

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 49 MAP 2019

COMMONWEALTH OF PENNSYLVANIA, *Appellant*
v.
SCOTT CHARLES DAVIS, *Appellee*

Appeal from the Order of the Superior Court dated March 29, 2019 (December 26, 2018 opinion withdrawn February 12, 2019) at No. 76 MDA 2018 Affirming in Part and Vacating in Part the Judgment of Sentence of the York County Court of Common Pleas, Criminal Division, dated December 7, 2017 at No. CP-67-MD-1000728-1980 and Remanding.

No. 47 MAP 2019

COMMONWEALTH OF PENNSYLVANIA, *Appellant*
v.
MICHAEL A. LEHMAN, *Appellee*

Appeal from the Order of the Superior Court dated January 4, 2019 at No. 1556 MDA 2017 Affirming in Part and Vacating in Part the Judgment of Sentence of the York County Court of Common Pleas, Criminal Division, dated April 4, 2017 at No. CP-67-CR-0002000-1998 and Remanding.

**BRIEF OF JUVENILE LAW CENTER AND AMERICAN CIVIL LIBERTIES
UNION OF PENNSYLVANIA AS *AMICI CURIAE* IN SUPPORT OF
APPELLEES SCOTT DAVIS AND MICHAEL LEHMAN**

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STATEMENT OF INTEREST OF AMICI CURIAE¹

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children’s unique developmental characteristics, and reflective of international human rights values.

The **American Civil Liberties Union (“ACLU”)** is a nationwide, nonprofit, nonpartisan organization dedicated to preserving and defending the principles of individual liberty and equality embodied in the United States Constitution and civil rights laws. The ACLU of Pennsylvania has particular expertise with respect to the law and practice governing assessment and collection of fines, costs, and restitution in criminal cases. Owing court costs can have significant collateral consequences that disproportionately impact low-income and indigent individuals, ranging from the denial of public assistance to the threat of incarceration due to an inability to pay.

¹ Pursuant to Rule 531, no counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief, nor authored the brief in whole or in part.

We respectfully submit this brief in the hope of aiding the Court in understanding the impact that the costs sought by the Commonwealth will have on individuals returning from decades of incarceration.

SUMMARY OF ARGUMENT

After entering prison as children and spending decades behind bars, Michael Lehman and Scott Davis do not have the financial resources to pay the costs associated with challenging their unconstitutional sentences of life without parole. Like hundreds of others formerly sentenced to juvenile life without parole who have now been resentenced, their decades in prison, beginning when they were still teenagers, have left them with limited marketable skills and without any realistic hope of being able to pay the thousands of dollars in resentencing costs the District Attorney now argues they must pay. While this Court is tasked with the narrow question of determining whether such resentencing costs are “costs of prosecution” under 16 P.S. § 1403 that must be paid by defendants, its analysis must recognize that resentencing costs essentially punish individuals such as Lehman and Davis with burdensome court debt because they were sentenced to life in prison as children and now have no financial resources and no ability to pay.

The available data shows that even individuals incarcerated for term-of-years sentences face significant consequences when faced with court debt. While most incarcerated individuals may face financial obstacles in prison and upon release that

prevent them from paying criminal justice costs, those who entered prison as children for sentences of life without the possibility of parole are significantly more disadvantaged. These young people did not have the opportunity to gain meaningful employment experience, job skills, postsecondary education, or often even a high school diploma before they were incarcerated. Classified as “lifers,” most did not have access to educational programming or workforce development training that may have allowed them to earn a wage sufficient to repay their resentencing costs upon release, and they have no savings as the meager compensation they may have earned from any prison jobs, if any, would have gone to cover basic necessities.

The practical result of these resentencing costs is that those formerly sentenced to juvenile life without parole, including Lehman and Davis, are punished for exercising their constitutional rights by being saddled with debt that they do not have the ability to repay and that undermines their ability to reintegrate back into their communities upon release.

