denied*, 116 A.3d 604 (Pa. 2015). A fourth case was granted PCRA relief and a new sentencing hearing is scheduled for January 30, 2020. *Commonwealth v. Street*, No. 952 WDA 2015, 2016 WL 5854506 (Pa. Super. Ct. August 24, 2016) (non-precedential), *appeal quashed*, 163 A.3d 399 (Pa. 2016); *see* County Docket CP-02-CR-0011095-2009.

sentences when *Batts II* was issued have all been remanded.[8] Leaving a handful of sentences undisturbed based on the date of conviction and sentencing is impermissible; as noted above, "[t]here is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose." *Mackey v. United States*, 401 U.S. at 693 (Harlan, J., concurring).

D. Denying Retroactive Application Of *Batts II* Would Unconstitutionally Distingusih Between Similar Groups of Individuals In Violation Of The Due Process And Equal Protection Clauses Of The Fourteenth Amendment

The denial of *Batts II* protections to those whose convictions are final creates two classes of Pennsylvania prisoners sentenced for first-degree murder as juveniles. Those whose life without parole sentences were not final as of June 26, 2017, or who were subject to a mandatory life sentence, must be resentenced and can only be sentenced to life without parole if the Commonwealth rebuts the presumption against such a sentence by proving irreparable corruption beyond a reasonable doubt. Those whose sentences were final as of June 25, 2017, however, would be serving an unconstitutional life without parole sentence with no recourse. Such disparate treatment of a subset of the class of individuals, all of whom are serving an illegal

[8] *Shabazz-Davis*, 172 A.3d 1112 (Pa. 2017) (subsequently resentenced to 38 years to life at CP-51-CR-0007330-2013); *Commonwealth v. Stern*, No. 1959 MDA 2016, 2017 WL 5944095 (Pa. Super. Ct. Nov. 22, 2017) (vacated life without parole sentence and remanded for resentencing) (subsequently resentenced to 45 years to life (*Commonwealth v. Stern*, No. 653 MDA 2018, 2019 WL 642415 (Pa. Super. Ct. Feb. 15, 2019) (non-precedential)); *Commonwealth v. Moye*, No. 1924 WDA 2016, 2017 WL 4329780 (Pa. Super. Ct. Sept. 29, 2017) (vacated life without parole sentence and remanded for resentencing).

sentence, is unconstitutional.[9] If Mr. Stahley's sentence was still on appeal when *Batts II* was issued, he would have received the same relief provided to Mr. Batts and others who had been resentenced to life without parole. However, failing to apply the standards retroactively would subject him to a disproportionate sentence and violate equal protection.

II. THE SENTENCE IMPOSED IS UNCONSTITUTIONAL BECAUSE THE COURT FAILED TO CONSIDER EVIDENCE OF MR. STAHLEY'S REHABILITATION AND REHABILITATIVE POTENTIAL, AS WELL AS THE HALLMARK CHARACTERISTICS OF YOUTH AS REQUIRED BY *MILLER V. ALABAMA*, 567 U.S. 460 (2012)

Even if this Court determines that *Batts II* should not be applied retroactively, Mr. Stahley's sentence is still unconstitutional as the sentencing court failed to comply with the constitutional mandates of *Miller* prior to imposing his life without parole sentence.

A life without parole sentence is illegal if it fails to comply with *Miller's* mandate that this sentence can only be imposed if the defendant is one of the "rare" and "uncommon" children who exhibit permanent incorrigibility. *Miller*, 567 U.S. at 479. Yet despite this clear rule, Mr. Stahley received a sentence of life without the possibility of parole following a hearing in which the sentencing court focused

[9] The class as enumerated under *Montgomery* and *Batts II*: those who were presumed parole-eligible and whom the Commonwealth has not proved irreparably corrupt beyond a reasonable doubt.

almost exclusively on the seriousness of the offense and the impact on the victims, with scant attention paid to Mr. Stahley's hallmark features of youth or his capacity for rehabiliatation.

The sentencing record demonstrates that the court ignored the core tenet of *Miller*—that children are different than adults, and that factors specifically associated with youth must be considered. "By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory-sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment." *Miller*, 567 U.S. at 489.

Miller notes the minimum factors that must be considered when sentencing juvenile offenders:

> a sentencer misses too much if he treats every child as an adult. To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, *e.g., Graham*, 560 U.S., at 78, 130

> S.Ct., at 2032 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings"); *J.D.B. v. North Carolina*, 564 U.S. 261, 269, 131 S.Ct. 2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children's responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Miller, 567 U.S. at 477–78.

The sentencing record belies any assertion—or finding—of permanent incorrigibility. Mr. Stahely's expert, Dr. Steven Samuel, specifically rejected the notion that Mr. Stahley's conduct was a permanent feature of his character, noting that making such a judgment at that time was "premature," as "adolescence in particular, particularly 16-year-old adolescents, can change." (Sentencing Hearing Tr. 12/17/14 82:19-23 [hereinafter SHT].) Making a determination of permanent incorrigibility at the time of sentencing was particularly problematic since Mr. Stahley had not yet received any treatment or therapy. (SHT 82:25-83:4.) Dr. Samuel stressed that such treatment was available in prison and that it was "inevitable that his brain is going to mature", and that "[t]he person he was when he was 16 is not the person he's going to be when he is 21." (SHT 98:8-20.)

> "No one can say with any hundred percent certainty whether someone is a risk at the future, whether they'll respond to treatment. We certainly know he's got a number of years to try to correct himself, and try to get help, and I think that that's to his advantage. Treatment is available for kids like him in prison, and I'm certainly hoping he can avail himself of that."

(SHT 98:21-99:4.)

While Mr. Stahley was inherently immature as a teenager, Dr. Samuel further found that he had "the psychological development of a kid that may be an early-aged teenager." (SHT 77:14-18.) Dr. Samuel testified that Mr. Stahley's IQ fell between "low average" and "borderline," indicating Mr. Stahley functioned at a very low level. (SHT 78:22-79:14.) Dr. Samuel also noted Mr. Stahley was previously diagnosed with ADHD and had a history of polysubstance abuse, showed signs of Oppositional Defiance Disorder and Bipolar Disorder. (SHT 79:15-25.) These developmental factors manifested in Mr. Stahley being "oversensitive and hyper-reactive to rejection," while also having "less access to solving problems." (SHT 82:9-83:10.) Dr. Samuels told the court: "I think it's a mitigating factor generally to talk about someone's age." (SHT 81:23-82:8.)

Dr. Samuels' expert testimony was uncontroverted; the Commonwelath neither called their own expert nor offered any expert documentary evidence.[10] The court's disregard of this testimony, as reflected in the court's reliance on the facts of the crime and the impact on the victims and the community in imposing a sentence of life without parole, is unlawful under both *Miller* and *Batts II*. Indeed, when the sentencing court did reference age, it cited it primarily as an aggravating factor: The

[10] Even with the enhanced procedural safeguards adopted by this Court in *Batts II*, the Court recognized that "it is difficult to conceive of a case where the Commonwealth would not proffer expert testimony and where the sentencer would not find expert testimony to be necessary" before competently concluding a juvenile is incapable of rehabilitation. *Batts II*, 163 A.3d at 456.

sentencing court first mentioned age merely to identify how old Mr. Stahley was when the crime was committed (SHT 120:4-7); mentioned it a second time as an indication of his continuing "danger to society," (SHT 125:24-126:5); and then used it—in conjunction with his having a job—as a sign of *maturity*. (SHT 127:25-128:4.) Notably, the court failed to acknowledge the Mr. Stahley had dropped out of school in the 10th grade to work, more reasonably reflecting his immaturity and impulsiveness. (SHT 69:20-70:9.)

The court cited other examples of Mr. Stahley's immaturity and adolescent risk-taking—"a long history of delinquent type behavior, including substance abuse, despite being given various treatment opportunities." (SHT 120:22-25)—in support of its conclusion that Mr. Stahley was permanenty corrupt. (SHT 124:15-19.) The court noted Mr. Stahley was diagnosed with ADHD at age 6, prescribed medication, but stopped taking them; had anger issues starting at age 13, including fighting with his dad and a generally defiant attitude; and had previously thought about homicide and suicide. (SHT 121:2-122:2.) The court went on to say Mr. Stahley "struggled with substance abuse issues and other anger related issues and other issues impacting on his mental capabilities," and added, [t]hese things, if anything, demonstrate his continuing danger to society." (SHT 125:25-126:5.) While all of these facts are true, Mr. Stahley's use of drugs and alcohol at the age of twelve is also a cautionary sign of potentially troubled family dynamics and negative impact on brain development

from such early substance abuse.

The sentencing court's focus on the crime and its impact obscured the mitigating factors of Mr. Stahley's age and related characteristics. As the Supreme Court wrote in *Miller:*

> *Roper* and *Graham* emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because " '[t]he heart of the retribution rationale' " relates to an offender's blameworthiness, " 'the case for retribution is not as strong with a minor as with an adult.' "

Miller, 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 71; *Roper*, 543 U.S. at 571). The sentencing court's reasoning ignores the United States Supreme Court's repeated admonitions that juveniles convicted of first-degree murder are presumptively less culpable than their adult counterparts and, as such, should be treated differently. *Miller*, 567 U.S. at 472; *Batts II*, 163 A.3d at 437. "[A]s the years go by and neurological development occurs" there is an enhanced prospect that a youth's "deficiencies will be reformed." *Miller*, 567 U.S. at 472 (quoting *Roper*, 543 US at 570). The Court further explained that a life without parole sentence would "require 'mak[ing] a judgment that [he] is incorrigible'—but 'incorrigibility is inconsistent with youth.'" *Id.* at 472-473.

The sentencing court failed to properly consider Mr. Stahley's youth and age-related characteristics as required by *Miller*, thereby rendering the sentence imposed illegal.

CONCLUSION

For the foregoing reasons, Mr. Stahley's life without parole sentence should be vacated and the case remanded for a resentencing consistent with *Batts II*.

Respectfully submitted,

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Dated: December 4, 2019

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 7,463 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

/s/ Marsha L. Levick
Marsha L. Levick

Dated: December 4, 2019

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 39 MAL 2019
	:	
Respondent	:	
	:	Petition for Allowance of Appeal from
	:	the Order of the Superior Court
v.	:	
	:	
	:	
TRISTAN STAHLEY,	:	
	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 24th day of July, 2019, the Petition for Allowance of Appeal is **GRANTED**, **LIMITED TO** the issues set forth below. Allocatur is **DENIED** as to all remaining issues. The issues, rephrased for clarity, are:

(1) Did the Superior Court err in concluding that *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017), did not announce a substantive rule of law, as that concept was refined in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), or a watershed procedural rule?

(2) Did the trial court fail to consider Stahley's rehabilitative potential and many of the "hallmark features" of youth, as required by *Miller v. Alabama*, 567 U.S. 460 (2012), rendering his sentence of life without the possibility of parole illegal?

APPENDIX B

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
TRISTAN STAHLEY	:	
Appellant	:	No. 3109 EDA 2017

Appeal from the PCRA Order August 28, 2017
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0005026-2013

BEFORE: STABILE, J., STEVENS*, P.J.E., and STRASSBURGER**, J.

OPINION BY STEVENS, P.J.E.: **FILED DECEMBER 19, 2018**

Appellant, Tristan Stahley, appeals from the order entered in the Court of Common Pleas of Montgomery County dismissing his petition filed under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 1941-1946. Herein, he contends the PCRA court erroneously denied his ineffective assistance of trial counsel claims and his legality of sentencing claim based on the Pennsylvania Supreme Court's recent decision in ***Commonwealth v. Batts***, 163 A.3d 410 (Pa. 2017) ("***Batts II***") (devising procedural safeguards to ensure proper implementation of ***Miller v. Alabama***, 567 U.S. 460 (2012) in the consideration of life without parole sentences for juvenile offenders). We affirm.

The PCRA court aptly provides a comprehensive recitation of relevant facts and procedural history, as follows:

[Appellant's stipulated non-jury trial] established that on May 25, 2013, Appellant murdered Julianne Siller, who was 17 years-old. N.T. (trial), 9/29/14, at 13. Appellant was 16 years of age at the time of the murder. *Id.*

On the night of the incident, a dispatch came into the State Police of a stabbing in Palmer Park. *Id.* The two responding troopers went to Appellant's house, where they saw Appellant and his father on the ground fighting. *Id.* After separating the two, Appellant [made] a statement that he stabbed his girlfriend because she broke up with him and that he thought she would hook up with other people. *Id*.

The troopers took Appellant to Palmer Park and he directed them to the trail where [ ] Ms. Siller was [lying]. *Id*. There was blood on the trail and a trail of blood [leading] into the woods of the park. *Id.* Appellant's DNA was found at the scene. There was DNA on the knife used to kill Ms. Siller. *Id*. at 13-14. The handle of the knife contained Appellant's DNA and on the blade was [DNA belonging to] Ms. Siller. *Id*. at 14. In addition, one of the troopers found blood in the bathroom at Palmer Park that was genetically matched to Appellant. *Id*.

At the scene of the crime the troopers found Ms. Siller's jean jacket with a stab wound in it, a shirt that had blood on it, stab wounds on Ms. Siller, and the murder weapon, 10 feet from Ms. Siller's body. *Id*.