ARGUMENT

One of the important tenets of our criminal justice system is that access to justice must not depend on access to money. The United States Supreme Court has repeatedly reinforced this principle by holding, *inter alia*, that indigent defendants must be provided counsel,² be afforded copies of their trial transcripts in order to

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

effectively prosecute an appeal,³ and be allowed to file motions for leave to appeal even if they cannot afford associated filing fees.⁴ Each of these cases stands for the broad principle that destitute defendants cannot be barred from accessing a fair trial, or appealing their convictions or sentences, because of their financial circumstances.

The Commonwealth's position in this case disregards the United States Supreme Court's protections for impoverished defendants. While the Commonwealth allows Michael Lehman, Scott Davis, and others similarly situated to access the expert witnesses necessary for the resentencing hearings challenging their illegal sentences, as the merits brief explains, the Commonwealth is essentially punishing them for making this choice by requiring them to pay the associated costs which they have no ability to pay.

Amici write to further emphasize the significant consequences to Lehman, Davis, and other similarly situated individuals, if they are required to repay their resentencing costs, due to their receiving life without parole sentences in their youth.

I. YOUTH SENTENCED TO LIFE WITHOUT PAROLE ENTERED PRISON WITH NO EMPLOYMENT HISTORY OR FINANCIAL RESOURCES

Criminal justice debt can cause overwhelming problems for any formerly incarcerated individual; these challenges are substantially worse for those who have

³ *Griffin v. Illinois*, 351 U.S. 12 (1956).

⁴ *Burns v. Ohio*, 360 U.S. 252 (1959).

spent their entire adult lives in prison. Michael Lehman and Scott Davis were teenagers when they were sentenced to life without parole. Their incarceration at such a young age meant they entered prison before gaining any meaningful employment experience or job skills. Combined with their limited access to programming in prison, this limits their employment options upon release, and underscores their inability to pay the court costs assessed here.

Under both state and federal law, youth generally have limited earning capacity. Children under fourteen are prohibited from working, and those fourteen or fifteen are permitted to work only limited hours. 29 C.F.R. § 570.2; 43 P.S. § 40.3. Pennsylvania further discourages children from working by requiring them to enroll in school through their 17th birthday.⁵ Ironically, youth from poorer families who need to work to support their families have greater difficulty in finding employment as compared to their more affluent peers.⁶

In addition to these financial challenges experience by most youth, research

⁵ See NATIONAL CENTER FOR EDUCATION STATISTICS; TABLE 5.1: COMPULSORY SCHOOL ATTENDANCE LAWS, MINIMUM AND MAXIMUM AGE LIMITS FOR REQUIRED FREE EDUCATION, BY STATE: 2017, https://nces.ed.gov/programs/statereform/tab5_1.asp (last visited Jan. 23, 2020).

⁶ See JESSICA FEIERMAN ET AL., DEBTOR'S PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM 7 (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>. See also ROBERT I. LERMAN, *ARE TEENS IN LOW-INCOME AND WELFARE FAMILIES WORKING TOO MUCH?* 2 (2000), https://www.urban.org/sites/default/files/publication/62291/309708-Are-Teens-in-Low-Income-and-Welfare-Families-Working-Too-Much-.PDF?source=post_page (finding that low-income youth were less likely to have a job in high school due to lack of informal connections to jobs, job availability in geographically convenient locations, and lack of parental encouragement, among other factors).

demonstrates that young people who are sentenced to life without parole generally experienced significant social and economic disadvantages in their homes prior to the imposition of their sentences. ASHLEY NELLIS, THE LIVES OF JUVENILE LIFERS: FINDINGS FROM A NATIONAL SURVEY 2-3 (2012), <https://www.sentencingproject.org/wp-content/uploads/2016/01/The-Lives-of-Juvenile-Lifers.pdf>. One third of these young people were raised in public housing, and eighteen percent were not living with a close adult relative before their incarceration. *Id.* at 2. Instead, they were homeless, living with friends, or housed in a detention facility, treatment center, or group home. *Id.* Without meaningful employment opportunities, personal financial resources, or financial support from family and community members, young people sentenced to life without parole enter prison with significant economic disadvantages.