Trooper Barry Bertolet took custody of Appellant at the scene when Ms. Siller's body was found. *Id*. Trooper Bertolet went through the ***Miranda***[1] warnings form with Appellant while in the presence of his mother. *Id*. Appellant and his mother both signed the form, indicating they understood all of his rights. *Id*.

Appellant gave the troopers a statement. During this statement Appellant told the trooper that he was sober and that he understood what was going on. *Id*. In the statement, Appellant gave a rendition of the facts, wherein he said that he and Ms. Siller were in a relationship, but they were on-again, off-again and that she would always come back. *Id*. at 15. Additionally, he told the troopers that they got into a fight that night about her going out

[1] ***Miranda v. Arizona***, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

and that he stabbed her in the neck with the knife. *Id*. The trooper asked Appellant, "When did you make the decision in your mind?" [Appellant] replied, "About two seconds before I did it." *Id*.

An autopsy was performed on Ms. Siller and the cause of death was determined to be multiple stab and cutting wounds, and the manner of death was homicide. *Id*. Ms. Siller suffered over 75 stab wounds to her body, including 27 to her head and neck and 45 to her torso and shoulders. *Id*.

At the conclusion of trial, [the trial court] found Appellant guilty beyond a reasonable doubt of murder in the first degree. *Id*. at 19.

On December 17, 2014, a sentencing hearing was held. After considering the ***Miller v. Alabama***, [567 U.S. 460 (2012)] factors as codified in 18 Pa.C.S.A. § 1102.1 and stating its reasons on the record, including the finding of irreparable corruption, [the trial court] imposed a sentence of life imprisonment without parole. No appeal was filed.

On December 22, 2015, Appellant filed a *pro se* PCRA petition. Counsel was appointed, and after multiple extensions of time, PCRA counsel filed an Amended PCRA Petition on February 13, 2017.

A PCRA Hearing was conducted on July 25, 2017. Appellant's trial counsel, Timothy Barton, a seasoned defense attorney of 29 years, provided credible testimony as follows.

Attorney Barton's involvement in this case began when he had been privately retained by the Stahleys. *Id*. at 4. In his initial meeting with the Stahley family, he discussed the scope and nature of his representation and he also interviewed Mr. and Mrs. Stahley regarding anything they might know about the incident. N.T., (PCRA hearing), 7/25/17, at 5.

Both Mr. and Mrs. Stahley had been present the night that Appellant was arrested. *Id*. Mrs. Stahley accompanied Appellant to the police station and was present during the custodial interrogation when Appellant, then a minor, gave a statement to police. *Id*. at 5-6.

Attorney Barton estimated that he met with Appellant over a dozen times, "if not more." *Id*. at 6. He met with him on a weekly basis for a period of time at Montgomery County Correctional Facility. *Id*. In addition, Attorney Barton testified that he met with Appellant's parents "[o]ften" and were in frequent contact, although he was unable to estimate on how many occasions. *Id*. at 6-7.

Since Appellant admitted to the murder in his statement to police, Attorney Barton's initial strategy was to focus on whether at the time of the crime Appellant could have formed a specific intent to kill and what degree of guilt it might be. *Id*. at 7.

Prior to trial, Attorney Barton in part prepared a decertification motion, for which he retained two psychiatrists, Dr. John O'Brien and Dr. Steven Samuel for the purpose of interviewing Appellant to ascertain what defenses there might be at trial. *Id*. at 25-27. In part, Attorney Barton wanted to use Dr. Samuel's report to show the [District Attorney] that there should be some sort of plea negotiations. *Id*. at 27. In addition, he had several conversations with the assigned Assistant District Attorney, Jeremy Lupo, who had been assigned the case and with the then District Attorney, Risa Ferman, about possible resolutions. *Id*. at 8. ADA Lupo informally suggested that if Appellant were to plead guilty, the Commonwealth would recommend a sentence of 40-80 years' imprisonment. *Id*. at 28. Attorney Barton testified that Appellant was not interested in that deal in large part because he believed that in 40 years his mom and/or dad would be deceased. *Id*. That was very important to Appellant, the hope that he would be able to unify with his parents. *Id*.

Attorney Barton testified that in his conversations with Appellant, they spoke about whether he actually formed the intent to kill. *Id*. at 9. Attorney Barton also testified that Appellant had described his state of mind the evening of the murder, telling him that he intended to kill the victim. *Id*. at 32. Appellant told Attorney Barton this at various meetings at the Montgomery County Correctional Facility. Specifically, Appellant told Attorney Barton that it was not his intent to kill Miss Siller when they were home or left the home or went to the park, but at some point while at the park he decided to kill her. *Id*.

Attorney Barton stated that he had reviewed discovery, which included a property receipt for a search that was executed at the

Stahleys' home. *Id*. at 9-10. In that property receipt was a "nearly empty bottle of raspberry vodka." *Id*. at 11.

Attorney Barton also reviewed various witness statement, and in particular the statement of Todd Evans, a paramedic who treated Appellant the evening of the murder, wherein Appellant told Mr. Evans that he was under the influence of alcohol. *Id*. at 12. Appellant had also told police in his statement that he had been under the influence of alcohol. *Id*.

According to Attorney Barton, he had also received an expert report from Dr. O'Brien which opined "It is my opinion that [Appellant's] records and the psychological testing performed by Dr. Samuel reflect him to have been a troubled adolescent with a combination of both psychiatric symptoms and characterological difficulties which rendered him susceptible to the disinhibiting effects of alcohol on the night of the offense." *Id*. at 13, 15. The report concluded "It is my opinion that as a result of his psychiatric, psychological and characterological impairments, and his degree of intoxication at the time of the offense, [Appellant] was not able to premeditate, deliberate and formulate the intent to kill Julianne Siller, notwithstanding his response to police questioning about the timing of his 'decision' to kill Julianne Siller at the time of the offense." *Id*. at 17.

Attorney Barton had this report prior to the trial; however, he did not call Dr. O'Brien to testify at the time of trial or at the suppression hearing. *Id*. at 17-18. On cross-examination, Attorney Barton explained that Dr. O'Brien had been privately retained by the Stahley family for an opinion regarding Appellant's ability to form the specific intent to kill, in anticipation of him testifying at a jury trial. *Id*. at 29.

At some point, Attorney Barton had concerns about Dr. O'Brien's opinion. *Id*. at 30. He elaborated that in speaking with Dr. O'Brien after the Commonwealth had an expert examine Appellant and prepare a report, and some of the statements Appellant made after Dr. O'Brien's report was prepared, that Dr. O'Brien's opinion was weakened, if not invalidated. *Id*. at 30. More specifically, Attorney Barton had the expert report prepared by Dr. Barbara Ziv, the expert retained by the Commonwealth to examine Appellant. *Id*. at 31. He reviewed the report himself and with Appellant at the prison. *Id*.

At the PCRA hearing, Attorney Barton detailed the events on September 29, 2014, the day of the scheduled trial, that occurred causing Appellant's decision to proceed with a stipulated bench trial instead of a jury trial. That morning Attorney Barton was prepared to proceed to a jury trial, and would have presented Dr. O'Brien, Mrs. Stahley and possibly Appellant along with an intoxication defense. *Id*. at 19, 21-22. Mrs. Stahley requested that she speak to her son. *Id*. at 19. Both Mr. and Mrs. Stahley were permitted to meet with Appellant in the robing room, where there was a conversation mainly between Mrs. Stahley and Appellant about whether he should proceed with a jury trial or plead guilty. *Id*.

Mrs. Stahley and Attorney Barton had had many conversations about the merits of the Commonwealth's case, the defenses, and the options. *Id*. Specifically, Attorney Barton explained the defense of intoxication. *Id*. He explained that to present a defense of diminished capacity by intoxication, [the intoxication] had to be so overwhelming as to render him unable to process what was going on. *Id*. at 20. Attorney Barton actually copied the law on first and third degree murder and diminished capacity and reviewed them with both Appellant and his mother. *Id*. Attorney Barton also discussed Dr. O'Brien's report with them. *Id*. at 21.

Additionally, Attorney Barton testified that they discussed jury trial, waiver of a jury trial, and what each entailed. *Id*. They discussed "degree of guilt" hearings. *Id*. Attorney Barton elaborated that whether to proceed to a stipulated non-jury trial was an evolving conversation. He stated that the consideration had been an ongoing conversation for weeks or months. As Attorney Barton explained it, "it was all part of the fabric of our conversations during probably the later parts of my representations." *Id*. at 33.

The Commonwealth asked trial counsel why . . . Appellant proceed[ed] to a stipulated non-jury trial if Appellant elected to plead guilty. *Id*. Attorney Barton recollected that [the trial court] did not want to accept a guilty plea because that would allow Appellant to at least attempt to file a motion to withdraw the guilty plea within ten days and, therefore, a stipulated non-jury trial was elected to go forward. *Id*. at 33-34. Attorney Baron fully advised Appellant that it would be a stipulated non-jury trial instead of a guilty plea. He also advised Appellant that it would be the

functional equivalent of a guilty plea, but that he had to be absolutely certain he wanted to proceed in that manner because unlike a guilty plea, Appellant would not have the option to file a motion to withdraw [a] guilty plea. *Id*. at 34.

It was Attorney Barton's opinion that the advantage to Appellant in waiving a jury trial and essentially pleading guilty wold be that the sentencing court would take this into consideration when fashioning a sentence to impose, that Appellant showed some remorse, took some accountability and spared the Siller's a prolonged jury trial with graphic testimony and exhibits. *Id*. at 35. He believed these factors would be considered at the time of sentencing. *Id*.

Regarding intoxication as an issue in this case, Attorney Barton did file a suppression motion[.] [I]n part included therein was the argument that the statements that Appellant gave to police were not knowing and voluntary due to his level of intoxication. *Id*. at 35-36. There were several statements that Appellant made to troopers who responded to the original scene, those made when Appellant voluntarily accompanied the troopers to the park and those he made during his custodial interrogation. *Id*. at 36. The trooper asked some questions to elicit some response about his condition, including his level of intoxication. *Id*. at 37. Mrs. Stahley was present during this questioning and signed off on each answer. *Id*.

There were audio/video recordings that cut against an intoxication defense. Id. Specifically, there was a video directing the troopers back to the park and you could hear Appellant in the audio being conversational with the troopers, directing them through the park, talking to them about certain things that happened. From Attorney Barton's perspective, he believed this evidence, which to him showed that Appellant did not seem intoxicated, would be well below the standard required to suppress a statement due to involuntary intoxication. *Id*. at 38. He also believed that this evidence also undercut an intoxication defense at trial. *Id*.

Next to testify on behalf of Appellant was Todd Evans, who was employed by Skippack Emergency Medical Services as a paramedic and responded to the scene at Palmer Park. *Id*. at 47-48. Mr. Evans provided emergency help to Appellant for some lacerations to his legs and an abrasion on his forehead. id. at

48. While transporting Appellant to the hospital, Mr. Evans observed that Appellant had different mood swings. *Id*. One minute he would be calm and able to talk, but then he would break down crying and sobbing uncontrollably and verbalizing inappropriately. *Id*. Under questioning by PCRA counsel he said that Appellant's behavior "possibly" indicated intoxication. *Id*. at 49. However, Mr. Evans was able to communicate with Appellant. *Id.* at 50. He was able to ask Appellant questions, and Appellant was able to provide some answers. *Id*. at 51. Mr. Evans testified Appellant seemed emotionally upset. Additionally, Mr. Evans stated that Appellant was able to walk on his own. *Id*. at 51.

Next to testify was Heather Stahley, Appellant's mother. According to Mrs. Stahley, she relayed to Attorney Barton that her son told her that he had been drinking and taken Molly the night of the incident. Id. at 54. It was Mrs. Stahley's testimony that Attorney Barton had advised her that voluntary intoxication is not a defense to murder. *Id*.

Mrs. Stahley testified that on the morning of the scheduled trial, Attorney Barton spoke to her about the possibility of pleading open or a stipulated non-jury trial, explaining that Attorney Barton suggested it because he believed it was the best chance to obtain a more favorable sentence. *Id*. at 59. Mrs. Stahley relayed this information to her son in the robing room. *Id*. [Concerning] the degrees of murder, Attorney Barton had explained the difference between first degree and third degree murder. *Id*. at 61. He had also talked to Mrs. Stahley about calling Dr. O'Brien as a witness at trial. *Id*. Additionally, Mrs. Stahley could only recall that Attorney Barton had met with her son four or five times over the course of his representation. *Id*. at 62.

Upon cross-examination, Mrs. Stahley recollected that in the statement she gave to troopers the night of the murder she did not tell the troopers that Appellant was intoxicated. Mrs. Stahley was with her son on the day and night of the murder. According to her statement to the troopers, at around 2:00 p.m., Appellant went into her room wanting to go to Target where he bought a video game. *Id*. at 64-65. Appellant knew that his mom was upset about a fight she had with a friend, so he bought her favorite drink from Starbucks to cheer her up. *Id*. at 65. After Target, Mrs. Stahley and her son went to Rita's for water ice. *Id*. at 65-66. The two of them went home afterwards and watched

TV. Id. Appellant was still trying to cheer up his mom. *Id*. at 66. Mrs. Stahley admitted at the PCRA hearing that Appellant did not appear intoxicated during the time they spent together. *Id*. at 66.

At some point that evening, Appellant went upstairs to his room. Later around 7:00 p.m., he asked his mom to take him to Wawa. *Id*. at 67. Mrs. Stahley told the troopers in her statement that Appellant did not appear intoxicated between the time they got home from Rita's and went to Wawa. *Id*. at 68. After Wawa, Appellant spent some time in the living room, and later went up to his room again. *Id*. Around 8:20, Appellant went down and asked his mom to use her phone to call Julianne two times. *Id*. He then went up to his room with the phone. *Id*. Still, Appellant did not appeal intoxicated. *Id*. at 69.

About 10 to 15 minutes later after Appellant [returned his mother's phone to her], Ms. Siller came over her house. *Id*. Ms. Siller said, "hi," and went upstairs. *Id.* Mrs. Stahley heard bickering coming from upstairs and she went to check on them. *Id*. She asked them if they were okay, and they said they were fine. *Id*. at 69-70. Around 8:56 p.m., Mrs. Stahley spoke to her husband on the phone. *Id*. at 70. Ms. Siller and Appellant came downstairs around 9:01 p.m. *Id*. Mrs. Stahley saw them briefly, and she did not see any signs of intoxication in her son. *Id*.

Ms. Siller and Appellant went for a walk and sometime later Appellant returned to his home and asked his mom to go for a walk with him. id. Mrs. Stahley immediately knew that her son was crying. *Id*. at 71. She also noticed some blood or dirt on his legs, which Appellant explained away telling her he had fallen. Id. Mrs. Stahley tried to persuade her son to sit down and talk right there, but Appellant insisted they go for a walk. *Id*. at 71.

On their walk, Appellant told her that he and Ms. Siller broke up and that he stabbed her. *Id*. at 72. Appellant said he did not know yet whether he had killed her. *Id*. Appellant started crying and pulled out a knife from his pocket and threatened to kill himself. *Id*. at 73. Mrs. Stahley convinced her son to come back to the house with her. *Id*. When she got there she went inside and spoke to her husband. *Id*. Mr. Stahley came out to ask Appellant what was going on. *Id*. He confessed to his father that

he stabbed Ms. Siller and that she was on the trial. *Id*. At the PCRA hearing, Mrs. Stahley stated that although Appellant was upset and bawling she was still able to communicate with him. *Id*. at 73-74.

Mrs. Stahley also testified that she had told police in her statement that Appellant had been drinking and that she knew that because her husband smelled alcohol on Appellant. *Id*. at 74-75. The police officer asked her whether Appellant had been drinking alcohol at the home prior to the event. *Id*. at 75-76. She responded by saying, "Not that I'm aware of. I didn't see the water bottle before they started wrestling. No. I mean, he was fine all day. He seemed fine when they left." *Id*. at 76. At the PCRA hearing, upon examination, Mrs. Stahley admitted that she never told the police on the night of the murder that Appellant had been drinking and took Molly, despite the officer's question specifically inquiring as to whether Appellant had been drinking that night. *Id*. at 76-77.

Next, the Commonwealth cross-examined Mrs. Stahley on the formal statement that he son gave to police when police asked her son whether he was under the influence of anything that might impair his ability to understand. *Id*. at 77. Appellant denied this, saying he understood what was going on. *Id*. The trooper followed up asking Appellant whether he would consider himself to be sober, buzzed or drunk to which Appellant answered, "Sober." Mrs. Stahley initialed those answers and agreed with Appellant. *Id*.

The third witness presented by PCRA counsel was Brian Stahley, Appellant's father. On direct examination, Mr. Stahley testified that the night of the incident his son was inebriated. *Id*. at 86-87. He also testified that Attorney Barton told him that intoxication is not a defense to murder in Pennsylvania. *Id*. at 87-88. On cross-examination, Mr. Stahley admitted that he was not with Appellant all day and would not have known when he started drinking. *Id*. at 94.

Finally at the PCRA hearing, Appellant testified. He testified that on the night of the incident he had been drinking and took the drug Molly. *Id*. at 98. Appellant stated that he had been drinking since 4:00 or 5:00 in the afternoon and took Molly, a form of Ecstasy, at about 7:00 p.m. *Id*. at 99. In relevant part, Appellant stated that when he spoke to Attorney Barton he had informed

him that he had been drinking and doing drugs the evening of the murder. *Id*. at 102. Appellant related that Attorney Barton told him that intoxication is not a defense to murder. *Id*. Appellant also said that he only met with Attorney Barton five or six times. *Id*. at 103.

Further, Appellant told [the PCRA court] that he wanted to go to trial, and that he had told this to his attorney. *Id*. at 103. Appellant denied that Attorney Barton reviewed with him how jury selection would work, what the Commonwealth had to prove to find him guilty, that there are different degrees of homicide in Pennsylvania and what third degree murder or voluntary manslaughter means. *Id*. at 104-104. Appellant further testified that Attorney Barton told him that the only [possible way to avoid] a life sentence was to proceed with a stipulated non-jury trial. *Id*. at 105. Moreover, Appellant denied that Attorney Barton ever reviewed appellate options, despite having competed and signed a post-sentence rights form. *Id*. at 106.

After the defense concluded its case, the Commonwealth called Attorney Barton to testify as a rebuttal witness. *Id*. at 112. On rebuttal, Attorney Barton categorically denied advising Appellant, his mother or father that voluntary intoxication was not a defense to murder. *Id*. at 113. Additionally, he denied telling Appellant, his mother or his father that Appellant's only chance for a non-life sentence was a guilty plea or a stipulated non-jury trial. *Id*. at 113-114.

On August 23, 2017, PCRA counsel and the Commonwealth provided argument on the PCRA petition including the recent case of ***Commonwealth v. Batts***, 163 A.3d 410 (Pa. 2017) ("***Batts II***"). Relief was denied on August 28, 2017.

Trial Court Opinion, 11/15/17, at 1-15.

On appeal, Appellant presents the following issues for review:

I. DID THE PCRA COURT ERRONEOUSLY DENY [APPELLANT'S INEFFECTIVENESS CLAIM, WHERE TRIAL COUNSEL FAILED TO INTRODUCE READILY AVAILABLE EVIDENCE, FROM BOTH LAY AND EXPERT WITNESSES, WHICH WOULD HAVE ESTABLISHED

[APPELLANT'S] INTOXICATION AT THE TIME OF THE CRIME AND WHICH WOULD HAVE SUPPORTED A DEFENSE OF VOLUNTARY-INTOXICATION/DIMINISHED-CAPACITY?

II. **DID THE PCRA COURT ERRONEOUSLY DENY [APPELLANT'S] INEFFECTIVENESS CLAIM, WHERE TRIAL COUNSEL FAILED TO INTRODUCE READILY AVAILABLE EVIDENCE WHICH WOULD HAVE ESTABLISHED [APPELLANT'S] INTOXICATION AT THE TIME OF HIS POST-ARREST STATEMENT AND WHICH WOULD HAVE PROVIDED THE BASIS FOR A SUCCESSFUL MOTION TO SUPPRESS THE STATEMENT?**

III. **DID THE PCRA COURT ERRONEOUSLY DISMISS [APPELLANT'S] CHALLENGE TO THE LEGALITY OF HIS SENTENCE UNDER BATTS II?**

Appellant's brief, at 5.

Initially, we recite our standard of review:

> This Court's standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. ***Commonwealth v. Halley****,* 582 Pa. 164, 870 A.2d 795, 799 n. 2 (2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa.Super. 2001).

Commonwealth v. Turetsky, 925 A.2d 876, 879 (Pa.Super. 2007).

> "To prevail on a claim alleging counsel's ineffectiveness, Appellant must demonstrate (1) that the underlying claim is of arguable merit; (2) that counsel's course of conduct was without a reasonable basis designed to effectuate his client's interest; and (3) that he was prejudiced by counsel's ineffectiveness." ***Commonwealth v. Wallace***, 724 A.2d 916, 921 (Pa. 1999), *citing* ***Commonwealth v. Howard****,* 645 A.2d 1300, 1304 (Pa. 1994) (other citation omitted). In order to meet the prejudice prong of the ineffectiveness standard, a defendant must show that there is a "'reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have

> been different.'" ***Commonwealth v. Kimball***, 724 A.2d 326, 331 (Pa. 1999), *quoting* ***Strickland v. Washington***, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A "'[r]easonable probability' is defined as 'a probability sufficient to undermine confidence in the outcome.'" [***Kimball***], 724 A.2d at 331, *quoting* ***Strickland***, 466 U.S. at 694, 104 S.Ct. 2052.

Commonwealth v. Jones, 811 A.2d 1057, 1060 (Pa.Super. 2002). Thus, when it is clear that a petitioner has failed to meet the prejudice prong of an ineffective assistance of counsel claim, the claim may be disposed of on that basis alone, without a determination of whether the first two prongs have been met. ***Commonwealth v. Baker***, 880 A.2d 654, 656 (Pa.Super. 2005).

"We presume counsel is effective and place upon Appellant the burden of proving otherwise. Counsel cannot be found ineffective for failing to pursue a baseless or meritless claim." ***Commonwealth v. Poplawski***, 852 A.2d 323, 327 (Pa.Super. 2004) (citations omitted). If the record supports a post-conviction court's credibility determination, it is binding on the appellate court. ***Commonwealth v. Dennis***, 17 A.3d 297 (Pa. 2011).

In Appellant's first claim of ineffective assistance of counsel, he contends counsel ineffectively failed to present the testimony of his mother and Mr. Evans, the ambulance driver, during the suppression hearing to establish his intoxication at and around the time he provided his post-arrest statement to police. Such testimony, he maintains, would have undermined the credibility of the officers' claims that Appellant was not intoxicated when he gave his statement.

Regarding a claim of trial counsel ineffective assistance for failure to call witnesses, this Court has stated the following:

> In order to demonstrate counsel's ineffectiveness for failure to call a witness, a petitioner must prove that "the witness existed, the witness was ready and willing to testify, and the absence of the witness' testimony prejudiced petitioner and denied him a fair trial." [***Commonwealth v.***] ***Johnson***, 27 A.3d [244,] 247 [(Pa.Super. 2011)] (internal citation omitted). In particular, when challenging trial counsel's failure to produce expert testimony, "the defendant must articulate what evidence was available and identify the witness who was willing to offer such evidence." ***Commonwealth v. Bryant***, 855 A.2d 726, 745 (Pa. 2004) (internal citation omitted).

Commonwealth v. Luster, 71 A.3d 1029, 1047 (Pa.Super. 2013).

Here, the notes of testimony from Appellant's PCRA hearing belie his claim that Mrs. Stahley and Mr. Evans would have advanced his defense that he was intoxicated at the time he gave his statement to police. Specifically, Appellant's mother testified that he did not appear intoxicated during his time with her in the afternoon, and he seemed fine when he left the house with his girlfriend. "[H]e was fine all day. He seemed fine when they left," she testified. N.T. (PCRA) at 76-77.

As noted, Mrs. Stahley did testify Appellant was swaying when he returned home after the incident. Proximate to the time Appellant gave his statement to police, however, Mrs. Stahley told police that Appellant "knew what was going on," and she agreed with Appellant when he claimed to be "sober" when police asked him to give a formal statement. N.T. at 76-77.

Similarly, Mr. Evans indicated Appellant's emotional behavior after the event "possibly" indicated intoxication. His testimony, however, also included

his observations that Appellant communicated clearly during Mr. Evans' interactions with him and was able to walk on his own.

Finally, the record shows Attorney Barton zealously cross-examined the arresting officers and the interviewing trooper regarding their assertions that Appellant was sober when he gave his statement. N.T. (Suppression) at 41, 55, 95-97.

Given the content of Mrs. Stahley's and Mr. Burns' respective PCRA testimonies, we discern no prejudice from Attorney Barton's failure to call them to testify at Appellant's suppression hearing, as they would not have supported Appellant's theory of intoxication to the degree necessary to preclude admission of his statement. Accordingly, this ineffectiveness claim fails.

Next, Appellant contends Attorney Barton ineffectively failed to advise his parents and him properly regarding the defense of voluntary intoxication. Ordinarily, voluntary intoxication, or diminished capacity, is not a defense in Pennsylvania. 18 Pa.C.S.A. § 308. In cases of murder, however, a defendant may offer evidence of intoxication if it is "relevant to reduce murder from a higher degree to a lower degree of murder." ***Id.*** "Thus, a defendant asserting a diminished capacity defense admits responsibility for the underlying action, but contests the degree of culpability based upon his inability to formulate the requisite mental state." ***Commonwealth v. Williams***, 980 A.2d 510, 527 (Pa. 2009).

According to Appellant and his parents, Attorney Barton asserted that voluntary intoxication is not a defense to first-degree murder. It follows that Attorney Barton never explained Pennsylvania decisional law holding that voluntary intoxication can negate the element of specific intent to kill required for a first-degree murder conviction, Appellant claims. For his part, Attorney Barton denied the Stahleys' claims in this regard.