When an adult is incarcerated, they may already have years of job experience they can highlight and rely upon when looking for employment upon release. Those incarcerated as children lack this foundation and will face unique challenges to finding meaningful employment at a wage that will allow them to repay their resentencing and any other criminal justice costs.

II. PRISONS OFFER LIMITED OPPORTUNITY TO GAIN THE EDUCATION, JOB SKILLS, OR WAGES NECESSARY TO PAY JUSTICE SYSTEM COSTS

Unfortunately, once incarcerated, individuals have limited opportunities to improve their financial circumstances. Nationally, the majority (58%) of people who are incarcerated do not complete an education program while they are in prison, and only nine percent of incarcerated people complete a postsecondary education program. PATRICK OAKFORD ET AL., INVESTING IN FUTURES: ECONOMIC AND FISCAL BENEFITS OF POSTSECONDARY EDUCATION IN PRISON 1 (2019), <https://www.vera.org/downloads/publications/investing-in-futures.pdf>. Those sentenced to juvenile life without parole face even more significant obstacles to education and job training than other incarcerated individuals.

Youth incarcerated in adult facilities in Pennsylvania are only eligible to receive the limited educational services that are provided to a student who has been expelled. 24 P.S. § 13-1306.2(b). Thus, youth in adult prisons have the right to only about five hours a week of education, rather than the usual 27.5 hours a week a young person receives in school. *See Brian B. ex rel. Lois B. v. Commonwealth of Pennsylvania Dep't of Educ.*, 230 F.3d 582, 585 (3d Cir. 2000).

Further, individuals serving life without parole sentences rarely have the same access to programming as those serving term-of-years sentences who are eligible for release from prison in the future. A national survey of those serving juvenile life

without parole sentences found that over 60% were not engaged in programming in prison. NELLIS, *supra*, at 4. Generally, this was because of state rules or prison policies, not because of a lack of interest. *Id.* Among those who were not participating in programming, 32.7% had been prohibited since they were never expected to be released from prison, while “an additional 28.9% were in prisons without sufficient programming or had completed all available programming.” *Id.*

The deprivation of education and workforce opportunities is uniquely harmful to individuals who enter the prison system as teenagers. Adolescence is a critical time of life to learn basic skills, social skills, and behaviors necessary for the workforce. RICHARD J. BONNIE ET AL., REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 102 (2013). These skills are developed when youth are included in peer groups that model prosocial behavior and academic success, and when youth have the opportunity to develop autonomous decision making through avenues such as school and extracurricular activities. *Id.* When such opportunities are absent, developmental progress is undermined. *Id.*

Compounding the lack of access to education in prison is the lack of access to any means of making money. The Pennsylvania Department of Corrections pays between \$0.19 (nineteen cents) to \$1 per hour for prison work.⁷ Thus, even if an

⁷ Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State* (April 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/>.

incarcerated individual is working full time, he or she will only make between \$8 and \$40 per week. But prison is hardly free for inmates. They must pay for basic necessities like food, to supplement portions that are too small or inedible.⁸ Ramen starts at \$0.28; salted mixed nuts are \$2.49.⁹ Inmates who want to wear shower sandals in the communal showers must pay \$2.26; a 6 ounce tube of baking soda toothpaste is \$2.59.¹⁰ The average cost of a 15-minute phone call in Pennsylvania prisons is \$0.89—more than four times the minimum hourly wage.¹¹ No one climbs out of poverty while imprisoned.

This leaves those formerly sentenced to juvenile life without parole in dire economic straits when they leave prison. The opportunities for education and to learn marketable skills have been lost. The national unemployment rate of formerly incarcerated people generally is a staggering **27 percent**. Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POLICY INITIATIVE (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html>. Even those who can find a

⁸ Stephen Raheer, *The Company Store: A Deeper Look at Prison Commissaries* (May 2018), <https://www.prisonpolicy.org/reports/commissary.html>.

⁹ Pennsylvania Correctional Industries, *Male General Population 1, 3* (Jan. 3, 2020), <https://www.cor.pa.gov/Inmates/Commissary%20Catalogs/Male%20General%20Population.pdf> (commissary list).

¹⁰ *Id.* at 5, 12.

¹¹ Peter Wagner & Alexi Jones, *State of Phone Justice: Local Jails, State Prisons and Private Phone Providers* (February 2019), https://www.prisonpolicy.org/phones/state_of_phone_justice.html; Sawyer, *supra* note 7.

job earn very low wages; one study found that in the first year after release, 49 percent of individuals who previously experienced incarceration earn less than \$500, 32 percent earn between \$500 and \$15,000, and only 20 percent earn more than \$15,000. ADAM LOONEY & NICHOLAS TURNER, WORK AND OPPORTUNITY BEFORE AND AFTER INCARCERATION 7 (2018), https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf. While specific data on the outcomes for individuals previously serving juvenile life without parole sentences are unavailable, the unique obstacles they face prior to and during incarceration suggest they may be at even greater risk of poverty upon release.

III. CRIMINAL JUSTICE DEBT UNDERMINES REENTRY

Saddling individuals formerly sentenced to juvenile life without parole with debt for exercising their constitutional rights is far from harmless, as the debt jeopardizes the ability of these men and women to successfully reintegrate back into their communities.

Criminal justice debt negatively impacts individuals even beyond the stigma they experience from their criminal convictions and incarceration. ALEXES HARRIS, A POUND OF FLESH MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR 55 (2016). Without financial resources or significant employment opportunities, Davis, Lehman, and others similarly situated are unlikely to be able to pay the entire amount of their court costs in one lump payment and will instead be required to make smaller

payments according to a set schedule. *See* The Administrative Office of Pennsylvania Courts, *A Guide To Collections In the Pennsylvania Courts*, <https://help.pacourts.us/PortalHelpDocs/CollectionsHandout.pdf>; Pa.R.Crim.P. 706(B). While payment plans are intended to help those with limited financial resources, making regular monthly payments can be an “insurmountable” task for many with criminal justice debt. *See* HARRIS, *supra*, at 61. Not only may people struggle with uncertain or limited income, unstable housing, and poor physical and mental health, they may also be inexperienced with managing money. *See id* at 61. This inexperience is a particular trouble spot for those who entered prison as children and who are being released from prison after decades behind bars.

Difficulties making monthly payments can lead to other consequences. In Pennsylvania, courts can suspend driver’s licenses of those who fail to appropriately make payments, order a warrant for them to appear before the court, or use a collection agency to obtain the payments. *See* The Administrative Office of Pennsylvania Courts, *supra*. Each of these consequences can exacerbate already difficult financial situations and make it substantially more difficult for a formerly incarcerated person to reintegrate.

Driver’s license suspensions in particular can impede a person’s ability to maintain employment, repay their debts, and attend court appearances, which can ultimately lead back to incarceration. *See* Jessica Eaglin, *Driver’s License*

Suspensions Perpetuate the Challenges of Criminal Justice Debt, BRENNAN CTR. FOR JUSTICE (Apr. 30, 2015), <https://www.brennancenter.org/our-work/analysis-opinion/drivers-license-suspensions-perpetuate-challenges-criminal-justice-debt>. Further, without driver's licenses, routine activities, including taking children to school, getting to the grocery store, or getting necessary healthcare become significantly more difficult. *National Driver's License Suspension Campaign: Free to Drive*, FINES & FEES JUSTICE CENTER (JUNE 25, 2019), <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/>.