The PCRA court determined Attorney Barton provided the credible testimony on this contested point. The court opines:

> Attorney Barton's credible testimony established that in his conversations with [Appellant], they spoke about whether he actually formed the intent to kill. Specifically, Attorney Barton explained the defense of intoxication. He explained that to present a defense of diminished capacity by intoxication, the intoxication had to be so overwhelming as to render him unable to process what was going on. Attorney Barton actually copied the law on first and third degree murder and diminished capacity and reviewed them with both [Appellant] and his mother. Accordingly, Attorney Barton cannot be found to be ineffective when he did, in fact, explain to [Appellant] and his parents the defense of voluntary intoxication.

Trial Court Opinion, at 24. As noted above, credibility determinations are within the sole province of the finder of fact, which in this case is the PCRA court. As there appears nothing in the record giving cause to disturb the court's findings of fact, Appellant's issue merits no relief.

Relatedly, Appellant also asserts Attorney Barton ineffectively proceeded to a stipulated non-jury trial instead of introducing evidence of Appellant's intoxication at the time of the crime. Evidence of his intoxication included: Appellant's post-arrest statement that he had drunk a half-gallon of

vodka at the time of the crime; the recovery of an empty vodka bottle from his bedroom; the testimony of Mr. Evans that Appellant was crying uncontrollably during his transport to the hospital; emergency room admission records containing a diagnosis of "alcohol intoxication"; Mrs. Stahley's testimony that Appellant was swaying when he returned from the park; Mr. Stahley's testimony that Appellant smelled of alcohol when he returned home; and the testimony of Dr. John O'Brien, a psychologist who concluded Appellant was unable to formulate the intent to kill Julianne Siller due to a number of factors including intoxication.

In response, the Commonwealth argues there was compelling evidence demonstrating Appellant's specific intent to kill:

> [Appellant] brought the victim to a secluded trail in a park, argued with her, and decided to kill her. He stabbed her first in the neck and then stabbed her over 75 more times. While he continued to stab her, he dragged her by her arms and hair into a wooded area. Hours later, he gave a detailed statement to police about the killing, in which he admitted that he intended to kill the victim and that he attempted to conceal her body. He also attempted to clean himself up after the murder.

Appellee's brief, at 19.

Most problematic for Appellant is that the evidence he presents to sustain his claim does not show he was "so intoxicated as to be overwhelmed to the point of losing his faculties and sensibilities and unable to formulate a specific intent to kill." ***See Commonwealth v. Spotz***, 47 A.3d 63, 92-93 (2012) (citing ***Commonwealth v. Hutchinson***, 25 A.3d 277 (Pa. 2011)) (citations omitted). In fact, the testimonies of those who saw Appellant

shortly before and shortly after the murder in question indicate he ably directed his actions and communicated his thoughts during all relevant times. Though he was emotional that evening, he nevertheless demonstrated no difficulty in leading investigators to the crime scene, describing to authorities the events leading up to his killing of Ms. Siller, or confirming that he formed the intent to kill just seconds before he stabbed her. Such evidence, therefore, refutes Appellant's claim that counsel's failure to make a voluntary intoxication presentation denied him a worthwhile guilt-phase defense. ***See Spotz***, 47 A.3d at 94-95 (holding evidence of defendant's directed, intentional, goal-oriented activity at or near time of murder argues strongly against assertion that diminished capacity would have been viable trial defense had counsel only done further investigation).

In Appellant's remaining claim, he contends that his 2014 discretionary sentence of life without parole ("LWOP") imposed in conformity with ***Miller v. Alabama***, 567 U.S. 460 (2012)[2] has since been rendered illegal by the Pennsylvania Supreme Court decision in ***Commonwealth v. Batts***, 163 A.3d 410 (Pa. 2017) ("***Batts II***"), which, Appellant maintains, applies retroactively to his collateral appeal. We review legality of sentencing claims "pursuant to

[2] On June 25, 2012, the United States Supreme Court held in ***Miller v. Alabama*** that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" ***Id.***, 567 U.S. at 465.

a *de novo* standard and plenary scope of review." ***Batts II***, 163 A.3d at 434-36.

Initially, we note Appellant properly predicates his claim of an illegal sentence on the argument that ***Batts II*** presents a new rule of law that is retroactively applicable to his present PCRA claim. With respect to the interplay between the legality of sentence and retroactivity claims, jurisprudence of this Commonwealth has stated:

> A new rule of law does not automatically render final, pre-existing sentences illegal. A finding of illegality, concerning such sentences, may be premised on such a rule only to the degree that the new rule applies retrospectively. In other words, if the rule simply does not pertain to a particular conviction or sentence, it cannot operate to render that conviction or sentence illegal. (***Accord Welch v. United States***, ––– U.S. ––––, ––––, 136 S.Ct. 1257, 1264, 194 L.Ed.2d 387 (2016) (alluding to the "general bar on retroactivity" for new constitutional rules of a procedural dimension); ***Montgomery***, ––– U.S. at ––––, 136 S.Ct. at 730 ("[A] trial conducted under a procedure found to be unconstitutional in a later case does not, as a general matter, have the automatic consequence of invalidating a defendant's conviction or sentence.").

Commonwealth v. Washington, 142 A.3d 810, 814-815 (Pa. 2016).

"[N]ew constitutional procedural rules generally pertain to future cases and matters that are pending on direct review at the time of the rule's announcement." ***Id.***, at 815. Per ***Teague v. Lane***, 489 U.S. 288 (1989) (plurality) and its progeny, "[a] new rule applies retroactively in a collateral proceeding only if (1) the rule is substantive or (2) the rule is a 'watershed rule of criminal procedure' implicating the fundamental fairness and accuracy

of the criminal proceeding." ***Commonwealth v. Ross***, 140 A.3d 55, 59 (Pa.Super. 2016) (citation and quotation omitted).[3]

Batts II involved a juvenile defendant who had originally received a mandatory LWOP sentence in 2007 for first-degree murder. While defendant Batts' direct appeal was pending, the United States Supreme Court issued its decision in ***Miller***, invalidating mandatory LWOP sentences for juveniles and further indicating that discretionary LWOP sentences for juveniles should be a rarity. In ***Commonwealth v. Batts***, 66 A.3d 286 (2013), ("***Batts I***"), the Pennsylvania Supreme Court directed that defendant Batts be resentenced in light of ***Miller***. Upon resentencing, however, Batts received a discretionary

[3] On the topic of choosing a test to decide retroactivity issues, this Court has said:

> While state courts are free to adopt more liberal standards in determining whether a decision is to be accorded full retroactivity, our Supreme Court has utilized the ***Teague*** test in examining retroactivity issues during state collateral review. ***Commonwealth v. Bracey***, 986 A.2d 128 (Pa. 2009); ***Commonwealth v. Hughes***, 865 A.2d 761 (Pa. 2004) (discussing ***Teague*** and whether a new rule was a watershed procedural rule); ***see also Commonwealth v. Cunningham***, 622 Pa. 543, 81 A.3d 1, 8 (2013) ("This Court, however, generally has looked to the ***Teague*** doctrine in determining retroactivity of new federal constitutional rulings."). In ***Cunningham***, the Court acknowledged that "this practice is subject to potential refinement" and "is not necessarily a natural model for retroactivity jurisprudence as applied at the state level." ***Cunningham***, ***supra*** at 8. However, it ultimately applied the ***Teague*** formulation.

Commonwealth v. Riggle, 119 A.3d 1058, 1065 (Pa.Super. 2015).

LWOP sentence. This Court affirmed, and Batts appealed to the Pennsylvania Supreme Court, which granted his petition for allowance of appeal.

In reversing Batts' judgment of sentence and remanding, our Supreme Court devised a procedural scheme by which to implement ***Miller***. Specifically, the scheme adopted a presumption against sentencing a juvenile to life in prison without the possibility of parole, and it imposed a burden upon the Commonwealth to prove a juvenile was incapable of rehabilitation beyond a reasonable doubt.

Importantly, the central concepts of ***Miller*** informed the ***Batts II*** procedures:

> Under ***Miller*** and ***Montgomery*** [***v. Louisiana***, ––– U.S. ––––, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016)], a sentencing court has no discretion to sentence a juvenile offender to life without parole unless it finds that the defendant is one of the "rare" and "uncommon" children possessing the above-stated characteristics, permitting its imposition. ***Montgomery***, 136 S.Ct. at 726, 734; ***Miller***, 567 U.S. at 479, 132 S.Ct. 2455; ***see Graham***, 560 U.S. at 73, 130 S.Ct. 2011; ***Roper***[***v. Simmons***], 543 U.S. [551,] 572–73, 125 S.Ct. 1183, 161 L.Ed.2d 1 [(2005)]. A sentence of life in prison without the possibility of parole for a murder committed when the defendant was a juvenile is otherwise disproportionate and unconstitutional under the Eighth Amendment. ***Montgomery***, 136 S.Ct. at 734, 735.
>
> Thus, in the absence of the sentencing court reaching a conclusion, supported by competent evidence, that the defendant will forever be incorrigible, without any hope for rehabilitation, a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose. ***See*** [***Commonwealth v.***] ***Vasquez***, 744 A.2d [1280,] 1282 [(Pa. 2000)]; [***Commonwealth v.***] ***Shiffler***, 879 A.2d [185] 189 [(Pa. 2005)]; ***In re M.W.***, 725 A.2d [729,] 731 [(Pa. 1999)].

Batts II, 163 A.3d at 435-36.

Our Supreme Court went on to conclude, therefore, that "a faithful application of the holding in ***Miller***, as clarified in ***Montgomery***, requires the creation of a presumption against sentencing a juvenile offender to life in prison without the possibility of parole." ***Batts II***, 163 A.3d at 452. Supporting this conclusion were the following reflections on ***Miller***:

> [A]ny suggestion of placing the burden on the juvenile offender is belied by the central premise of ***Roper***, ***Graham***, ***Miller*** and ***Montgomery***—that as a matter of law, juveniles are categorically less culpable than adults. This central premise arises from "a conclusion firmly based upon the generally known results of wide human experience," which is that the vast majority of adolescents change as they age and, despite their involvement in illegal activity, do not "develop entrenched patterns of problem behavior." ***Miller***, 567 U.S. at 471, 132 S.Ct. 2455 (referring to this conclusion as "common sense" and "what any parent knows") (citing ***Roper***, 543 U.S. at 569–70, 125 S.Ct. 1183); ***Watkins***, 173 A. at 648. *The* ***Miller*** *Court reiterated the High Court's longstanding conclusion that the distinctive attributes of youth generally preclude a finding that a juvenile will forever be incorrigible, especially in light of the great difficulty even professional psychologists have in making that determination during a person's youth*. ***See Miller***, 567 U.S. at 472–73, 479–80, 132 S.Ct. 2455.
>
> ***Miller***'s holding, "that life without parole is an excessive sentence for children whose crimes reflect transient immaturity," is a "substantive rule of constitutional law." ***Montgomery***, 136 S.Ct. at 735. This, according to ***Montgomery***, means that only "the rarest of juvenile offenders" are eligible to receive a sentence of life without the possibility of parole. ***Id.***
>
> Only in "exceptional circumstances" will life without the possibility of parole be a proportionate sentence for a juvenile.[ ] ***Id.*** at 736. Thus, there can be no doubt that pursuant to established Supreme Court precedent, the ultimate fact here (that an offender is capable of rehabilitation and that the crime was the result of transient immaturity) is connected to the basic fact (that the

> offender is under the age of eighteen). ***See Childs***, 142 A.3d at 830.
>
> The United States Supreme Court expressly left it to the States to determine how the holding in ***Miller*** was to be implemented in state court proceedings. ***Montgomery***, 136 S.Ct. at 735.

Batts II, 163 A.3d at 452 (emphasis added).

The Court further held the Commonwealth could rebut the presumption against the imposition of LWOP punishment with proof beyond a reasonable doubt that the juvenile falls under the exception to the general rule deeming juvenile offenders rehabilitable. ***Id.*** at 453. On this point, again, the Court drew upon the ***Miller*** decision:

> The United States Supreme Court has clearly and unambiguously instructed that the decision that an offender is one of the rare and uncommon juveniles who may constitutionally receive a sentence of life without the possibility of parole must be made with near certainty. *The sentencer must determine that the offender is and "forever will be a danger to society," a finding that the High Court found to be in direct conflict with a child's inherent capacity to change.* ***Miller***, 567 U.S. at 472, 132 S.Ct. 2455. To protect youthful offenders from erroneous decisions that foreclose their ability to ever be released from prison, the Supreme Court therefore held that a sentence of life without parole is disproportionate and illegal for a juvenile offender unless that defendant "exhibits such irretrievable depravity that rehabilitation is **impossible**." ***Montgomery***, 136 S.Ct. at 733 (citing ***Miller***, 567 U.S. at 479–80, 132 S.Ct. 2455) (emphasis added).
>
> Pursuant to our consideration of the attendant due process concerns and the definitive language used by the Supreme Court, we conclude that to overcome the presumption against the imposition of a sentence of life without parole for a juvenile offender, the Commonwealth must prove that the juvenile is constitutionally eligible for the sentence beyond a reasonable doubt. In an effort to satisfy this burden, the Commonwealth may present evidence relating to the factors announced in ***Miller*** and the factors appearing in section 1102.1(d).

Batts II, 163 A.3d at 454–55 (emphasis added).

At the time ***Batts II*** was decided, Appellant's judgment of sentence was final, and his present collateral appeal was pending. Under the general rule of retroactivity cited *supra*, therefore, the new constitutional procedural rule announced in ***Batts II*** would not apply to Appellant's matter. Acknowledging this fact, Appellant argues ***Batts II*** qualifies as an exception to the general rule, as it announced either a substantive rule or, in the alternative, a "watershed rule of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding." ***Ross***, 140 A.3d at 59.

Differentiating substantive from procedural rules, the Pennsylvania Supreme Court has explained:

> [S]ubstantive rules are those that decriminalize conduct or prohibit punishment against a class of persons. ***See Montgomery***, ––– U.S. at ––––, 136 S.Ct. at 729–30. Concomitantly, the Supreme Court has made clear that "rules that regulate only the *manner of determining* the defendant's culpability are procedural." ***Id.*** at ––––, 136 S.Ct. at 730 (quoting ***Schriro v. Summerlin***, 542 U.S. 348, 353, 124 S.Ct. 2519, 2523, 159 L.Ed.2d 442 (2004)) (emphasis in original).
>
> As to watershed rules, to date, the Supreme Court of the United States has discerned only one, arising out of the sweeping changes to the criminal justice system brought about by the conferral of the right to counsel upon indigent defendants charged with felonies in ***Gideon v. Wainwright***, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). ***See Beard v. Banks***, 542 U.S. 406, 417, 124 S.Ct. 2504, 2513–14, 159 L.Ed.2d 494 (2004).

Washington, 142 A.3d at 813.

Specifically, Appellant offers alternative arguments for retroactive application of ***Batts II*** to his collateral appeal, asserting ***Batts II*** announced either a substantive rule of constitutional law or a watershed procedural rule:

> [Appellant] was never placed in the class of individuals eligible to receive life without parole. After [his] sentence was final, the Pennsylvania Supreme Court, in ***Batts II***, corrected the prevailing jurisprudence in the state and adopted due process protections to ensure unconstitutional sentences were not imposed. The Court established that life without parole imposed in the absence of key due process protections was an illegal sentence beyond the state's authority to impose, creating a substantive rule that must be applied on collateral review [pursuant to ***Teague***].
>
> . . .
>
> Alternatively, . . . [e]ven if ***Batts II*** is deemed procedural, it satisfies ***Teague's*** second exception as a "watershed rule[ ] of criminal procedure" [so as to require retroactive application]. . . . [***Batts II***] requir[es] a sentencing court to presume the attendant characteristics of youth and how they counsel against a life without parole sentence[, as is] necessary to avoid an unacceptable risk that the facts of the case will overpower the inherent mitigation of youth. . . . The presumption also constitutes a "bedrock procedural element" as it ensures the court conducts its analysis from the proper starting point, favoring parole-eligibility, and the presumption shifts the burden to the Commonwealth. "[A]ny suggestion of placing the burden on the juvenile offender is belied by the central premise of ***Roper***, ***Graham***, ***Miller***, and ***Montgomery***—that as a matter of law, juveniles are categorically less culpable than adults."
>
> Further, ***Batts II*** affirms the need for the Commonwealth to prove irreparable corruption [of the juvenile] beyond a reasonable doubt. . . . The Court selected the highest burden of proof due to its assessment that the "risk of an erroneous decision against the offender would result in the irrevocable loss of that liberty for the rest of his or her life," which outweighed the minimal risk of a parole-eligible sentence[, with parole likely to be denied if the juvenile later proved to be incapable of rehabilitation after all]. . . . Requiring a sentencer to shift from weighing various factors to

> the Commonwealth having to prove irreparable corruption beyond a reasonable doubt creates a fundamentally different hearing.
>
> . . .
>
> [In the case *sub judice*,] [t]he lack of a presumption, failing to assign the burden of proof to the Commonwealth, and the absence of a beyond the reasonable doubt standard left the sentencing court in a position of merely weighing various factors against one another rather than answering ***Miller***'s central question: whether the juvenile is capable of rehabilitation.

Appellant's brief at 26, 33, 34-35, 36.

The Commonwealth counters that ***Batts II*** expressed neither a substantive new rule nor a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding. Instead, the Pennsylvania Supreme Court in ***Batts II*** identified that it was merely imposing new "procedural safeguards . . . required to ensure that life-without-parole sentences are meted out only to 'the rarest of juvenile offenders' whose crimes reflect 'permanent incorrigibility,' 'irreparable corruption' and 'irretrievable depravity,' as required by ***Miller*** and ***Montgomery***." ***Batts II***, at 416. As the procedures simply advanced the ***Miller*** concepts of juvenile sentencing, the Commonwealth submits, they affected only the manner in which the court determined sentence, and do not amount to a substantive rule.

Nor do the ***Batts II*** procedures reach "watershed status," argues the Commonwealth. This is hardly surprising, the Commonwealth continues, as the United States Supreme Court has effectively limited the class of cases establishing watershed rules to a class of one—***Gideon v. Wainwright***, 372

U.S. 335 (1963) (requiring the appointment of counsel to indigent defendants charged with felonies). ***See Whorton v. Bockting***, 549 U.S. 406, 417-18 (2007) ("in the years since ***Teague***, we have rejected every claim that a new rule satisfied the requirements for watershed status") (collecting cases).

Further undercutting Appellant's claim that ***Batts II*** announces a watershed procedural rule, the Commonwealth posits, is that ***Miller*** and ***Montgomery*** anticipated states would create procedural rules to implement ***Miller***'s new substantive rule. It insists this is all the Pennsylvania Supreme Court did in its ***Batts II*** decision, as the Superior Court has since recognized. Appellee's brief at 28 (citing ***Commonwealth v. Foust***, 180 A.3d 416, 429 (Pa.Super. 2018) ("After deciding the merits of Batts' appeal, our Supreme Court 'exercise[d its] constitutional power of judicial administration to devise a procedure for the implementation of the ***Miller*** and ***Montgomery*** decisions in Pennsylvania.'") (quoting ***Batts II***).

Appellant first submits that ***Batts II*** expresses a substantive rule, as he claims it forbids imposition of a LWOP sentence upon a defined class of individuals, namely, those whom the Commonwealth cannot prove beyond a reasonable doubt are incapable of rehabilitation. In other words, he says ***Batts II*** protects a class of individuals from a discretionary LWOP sentence beyond the Commonwealth's authority. Appellant's brief at 29. We disagree.

It was ***Miller***, not ***Batts II***, that announced the relevant substantive rule requiring retroactive application when it held sentencing a juvenile to life without parole is excessive for all but "the rare juvenile offender whose crime

reflects irreparable corruption[.]" ***Id.***, at 479-480. ***See also Montgomery***, 136 S.Ct.. at 734 (recognizing ***Miller*** issued a new substantive rule requiring retroactive application to collateral appeals). Indeed, the Pennsylvania Supreme Court specifically announced it was providing with its ***Batts II*** decision a procedural overlay to ***Miller*** in order to advance implementation of ***Miller*****.** As such, ***Batts II*** did not represent an extension of ***Miller*** by defining an additional class of juvenile offenders capable of rehabilitation and, thus, insulated from LWOP sentencing. Instead, it only developed procedures, rooted in ***Miller***'s principal considerations of juvenile sentencing, that would optimize accurate identification of rehabilitable juveniles coming under ***Miller***'s protection.

This conclusion aligns with the precept in ***Schriro*** and its progeny that whether a new rule is substantive or procedural is largely driven by a consideration of the function of the rule at issue, we discern that the new rule in ***Batts II*** may fairly be said to regulate only the procedures for determining a juvenile offender's capacity for rehabilitation. As such, the rule is procedural, not substantive. ***See Welch***, 136 S.Ct. at 1265-66. For these reasons, we conclude ***Batts II*** announced no substantive rule qualifying for retroactive application to cases pending on collateral review.

Alternatively, Appellant argues, ***Batts II*** created a "watershed rule of criminal procedure requiring retroactive application." Appellant's brief at 33 (emphasis omitted). "Even if ***Batts II*** is deemed procedural, it satisfies ***Teague***'s second exception as a "watershed rule[ ] of criminal procedure[,]"

Appellant posits, because the change is "necessary to prevent an impermissibly large risk" of inaccuracy in a criminal proceeding and also "alter[s] our understanding of the bedrock procedural elements essential to the fairness of a proceeding." Appellant's brief at 33 (acknowledging standard expressed in ***Whorton***, 549 U.S. at 418 (internal quotations omitted)). Appellant also claims that "[t]he requirements under ***Batts II*** upend juvenile homicide sentencing hearings, recognizing the distinct nature of life without parole and protecting against such a sentence for a certain class of youth." Appellant's brief at 34.

We discern no "impermissibly large risk" of inaccuracy in LWOP proceedings when ***Miller*** repeatedly emphasized how rare it is for a juvenile's crime to reflect incorrigibility and admonished that a LWOP sentence should be an uncommon occurrence. [4] Clearly, the aim of the ***Batts II*** procedural

[4] To our earlier discussion of such references in ***Miller***, we add the following principled insights from the seminal decision that served as a template for the ***Batts II*** procedural scheme:

> "[G]iven all we have said in ***Roper***, ***Graham***, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in Roper and Graham of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the *rare* juvenile offender whose crime reflects irreparable corruption." ***Roper***, 543 U.S. at 573, 125 S.Ct. 1183; ***Graham***, 560 U.S. at 68, 130 S.Ct., at 2026-2027. Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children

scheme is to reduce misapplications of ***Miller*** in juvenile sentencing, and its specific requirements regarding presumptions and burdens are well-designed toward that end.

Yet, precedent teaches that "the chance of a more accurate outcome under the new procedure normally does not justify the cost of vacating a conviction whose only flaw is that its procedures 'conformed to then-existing constitutional standards.'" ***Teague***, ***supra***, at 310. In this regard, ***Miller***'s standards, embracing as they did a clear repudiation of not only mandatory LWOP sentencing schemes but also the notion of commonplace discretionary LWOP sentences, did much to clarify how sentencing courts should view evidence of a juvenile's capacity to rehabilitate. While ***Batts II*** provides a delineation of procedures that aid in this evidentiary review, we stop short of

> are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." ***Miller***, at 479-480.
>
> "'[o]nly a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior.'" ***Miller*** at 471 (at 570) (citation omitted).
>
> "We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed'" ***Miller***, at 570 (citation omitted).
>
> Incorrigibility is inconsistent with youth. Life without the possibility of parole forswears altogether the rehabilitative ideal. It is "at odds with a child's capacity for change." ***Miller***, at 473 (citation omitted).

declaring it to have altered our understanding of ***Miller***'s bedrock elements informing a fair proceeding.

Indeed, in ***Batts II***, our Pennsylvania Supreme Court distilled ***Miller***'s essential observations—appropriate occasions for LWOP sentences will be *uncommon*; it will be the *rare* juvenile offender whose crime reflects irreparable corruption; and fundamental differences between children and adults *counsel against* LWOP sentences for juveniles—into a procedural scheme requiring sentencing courts to presume juveniles can rehabilitate and placing upon the Commonwealth the burden to prove otherwise beyond a reasonable doubt. To be sure, our Supreme Court acknowledged ***Miller***'s pivotal role in the formulation of the ***Batts II*** presumption and burden of proof assignment where it noted "any suggestion of placing the burden on the juvenile offender is belied by the central premise of ***Roper***, ***Graham***, ***Miller***, and ***Montgomery***. . . ." ***Batts II***, 163 A.3d at 452.

Such a scheme, therefore, represents the manifestation of ***Miller***'s clear charge for mitigated sentencing with the opportunity for parole in the vast majority of juvenile cases.

Rather than including ***Batts II*** among the ranks of ***Gideon***—the only decision recognized by the United States Supreme Court as issuing a watershed procedural rule—we understand ***Batts II*** as announcing a new rule that nevertheless rests largely on the ***Miller*** precedent. As such, ***Batts II*** provides a most salient directive regulating the manner in which sentencing courts are to implement ***Miller***'s governing considerations.

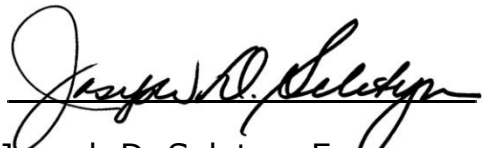
We, therefore, decline to find ***Batts II*** established a watershed procedural rule necessitating retroactive application to collateral proceedings. Accordingly, Appellant's final challenge fails.

Order affirmed.

Judge Stabile has joined the Opinion.

Judge Strassburger files a Concurring/Dissenting Opinion.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/19/18

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
TRISTAN STAHLEY	:	
Appellant	:	No. 3109 EDA 2017

Appeal from the PCRA Order August 28, 2017
in the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0005026-2013

BEFORE: STABILE, J., STEVENS, P.J.E.,* and STRASSBURGER, J.**

CONCURRING AND DISSENTING OPINION BY STRASSBURGER, J.: **FILED DECEMBER 19, 2018**

I join the Majority opinion denying relief with respect to Appellant's ineffective-assistance-of-counsel claim. However, because ***Commonwealth v. Batts***, 163 A.3d 410 (Pa. 2017) (***Batts II***) announced a substantive change in the law, it therefore applies to Appellant retroactively. Accordingly, I would vacate Appellant's sentence and remand for a new sentencing hearing applying ***Batts II***.