When collection agencies are used to collect debt, the debt can become public information available to credit reporting agencies. ALICIA BANNON ET AL., *CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY* 27 (2010), https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf. The resulting low credit scores may make it more difficult to find employment, obtain credit cards, mortgages, leases, or loans—endangering housing, and transportation as well. KARIN D. MARTIN ET AL. *SHACKLED TO DEBT: CRIMINAL JUSTICE FINANCIAL OBLIGATIONS AND THE BARRIERS TO RE-ENTRY THEY CREATE* 9 (2017), <https://www.ncjrs.gov/pdffiles1/nij/249976.pdf>. For example, for individuals seeking public or rental housing, credit scores often serve as a screening mechanism

that prevent people with poor credit scores from accessing affordable housing. BANNON ET AL., *supra*, at 27. Additionally, low credit scores can lead to high interest rates and high insurance premiums. 6 *Damaging Side Effects of Having a Bad Credit Score*, MINT, <https://www.mint.com/money-management-2/6-damaging-side-effects-of-having-a-bad-credit-score> (last visited Jan. 24, 2020). Criminal justice debt can even be a barrier to receiving food assistance including leading to a denial of General Assistance and Temporary Assistance for Needy Families.¹²

Beyond financial repercussions, criminal justice debt can create strains on family and friendship networks and cause people to feel “a profound sense of despair” because they are overwhelmed by the financial burden of their debt. HARRIS, *supra*, at 70. Individuals carrying criminal debt have reported feeling like their lives were “out of their control” and they were frustrated and overwhelmed. *Id.*

Successful reentry requires formerly incarcerated persons such as Lehman and Davis to have access to transportation, clothing, food, amenities, financial resources, housing, employment, health care, and a support system of family members and friends. NANCY LA VIGNE ET AL., *RELEASE PLANNING FOR SUCCESSFUL REENTRY: A GUIDE FOR CORRECTIONS, SERVICE PROVIDERS, AND COMMUNITY GROUPS* 2-3

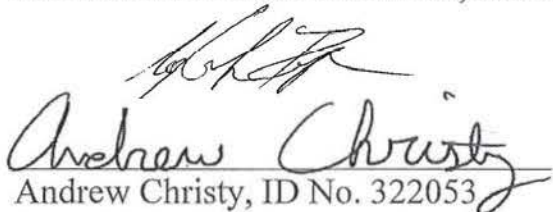
¹² PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HANDBOOK: OPERATIONS MEMORANDA AND POLICY CLARIFICATIONS, *Appendix B: Criminal History Desk Guide*, http://services.dpw.state.pa.us/oimpolicymanuals/snap/503_General_Information/503_Appendix_B.htm (explaining that a defendant must have paid all fines, costs, or restitution, or be on a court-approved payment plan to receive benefits).

(2008), <https://www.urban.org/sites/default/files/publication/32056/411767-Release-Planning-for-Successful-Reentry.PDF>. Criminal justice debt from their resentencing costs may interfere with access to these key prongs of successful re-entry.

Lehman and Davis exercised their constitutional rights to be resentenced after receiving illegal life without parole sentences. Subjecting them to punishing criminal justice debt for the remainder of their lives for exercising this constitutional right is contrary to the significant criminal justice protections the United States Supreme Court has articulated for financially vulnerable individuals and will undermine opportunities for their productive reintegration into their communities.

CONCLUSION

WHEREFORE, for the foregoing reasons, we urge this Court to affirm the Superior Court opinions in *Commonwealth v. Davis*, 207 A.3d 341 (Pa. Super. 2019) and *Commonwealth v. Lehman*, 201 A.3d 1279 (Pa. Super 2019).


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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 531 and 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 2,981 words. In preparing this certificate, I relied on the word count feature of Microsoft Word. I further certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Marsha L. Levick
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