Here, the Majority concludes that our Supreme Court in ***Batts II*** "devised a procedural scheme by which to implement" ***Miller v. Alabama***, 567 U.S. 460 (2012); therefore, it is not required to be applied retroactively. Majority at 21. ***Batts II***, however, is more than merely procedural. Instead,

it concludes specifically, that in order to apply ***Miller*** constitutionally, there must be a

> presumption against the imposition of a sentence of life without parole for a defendant convicted of first-degree murder committed as a juvenile…. To rebut the presumption, the Commonwealth has the burden to prove, beyond a reasonable doubt, that the juvenile offender is permanently incorrigible and thus is unable to be rehabilitated. Consistent with the mandate of ***Miller*** and ***Montgomery***, for a life-without-parole sentence to be constitutionally valid, the sentencing court must find that the juvenile offender is permanently incorrigible and that rehabilitation would be impossible.

Batts II, 163 A.3d at 459.

"Concerning the substantive/procedural dichotomy, substantive rules are those that decriminalize conduct or prohibit punishment against a class of persons." ***Commonwealth v. Washington***, 142 A.3d 810, 813 (Pa. 2016). ***Batts II*** prohibits punishment against a class of persons, *i.e.* those juveniles whom the Commonwealth has not proven beyond a reasonable doubt to be permanently incorrigible. 163 A.3d at 476.

In fact, this is essentially the position taken by two Justices in ***Batts II***. ***See Batts II***, 163 A.3d at 460-61 (Wecht J., concurring) (pointing out that despite the diligent efforts of the trial court to consider every factor in sentencing Batts to an LWOP sentence, it "still fell short of the new constitutional standard").

Based on the foregoing, I would vacate Appellant's sentence and remand for a new, constitutional sentencing hearing applying the presumption and burden of proof required by ***Batts II***.

APPENDIX C

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY
PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-46-CR-0005026-2013
V.	:	
TRISTAN STAHLEY	:	**3109 EDA 2017**

OPINION

CARPENTER J. **NOVEMBER 15, 2017**

FACTUAL AND PROCEDURAL HISTORY

Appellant, Tristen Stahley ("Stahley"), appeals from an order dated August 28, 2017, dismissing of his petition seeking collateral relief pursuant to the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§9541-9546. On appeal, Stahley contests this Court's determination that Commonwealth v. Batts, 163 A.3d 410 (Pa. 2017) does not apply retroactively in the PCRA context and this Court's conclusion that trial counsel was not ineffective.

A brief history of this case follows. After a motion to suppress was denied, a Stipulated Non-Jury Trial was held on September 29, 2014. The trial established that on May 25, 2013, Stahley murdered Julianne Siller, who was 17 years-old. (Stipulated Bench Trial 9/29/14, p. 13). Stahley was 16 years of age at the time of the murder. Id. On the night of the incident, a dispatch came into the State Police of a stabbing in Palmer Park. Id. at 13. The two responding troopers went to Stahley's house, where they saw Stahley and his father on the

ground fighting. Id. After separating the two, Stahley makes a statement that he stabbed his girlfriend because she broke up with him and that he thought she would hookup with other people. Id.

The troopers took Stahley to Palmer Park and he directed them to the trail where the Ms. Siller was laying. Id. There was blood on the trail and a trail of blood into the woods of the park. Id. Stahley's DNA was found at the scene. There was DNA on the knife used to kill Ms. Siller. Id. at 13 -14. The handle of the knife contained Stahley's DNA and on the blade was that of Ms. Siller. Id. at 14. In addition, one of the troopers found blood in the bathroom at Palmer Park, which was genetically matched to Stahley. Id.

At the scene of the crime the troopers found Ms. Siller's jean jacket with a stab wound in it, a shirt that had blood on it, stab wounds on Ms. Siller and the murder weapon, 10 feet from Ms. Siller's body. Id.

Trooper Barry Bertolet took custody of Stahley at the scene when Ms. Siller's body was found. Id. Trooper Bertolet went through the Miranda warnings form with Stahley while in the presence of his mother. Id. Stahley and his mother both signed the form, indicating they understood all of his rights. Id.

Stahley gave the troopers a statement. During this statement Stahley told the trooper that he was sober and that he understood what was going on. Id. In the statement, Stahley gave a rendition of the facts, wherein he said that he and Ms. Siller were in a relationship, but they were on again off again, and that she would always come back. Id. at 15. Additionally, he told the

troopers that they got into a fight that night about her going out and that he stabbed her in the neck with the knife. Id. The trooper asked Stahley, "'When did you make the decision in your mind?'" and he replied, "'About two seconds before I did it." Id.

An autopsy was performed on Ms. Siller and the cause of death was determined to be multiple stab and cutting wounds, and the manner of death was homicide. Id. Ms. Siller suffered over 75 stab wounds to her body, including 27 to her head and nect and 45 to her torso and shoulders. Id.

At the conclusion of the trial, this Court found Stahley guilty beyond a reasonable doubt of murder in the first degree. Id. at 19.

On December 17, 2014, a sentencing hearing was held. After considering the Miller v. Alabama, 132 S.Ct. 2455 (2012) factors as codified in 18 Pa.C.S.A. §1102.1 and stating its reasons on the record, including the finding of irreparable corruption, this Court imposed a sentence of life imprisonment without parole. No appeal was filed.

On December 22, 2015, Stahley filed a *pro se* PCRA petition. Counsel was appointed, and after multiple extensions of time, PCRA counsel filed an Amended PCRA Petition on February 13, 2017.

A PCRA Hearing was conducted on July 25, 2017. Stahley's trial counsel, Timothy Barton, a seasoned defense attorney of 29 years, provided credible testimony as follows. . (PCRA Hearing 7/25/17 p. 25). Attorney Barton's involvement in this case began when he had been privately retained by the Stahleys. Id. at 4. In his initial meetings with the Stahley family, he

discussed the scope and nature of his representation and he also interviewed Mr. and Mrs. Stahley regarding anything they might know about the incident. Id. at 5.

Both Mr. and Mrs. Stahley had been present the night that Stahley was arrested. Id. Mrs. Stahley accompanied Stahley to the police station and was present during the custodial interrogation when Stahley, a then minor, gave a statement to police. Id. at 5 - 6.

Attorney Barton estimated that he met with Stahley over a dozen times, "if not more." Id. at 6. He met with him on a weekly basis for a period of time at Montgomery County Correctional Facility. Id. In addition, Attorney Barton testified that he met with Stahley's parents "[o]ften" and were in frequent contact, although he was unable to estimate on how many occasions. Id. at 6 - 7.

Since Stahley admitted to the murder in his statement to police, Attorney Barton's initial strategy was to focus on whether at the time of the crime Stahley could have formed a specific intent to kill and what degree of guilt it might be. Id. at 7. Prior to trial, Attorney Barton in part prepared a decertification motion, for which he retained two psychiatrists, Dr. John O'Brien and Dr. Steven Samuel. Id..at 8. He further testified that he also retained Dr. Samuel for the purpose of interviewing Stahley to ascertain what defenses there might be at trial. Id. at 25 - 27. In part, Attorney Barton wanted to use Dr. Samuel's report to show the DA that there should be some sort of plea negotiations. Id. at 27. In addition, he had several conversations with the

assigned Assistant District Attorney, Jeremy Lupo, who had been assigned the case and with the then District Attorney, Risa Ferman, about possible resolutions. Id. at 8. ADA Lupo informally suggested that if Stahley were to plead guilty, the Commonwealth would recommend a sentence of 40 - 80 years' imprisonment. Id. at 28. Attorney Barton testified that Stahley was not interested in that deal in large part because he believed that in 40 years his mom and/or dad would be deceased. Id. That was very important to Stahley, the hope that he would be able to reunify with his parents. Id.

Attorney Barton testified that in his conversations with Stahley, they spoke about whether he actually formed the intent to kill. Id. at 9. Attorney Barton also testified that Stahley had described his state of mind the evening of the murder, telling him that he intended to kill the victim. Id. at 32. Stahley told Attorney Barton this at various meetings at the Montgomery County Correctional Facility. Specifically, Stahley told Attorney Barton that it was not his intent to kill Miss Siller when they were at the home or left the home or went to the park, but at some point while at the park he decided to kill her. Id.

Attorney Barton stated that he had reviewed discovery, which included a property receipt for a search that was executed at the Stahley's home. Id. at 9 - 10. In that property receipt was a "'nearly empty bottle of raspberry vodka.' "Id. at 11. Attorney Barton also reviewed various witness statements, and in particular the statement of Todd Evans, a paramedic who treated Stahley the evening of the murder, wherein Stahley told Mr. Evans that

he was under the influence of alcohol. Id. at 12. Stahely had also told police in his statement that he had been under the influence of alcohol. Id.

According to Attorney Barton, he had also received an expert report from Dr. O'Brien which opined "'It is my opinion that Mr. Stahley's records and the psychological testing performed by Dr. Samuel reflect him to have been a troubled adolescent with a combination of both psychiatric symptoms and characterologic difficulties which rendered him susceptible to the disinhibiting effects of alcohol on the night of the offense.'". Id. at 13, 15. The report concluded "'It is my opinion that as a result of his psychiatric, psychological and characterologic impairments, and his degree of intoxication at the time of the offense, Mr. Stahley was not able to premeditate, deliberate and formulate the intent to kill Julianne Stiller, notwithstanding his response to police questioning about the timing of his,'" quote, "'decision,'" unquote "'to kill Julianne Siller at the time of the offense.'" Id. at 17.

Attorney Barton had this report prior to the trial; however, he did not call Dr. O'Brien to testify at the time of trial or at the suppression hearing. Id. at 17 - 18. On cross-examination, Attorney Barton explained that Dr. O'Brien had been privately retained by the Stahley family for an opinion regarding Stahley's ability to form the specific intent to kill, in anticipation of him testifying at a jury trial. Id. at 29. At some point, Attorney Barton had concerns about Dr. O'Brien's opinion. Id. .at 30 He elaborated that in speaking with Dr. O'Brien after the Commonwealth had an expert examine Stahley and prepare a report and some of the statements Stahley made after Dr. O'Brien's report was

prepared, that Dr. O'Brien's opinion was weakened, if not invalidated. Id. at 30. More specifically, Attorney Barton had the expert report prepared by Dr. Barbara Ziv, the expert retained by the Commonwealth to examine Stahley. Id. at 31. He reviewed the report himself and with Stahley at the prison. Id.

At the PCRA Hearing, Attorney Barton detailed the events on September 29, 2014, the day of the scheduled trial that occurred causing Stahley's decision to proceed with a Stipulated Bench Trial instead of a jury trial. That morning Attorney Barton was prepared to proceed to a jury trial, and would have presented Dr. O'Brien, Mrs. Stahley and possibly Stahley along with an intoxication defense. Id. 19, 21 - 22. Mrs. Stahley requested that she speak to her son. Id. at 19. Both Mr. and Mrs. Stahley were permitted to meet with Stahely in the robing room, where there was a conversation mainly between Mrs. Stahley and Stahley about whether he should proceed with a jury trial or plead guilty. Id.

Mrs. Stahley and Attorney Barton had had many conversations about the merits of the Commonwealth's case, the defenses and the options. Id. Specifically, Attorney Barton explained the defense of intoxication. Id. He explained that to present a defense of diminished capacity by intoxication had to be so overwhelming as to render him unable to process what was going on. Id. at 20. Attorney Barton actually copied the law on first and third degree murder and diminished capacity and reviewed them with both Stahley and his mother. Id. Attorney Barton also discussed Dr. O'Brien's report with them. Id. at 21. Additionally, Attorney Barton testified that they discussed jury trial, waiver

of a jury trial and what each entailed. Id. They discussed degree of guilty hearings. Id. Attorney Barton elaborated that whether to proceed to a stipulated non-jury trial was an evolving conversation. He stated that that consideration had been an ongoing conversation for weeks or months. As Attorney Barton explained it, "it was all part of the fabric of our conversations during probably the later parts of my representation..." Id. at 33.

The Commonwealth asked trial counsel why did Stahley proceed to a stipulated non-jury trial if Stahley elected to plead guilty. Id. Attorney Barton recollected that this Court did not want to accept a guilty plea because that would allow Stahley to at least attempt to file a motion to withdraw the guilty plea within ten days and; therefore, a stipulated non-jury trial was elected to go forward. Id. at 33 - 34. Attorney Barton fully advised Stahley that it would be a stipulated non-jury trial instead of a guilty plea. He also advised Stahely that it would be the functional equivalent of a guilty plea, but that he had to be absolutely certain he wanted to proceed in that manner because unlike a guilty plea, Stahley would not have the option to file a motion to withdraw guilty plea. Id. at 34.

It was Attorney Barton's opinion that the advantage to Stahley in waiving a jury trial and essentially pleading guilty would be that the sentencing court would take this into consideration when fashioning a sentence to impose, that Stahley showed some remorse, took some accountability and spared the Siller's a prolonged jury trial with graphic testimony and exhibits. Id. at 35. He believed these factors would be considered at the time of sentencing. Id.

Regarding, intoxication as an issue in this case, Attorney Barton did file a suppression motion, in part included therein was the argument that the statements that Stahley gave to police were not knowing and voluntary due to his level of intoxication. Id. at 35 - 36. There were several statements that Stahley made to troopers who responded to the original scene, those made when Stahley voluntarily accompanied the troopers to the park and those he made during his custodial interrogation. Id. at 36. During the custodial interrogation, Stahley had told the trooper that he was not intoxicated and that he could understand what was going on. Id. The trooper asked some questions to elicit some response about his condition, including his level of intoxication. Id. at 37. Mrs. Stahley was present during this questioning and signed off on each answer. Id.

There were audio/video recordings that cut against an intoxication defense. Id. Specifically, there was a video directing the troopers back to the park and you could hear Stahley it the audio being conversational with the troopers, directing them through the park, talking to them about certain things that happened. From Attorney Barton's perspective he believed this evidence, which to him showed that Stahley did not seem intoxicated, would be well below the standard required to suppress a statement due to involuntary intoxication. Id. at 38. He also believed that this evidence also undercut an intoxication defense at trial. Id.

Next to testify on behalf of Stahley was Todd Evans, who was employed by Skippack Emergency Medical Services as a paramedic and

responded to the scene at Palmer Park. Id. at 47 - 48. Mr. Evans provided emergency help to Stahley for some lacerations to his legs and an abrasion on his forehead. Id. at 48. While transporting Stahley to the hospital, Mr. Evans observed that Stahley had different mood swings. Id. One minute he would be calm and able to talk, but then he would break down crying and sobbing uncontrollably and verbalizing inappropriately. Id. Under questioning by PCRA counsel he said that Stahley's behavior "possibly" indicated intoxication. Id. at 49. However, Mr. Evans was able to communicate with Stahley. Id. at 50. He was able to ask Stahley questions, and Stahley was able to provide some answers. Id. at 51. Mr. Evans testified Stahley seemed emotionally upset. Additionally, Mr. Evans stated that Stahley was able to walk on his own. Id. at 51

Next to testify was Heather Stahley, Stahely mother. According to Mrs. Stahley, she relayed to Attorney Barton that her son told her that he had been drinking and taken Molly the night of the incident. Id. at 54. It was Mrs. Stahley testimony that Attorney Barton had advised her that voluntary intoxication is not a defense to murder. Id.

Mrs. Stahley testified that the morning of the scheduled trial, Attorney Barton spoke to her about the possibility of pleading open or a stipulated non-jury trial, explaining that he suggested it because Attorney Barton believed it was the best chance to obtain a more favorable sentence. Id. at 59. Mrs. Stahley relayed this information to her son in the robing room. Id. In regard to the degrees of murder, Attorney Barton had explained the difference between first degree and third degree murder. Id. at 61. He had also talked to

Mrs. Stahley about calling Dr. O'Brien as a witness at trial. Id. Additionally, Mrs. Stahley could only recall that Attorney Barton had met with her son four or five times over the course of his representation. Id. at 62.

Upon cross-examination, Mrs. Stahely recollected that in the statement she gave to troopers the night of the murder she did not tell the troopers that Stahley was intoxicated. Mrs. Stahley was with her son on the day and night of the murder. According to her statement to the troopers, at around 2:00 p.m., Stahley went into her room, wanting to go to Target where he bought a video game. Id. at 64 - 65. Stahley knew that his mom was upset about a fight she had with a friend, so he bought her favorite drink from Starbucks to cheer her up. Id. at 65. After Target Mrs. Stahely and her son went to Rita's and for water ice. Id. at 65 - 66. The two of them went home afterwards and watched TV. Id. Stahley was still trying to cheer up his mom. Id. at 66. Mrs. Stahley admitted at the PCRA hearing that Stahley did not appear intoxicated during the time spent together. Id. at 66.

At some point that evening, Stahley went upstairs to his room. Later around 7:00 p.m. he asked his mom to take him to Wawa. Id. at 67. Mrs. Stahley told the troopers in her statement that Stahley did not appear intoxicated between the time they got home from Rita's and went to Wawa. Id. at 68. After Wawa, Stahley spent some time in the living room, and later went up to his room again. Id. Around 8:20, Stahley went down and asked his mom to use her phone to call Julianne two times. Id. He then went up to his room with the phone. Id. Still, Stahley did not appear intoxicated. Id. at 69.

About 10 to 15 minutes later after Stahely gave his mom back her phone, Ms. Siller came over her house. Id. Ms. Siller said hi and went upstairs. Id. Mrs. Stahley heard bickering coming from upstairs and she went to check on them. Id. She asked them if they were okay, and they said they were fine. Id. at 69 - 70. Around 8:56 p.m., Mrs. Stahely spoke to her husband on the phone. Id. at 70. Ms. Siller and Stahley came downstairs around 9:01 p.m. Id. Mrs. Stahley saw them briefly, and she did not see any signs of intoxication in her son. Id.

Ms. Siller and Stahley went for a walk and sometime later Stahley returned to his home and asked his mom to go for a walk with him. Id. Mrs. Sthaley immediately knew that her son was crying. Id. at 71. She also noticed some blood or dirt on his legs, which Stahley explained away telling her he had fallen. Id. Mrs. Stahely tried to persuade her son to sit down and talk right there, but Stahley insisted they go for a walk. Id. at 71. On their walk Stahley told her that he and Ms. Siller broke up and that he stabbed her. Id. at 72. Stahley didn't know yet whether he had killed her. Id. Stahley started crying and pulled out a knife out of his pocket and threatened to kill himself. Id. at 73. Mrs. Stahley convinced her son to come back to the house with her. Id. When she got there she went inside and spoke to her husband. Id. Mr. Stahley came out to ask Stahley what was going on. Id. He confessed to his father that he stabbed Ms. Siller and that she was on the trail. Id. At the PCRA hearing, Mrs. Stahley stated that although Stahely was upset and bawling she was still able to communicate with him. Id. at 73 - 74.

Mrs. Stahley also testified that she had told police in her statement that Stahley had been drinking and that she knew that because her husband smelled alcohol on Stahley. Id. at 74 - 75. The police officer asked her whether Stahley had been drinking alcohol at the home prior to event. Id. at 75 - 76. She responded by saying, "'Not that I'm aware of. I didn't see the water bottle before they stated wrestling. No. I mean, he was fine all day. He seemed fine when they left.'" Id. at 76. At the PCRA hearing, upon examination, Mrs. Stahley admitted that she never told the police the night of the murder that Stahley had been drinking and took Molly despite the officer's question specifically inquiring as to whether Stahley had been drinking that night. Id. at 76 - 77.

Next, the Commonwealth cross-examined Mrs. Stahley on the formal statement that her son gave to police when police asked her son whether he was he under the influence of anything that might impair his ability to understand. Id. at 77. Stahley denied this, saying he understood what was going on. Id. The trooper followed up asking Stahley whether he would consider himself to be sober, buzzed or drunk to which Stahley answered, "Sober." Mrs. Stahley initialed those answers and agreed with Stahley. Id.

The third witness presented by PCRA counsel was Brian Stahley, Stahley's father. On direct examination, Mr. Stahley testified that the night of the incident his son was inebriated. Id. at 86 - 87. He also testified that Attorney Barton told him that intoxication is not a defense to murder in Pennsylvania. Id.at 87 - 88. On cross-examination, Mr. Stahley admitted that he

was not with Stahley all day and would not have known when he started drinking. Id. at 94.

Finally at the PCRA Hearing, Stahley testified. He testified that on the night of the incident he had been drinking and took the drug Molly. Id. at 98. Stahley stated that he had been drinking since 4:00 or 5:00 in the evening and took Molly, a form of Ecstasy about 7:00 p.m. Id. at 99. In relevant part, Stahley stated that when he spoke to Attorney Barton he had informed him that he had been drinking and doing drugs the evening of the murder. Id. at 102. Stahley related that Attorney Barton told him that intoxication is not a defense to murder. Id. Stahley also said that he only met with Attorney Barton five or six times. Id. Further, Stahley told this Court that he wanted to go to trial, and that he had told this to his attorney. Id. at 103. Stahley denied that Attorney Barton reviewed with him how jury selection would work, what the Commonwealth had to prove to find him guilty, that there are different degrees of homicide in Pennsylvania and what third degree murder or voluntary manslaughter means. Id. at 103 - 104. Stahley further testified that Attorney Barton told him that the only way to possibly not get a life sentence was to proceed with a stipulated non-jury trial. Id. at 105. Moreover, Stahley denied that Attorney Barton ever reviewed appellate options, despite having completing and signing a post-sentence rights form. Id. at 106.

After the defense concluded its case, the Commonwealth called Attorney Barton to testify as a rebuttal witness. Id. at 112. On rebuttal, Attorney Barton categorically denied advising Stahley, his mother or father that

voluntary intoxication was not a defense to murder. Id. at 113. Additionally, he denied telling Stahley, his mother or his father that Stahley's only chance for a non-life sentence was a guilty plea or a stipulated non-jury trial. Id. at 113 - 114.

On August 23, 2017, PCRA counsel and the Commonwealth provided Argument on the PCRA petition including the recent case of Commonwealth v. Batts, 163 A.3d 410 (Pa. 2017) ("Batts II"). Relief was denied on August 28, 2017.

ISSUES

Batts II Claim

I. Whether this Court properly denied Stahley's petition for a new sentencing hearing, when this Court determined that the holding in *Batts II* did not apply in the post-conviction context.

Ineffectiveness of Counsel Claims

II. Whether this Court's determination was proper that trial counsel was not ineffective in not presenting evidence of Stahley's alleged intoxication during custodial interrogation at the suppression hearing.

III. Whether this Court's determination was proper that trial counsel was not ineffective, when he did explain the defense of voluntary intoxication.

IV. Whether this Court's determination that trial counsel was not ineffective was proper, when Stahley elected to proceed with a stipulated non-jury trial; therefore, no evidence of intoxication was presented

DISCUSSION

Our [appellate court's] standard of review regarding a PCRA court's order is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. Commonwealth v. Garcia, 23 A.3d

1059 (Pa. Super. 2011).

Batts II Claim

I. This Court properly denied Stahley's petition for a new sentencing hearing, when this Court determined that the holding in *Batts II* did not apply to him in the post-conviction context.

First on appeal, Stahley contends that this Court erroneously denied his petition for a new sentencing hearing, where his original sentencing did not comport with the federal and state constitutional requirements articulated in Batts II and where the requirements articulated in Miller v. Alabama, 567 U.S. 460 (2012), Montgomery v. Louisiana, 136 S.Ct 718 (2016), and Batts II constitutes a new substantive constitutional rule or a watershed rule of criminal procedure.

Batts II held in part that "to effectuate the mandate of Miller and Montgomery," there is a presumption against life-without parole sentence for juveniles and that the Commonwealth must prove beyond a reasonable doubt that the juvenile is incapable of rehabilitation.. Id. at 451. Batts II was decided after Stahley's judgment of sentence became final. The issue therefore, is whether the Batts II holding applies to Stahley retroactively in his collateral challenge to his conviction,

New constitutional rules "generally should not be applied retroactively to cases on collateral review." Teague v. Lane, S.Ct. 1060, 103 L.Ed.2d 334 (1989). The seminal test in determining whether a constitutional rule warrants retroactive application during collateral review was delineated in Teague v. Lane, 109 S.Ct. 1060 (1989) (plurality), which was subsequently

adopted by a majority of the Pennsylvania Supreme Court. See Commonwealth v. Lesko, 609 Pa. 128, 15 A.3d 345, 363 (2011) (citing Butler v. McKellar, 494 110 S.Ct. 1212 (1990)). "Under the Teague framework, an old rule applies both on direct and collateral review, but a new rule is generally applicable only to cases that are still on direct review. A new rule applies retroactively in a collateral proceeding only if (1) the rule is substantive or (2) the rule is a 'watershed rule of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." Whorton v. Bockting, 127 S.Ct. 1173, (2007) (internal citations omitted).

At the PCRA petition Argument on July 25, 2017, PCRA counsel asserted that the holding in Batts II requires that absent the Commonwealth proving beyond a reasonable doubt that a defendant is permanently incorrigible, the juvenile offender cannot be sentenced to a sentence of life without parole. She argued that this holding is relevant in the PCRA context because Batts II announced a new substantive constitutional right. (Argument on the Commonwealth's Motion to Dismiss Defendant's Amended PCRA 7/25/17 p. 112).

The Commonwealth's position was that Batts II is a non-watershed procedural rule which is not entitled to retroactive application in the post-conviction process. Id. at 15 - 16.

Having applied the Teague framework to the holdings of Batts II, this Court agreed with the Commonwealth that Batts II was a non-watershed procedural rule, which is not entitled to retroactive effect in the PCRA context,

Concerning the substantive/procedural dichotomy, substantive rules are those that decriminalize conduct or prohibit punishment against a class of persons. See Montgomery, 136 S.Ct. at 729-30. Concomitantly, the Supreme Court has made clear that "rules that regulate only the *manner* of determining the defendant's culpability are procedural." Id. at 730 (quoting Schriro v. Summerlin, 124 S.Ct. 2519, 2523 (2004)) (citation omitted, emphasis in original). A constitutional criminal procedural rule will not apply retroactively unless it is a watershed rule that implicates the fundamental fairness and accuracy of the criminal proceeding. A procedural rule is considered watershed if it is necessary to prevent an impermissibly large risk of an inaccurate conviction and alters the understanding of the bedrock procedural elements essential to the fairness of a proceeding. Whorton, supra. As to watershed rules, to date, the Supreme Court of the United States has discerned only one, arising out of the sweeping changes to the criminal justice system brought about by the conferral of the right to counsel upon indigent defendants charged with felonies in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

In this case, there is no dispute that Batts II sets forth a new rule of constitutional law. As to the substantive-procedural distinction, Batts II neither decriminalizes conduct, nor the class of persons punished by the law. Rather, Batts II mandates the procedure that a sentencing court must adhere to before the court can make the determination that a life sentence without parole ("LWOP") is warranted in the case of a juvenile defendant. A LWOP sentence

may be still be imposed upon a juvenile, but the sentencing court must apply the presumption against such sentence and other procedural safeguards provided for in Batts II.

In addition, looking at the language in Batts II, the Pennsylvania Supreme Court's described its holding, as a procedural rule, not substantive. The Court's Opinion is replete with this description. In fact, the Court dedicated a portion of its Opinion justifying its constitutional authority to create procedures to implement a substantive rule, rejecting the Commonwealth's assertion that only the General Assembly made create such procedures. The Court quoted the Pennsylvania Constitution, which permits our state Supreme Court "the power to prescribe general rules governing practice, procedure and the conduct of all courts." Batts II, 163 A.3d at 449. In further explaining its own authority to promulgate such procedural rules the Court stated, "...the question here solely pertains to the procedures to implement the sentence for a juvenile convicted of first degree murder. Id. at450. The Court further stated that "[i]t is abundantly clear that the exercise our constitutional authority is required to set forth the manner in which resentencing will proceed in the courts of this Commonwealth." Id. Therefore, the Court concluded that "'we will exercise our constitutional power of judicial administration to devise a procedure' for the implementation of the Miller and Montgomery decisions in Pennsylvania."

Additionally, Batts II holding is not a groundbreaking, "watershed" procedural rule. It remains lawful for a sentencing court to impose a LWOP

sentence, but can only be imposed after the procedure announced in Batts II is adhered to. The Batts II holding does not undermine the conviction, and it does not alter the "understanding of the bedrock procedural elements essential to the fairness of a proceeding because the juvenile could receive a LWOP sentence; therefore, the fundamental fairness of sentencing is not seriously undermined, and Batts II is not entitled to retroactive effect in this PCRA setting.

Ineffectiveness of Counsel Claims

To prevail on a claim of ineffectiveness of counsel, a petitioner must show, by a preponderance of the evidence, ineffective assistance of counsel which, in the circumstance of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. Commonwealth v. Anderson, 995 A.2d 1184, 1191 (Pa.Super. 2010). The law presumes counsel was effective and thus, the burden of proving otherwise rests with the defendant. Commonwealth v. Zook, 887 A.2d 1218, 1227 (Pa. 2005). To properly plead ineffective assistance of counsel, a petitioner must plead and prove: (1) that the underlying issue has arguable merit; (2) counsel's actions lacked an objective reasonable basis; and (3) actual prejudice resulted from counsel's act or failure to act. Commonwealth v. Tedford, 598 Pa. 639, 960 A.2d 1 (Pa. 2008) (citing Commonwealth v. Pierce, 515 Pa. 153, 527 A.2d 973, 975 (Pa. 19987) (adopting the U.S. Supreme Court's holding in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). "A petitioner establishes prejudice when he demonstrates that

there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Commonwealth v. Johnson, 966 A.2d 523, 533 (Pa. 2009) (citations omitted). A "reasonable probability" is, for example, a probability sufficient to undermine confidence in the verdict returned by the jury. Commonwealth v. Bardo, 629 Pa. 352, 363, 105 A.3d 678, 684 (2014). A claim will be denied if the petitioner fails to meet any one of these requirements. Commonwealth v. Springer, 961 A.2d 1262, 1267 (Pa. Super. 2008) (citing Commonwealth v. Natividad, 938 A.2d 310, 322 (Pa. 2007)).

II. This Court's determination that trial counsel was not ineffective was proper, when Stahley was not prejudiced by counsel's failure to present the testimony of Mrs. Stahley and Mr. Evans.

Stahley next contends that this Court erroneously denied his claim for the ineffectiveness of counsel where trial counsel failed to introduce readily available evidence during the pretrial suppression hearing, which would have established his intoxication at the time of his custodial interrogation and which would have provided the basis for the suppression of his post-arrest statement. More specifically Stahley asserted in his Amended PCRA petition filed February 13, 2017, that trial counsel was ineffective in failing to call Heather Stahley and the ambulance driver to support the claim that Stahley was intoxicated at the time of the crime and at the time that he provided statements to police..." Amended PCRA Petition 2/13/17 ¶43. It was argued that had Attorney Barton presented this testimony "there would be reason to question the officer's claims that Petitioner Stahley was not intoxicated." Amended PCRA Petition,

2/13/17 at ¶25. He further alleged in his petition that he was prejudiced by trial counsel's failure to call these witnesses..." Id. at ¶46.

When raising a claim of ineffectiveness for the failure to call a potential witness, a petitioner satisfies the performance and prejudice requirements of the Strickland test by establishing that: (1) the witness existed; (2) the witness was available to testify for the defense; (3) counsel knew of, or should have known of, the existence of the witness; (4) the witness was willing to testify for the defense; and (5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial. Commonwealth v. Sneed, 45 A.3d 1096, 1108-09 (Pa. 2012) (citations omitted).

Prior to trial, Attorney Barton did file a motion to suppress and he did try to suppress Stahley's statements based on alleged intoxication. In furtherance of this basis for suppression, at the heawring trial counsel cross-examined the responding troopers and the interviewing trooper about Stahley's level of intoxication during their interactions with him at various times during which Stahley made statements. (Suppression Hearing 3/26/14 at pp. 41, 55, 95 - 97). Therefore the issue here is whether Attorney Barton was ineffective in failing to present two additional witnesses in support of this suppression argument. However, the testimony given by the ambulance driver and that of Mrs. Stahley at the PCRA hearing belies Stahley's argument, and this ineffectiveness claim in connection with suppression lacks arguable merit because there was no prejudice to Stahley in not presenting Mrs. Stahely's testimony and that of Mr. Evans regarding the issue of intoxication.

At the PCRA Hearing, Stahley's mother testified that despite being with her son most of the afternoon and evening of the murder, up until Ms. Siller and Stahley went for a walk he did not appear intoxicated to her. She told this to the troopers the night of the murder, even when the trooper's question specifically inquiring as to whether Stahley had been drinking that night. Id. at 76 - 77. The trooper asked her whether her son had been drinking alcohol at the home prior to event, and she responded by saying, "'Not that I'm aware of. I didn't see the water bottle before they stated wrestling. No. I mean, he was fine all day. He seemed fine when they left.'"

As to the testimony of the ambulance driver, Mr. Evans, testified that Stahley seemed emotionally upset, and that Stahley's behavior "possibly" indicated intoxication. However, Mr. Evans was able to communicate with him and Stahley was able to walk on his own.

Given the substance of testimony provided by Mrs. Stahley and Mrs. Evans, this Court did not find that Stahley was prejudiced in not presenting the testimony of these two witnesses at the suppression hearing.

III. This Court's determination that trial counsel was not ineffective was proper, when he did explain the defense of voluntary intoxication to Stahley and his parents.

In Stahley's next issue on appeal he asserts that this Court erroneously denied his IAC claim where trial counsel failed to explain the defense of voluntary intoxication. Specifically, it is argued that he failed to explain that voluntary intoxication could negate a finding of the specific intent to kill required for a first degree murder conviction, despite availability of

evidence from both lay and expert witnesses, which would have established his intoxication at the time of the crime. Despite this claim, the credible testimony provided at the PCRA Hearing by Attorney Barton belies the assertion.

Stahley, Mrs. Stahley and Mr. Stahley all stated at the PCRA Hearing that Attorney Barton advised them that intoxication is not a defense to murder in Pennsylvania. However, Attorney Barton's credible testimony established that in his conversations with Stahley, they spoke about whether he actually formed the intent to kill. Specifically, Attorney Barton explained the defense of intoxication. He explained that to present a defense of diminished capacity by intoxication had to be so overwhelming as to render him unable to process what was going on. Attorney Barton actually copied the law on first and third degree murder and diminished capacity and reviewed them with both Stahley and his mother. Accordingly, Attorney Barton cannot be found to be ineffective when he did in fact explain to Stahley and his parents the defense of voluntary intoxication.

VII. This Court's determination that trial counsel was not ineffective was proper, when Stahley proceeded to a stipulated non-jury trial and therefore trial counsel did not introduce evidence of intoxication at the time of the crime.

Last on appeal, Stahley contends that this Court erroneously denied his ineffectiveness claim where trial counsel failed to introduce readily available evidence, from both lay and expert witnesses, which would have established his intoxication at the time of the crime and which would have supported a defense of voluntary intoxication.

This issue can be restated as contesting Stahley's ultimate decision to proceed to a stipulated non-jury trial; wherein no evidence was presented on behalf of the defense, including a defense of voluntary intoxication.

The testimony at the PCRA Hearing established the reasons that Stahley ultimately decided to proceed to a stipulated non-jury trial. In addition, the hearing showed that a defense of intoxication did not prejudice him because there was overwhelming evidence that would undercut that defense theory; therefore, Stahley is unable to show prejudice.

At the PCRA Hearing, Attorney Barton was originally prepared to go to a jury trial and would have presented Dr. O'Brien, Mrs. Stahley and possibly Stahley along with an intoxication defense. Attorney Barton described Stahley's decision to waive a jury trial as an ongoing and evolving conversation for weeks or months. As Attorney Barton explained it, "it was all part of the fabric of our conversations during probably the later parts of my representation." And on the day of trial, Stahley, after a discussion with his mother in the robing room, elected to plead guilty.[1] Id. at 33.

It was Attorney Barton's opinion that the advantage to Stahley in waiving a jury trial and essentially pleading guilty would be that the sentencing

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[1] Stahley proceed to a stipulated non-jury trial rather than plead guilty because, as Attorney Barton recollected, this Court did not want to accept a guilty plea since it would allow Stahley to at least attempt to file a motion to withdraw the guilty plea. (PCRA Hearing 7/25/17 at pp. 33 - 34). Attorney Barton fully advised Stahley that it would be a stipulated non-jury trial instead of a guilty plea. He explained that it would be the functional equivalent of a guilty plea, but that he had to be absolutely certain he wanted to proceed in that manner since unlike a guilty plea, Stahley would lose the post-sentence right to file a motion to withdraw guilty plea. Id. at 34. Attorney Barton unequivocally, explained to Stahley that a stipulated non-jury trial was essentially a guilty plea. Id. at 34 - 35.

court would take this into consideration when fashioning a sentence to impose, that Stahley should some remorse, took some accountability and spared the Sillers a prolonged jury trial with graphic testimony and exhibits. He believed these factors would be considered at the time of sentencing. This was a reasonable strategy. Therefore despite Attorney Barton's readiness in mounting an involuntary intoxication defense, such was rendered moot by Stahley's decision.

In addition, based upon the testimony presented at the PCRA hearing, Stahley was not prejudiced because the success of defense of diminished capacity grounded in voluntary intoxication is doubtful. The mere fact of intoxication is not a defense; rather, the defendant must prove that his cognitive abilities of deliberation and premeditation were so compromised by voluntary intoxication that he was unable to formulate the specific intent to kill. In other words, to prove a voluntary intoxication defense, the defendant must show that he was "overwhelmed to the point of losing his faculties and sensibilities." Id. (quoting Commonwealth v. Blakeney, 946 A.2d 645, 653 (Pa. 2008); see also Commonwealth v. Collins, 810 A.2d 698, 701 (Pa. Super. 2002) (concluding, generally, defendant has the burden of proving the defense by a preponderance of the evidence when a defense is asserted that relates to the defendant's mental state or to information that is peculiarly within the defendant's own knowledge and control.). In response, the Commonwealth need not "disprove a negative." Commonwealth v. Rose, 321 A.2d 880, 884 (Pa. 1974).

In this case, the evidence showed that Mrs. Stahley told the troopers the night of the murder, when presumably her observations of that night would be the freshest and most accurate, that Stahley did not seem intoxicated, despite her having been with him throughout different parts of the day and evening. Additionally, Mr. Evans' testimony was that Stahley's emotional behavior could "possibly" be the result of intoxication. Then Mr. Staley stated that he smelled alcohol on his son while they were fighting on the night the murder. This evidence is far from what is required to prove by a preponderance of the evidence that Stahley was "overwhelmed to the point of losing his faculties and sensibilities." Therefore, the intoxication defense would likely have failed. Counsel was not ineffective.

CONCLUSION

Based on the forgoing analysis, the denial of post-conviction relief dated August 28, 2017 should be affirmed.

BY THE COURT:

WILLIAM R. CARPENTER J.
COURT OF COMMON PLEAS
MONTGOMERY COUNTY
PENNSYLVANIA
38TH JUDICIAL DISTRICT

Copies sent on November 15, 2017
By Interoffice Mail to:
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