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54 MAP 2019

NO. 54 MAP 2019

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

V.

TRISTAN STAHLEY,

Appellant.

APPELLANT'S SUPPLEMENTAL BRIEF

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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ARGUMENT

On June 22, 2021, this Court ordered parties to file supplemental briefs addressing what impact, if any, the United States Supreme Court's decision in *Jones v. Mississippi*, ___ U.S. ___, 141 S. Ct. 1307 (2021) has on the issues presented in the instant appeal. Mr. Stahley submits that the Supreme Court's holding in *Jones* has no bearing on the instant case. The rules created by *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) are in keeping with the Supreme Court's holding in *Jones* allowing states to set forth procedural protections interpreting *Miller v. Alabama*, 567 U.S. 460 (2012).

I. *JONES V. MISSISSIPPI* AFFIRMED THE SUPREME COURT'S HOLDINGS IN *MILLER V. ALABAMA* AND *MONTGOMERY V. LOUISIANA*, UPON WHICH THIS COURT BASED THE SENTENCING PROCEDURES IT SET FORTH IN *COMMONWEALTH V. BATTS*

In *Jones*, the Supreme Court held that the Eighth Amendment does not require a sentencer to make either an explicit or implicit finding that a child is "permanently incorrigible" before sentencing them to life without parole. *Jones v. Mississippi*, 141 S. Ct. 1307, 1311 (2021). However, *Jones* was also clear that it was not overruling or modifying the Court's prior rulings in *Miller* or *Montgomery*. *Id.* at 1321 ("The Court's decision today carefully follows both *Miller* and *Montgomery*.") The Court explained that in *Miller*,

> the Court allowed life-without-parole sentences for defendants who committed homicide when they were under 18, but only so long as the sentence is not mandatory—that is, only so long as the sentencer has discretion to "consider the mitigating qualities of youth" and impose a lesser punishment.

Jones, 141 S. Ct. at 1314 (2021) (quoting *Miller*, 567 U.S. at 476).

The holdings of *Miller* and *Montgomery* establish that it is unconstitutional to sentence a child whose crime reflects transient immaturity and who is not permanently incorrigible to life without parole and that the "permanently incorrigible" child is rare and uncommon. *Miller v. Alabama*, 567 U.S. 460, 479–80 (2012); *Montgomery v. Louisiana*, 577 U.S. 190, 208–09 (2016). In *Jones*, despite holding that a specific finding of permanent incorrigibility was not needed, the Court underscored the relationship of transient immaturity of youth to sentencing:

> [t]hat *Miller* did not impose a formal factfinding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment.

Jones, 141 S. Ct. at 1315 n.2 (quoting *Montgomery*, 577 U. S. at 211). Because it is clear that *Jones* did not disturb these prior precedents, these requirements from *Miller* and *Montgomery* remain binding.

In the instant case, this Court is not being asked whether the key holding in *Jones*—that a finding of permanent incorrigibility is not needed before sentencing a child to life without parole—applies to Mr. Stahley. The question before this Court

is whether its ruling in *Batts* should have been applied retroactively to Mr. Stahley. *Jones* has no bearing on the resolution of this question.[1]

II. *JONES* EXPLICITLY PERMITS STATES TO SET FORTH SENTENCING PROCEDURES IN RESPONSE TO *MILLER*, WHICH THIS COURT DID IN *BATTS*

In *Batts*, this Court set forth what it considered appropriate procedures for the sentencing of children convicted of first-degree murder in order to comply with the mandates of *Miller* and *Montgomery*. This Court's broad authority to establish rules

[1] Although Westlaw has marked *Batts* as "abrogated" by *Jones*, this decision is not determinative and was made by KeyCite editors who interpret cases that are directly cited in an opinion as having negative treatment, but not explicitly overruling their holding. *See generally* Paul Hellyer, *Evaluating Shepard's, KeyCite, and BCite for Case Validation Accuracy*, 110 L. Libr. J. 449, 449 (2018). ("In this sample, Shepard's and KeyCite missed or mislabeled about one-third of negative citing relationships."); Karen E. Westwood & Charles D. Wilson, *How Do You Feel About "Good Enough"?: Another Look at Citators*, 4 Legal Info. Rev. 1, 35 (2019) ("Upon reflection, the authors now understand why it is difficult to find an article that undertakes to aid practitioners in determining which citator service is 'good enough.' . . . But the core of the problem is in the nature of caselaw itself, which presents multiple issues within a single case, is created by judges using noncontrolled vocabulary, and frankly can be less than clear."); Alan Wolf & Lynn Wishart, *A Tale of Legal Research: Shepard's and KeyCite Are Flawed (or Maybe It's You)*, 75-SEP N.Y. ST. B.J. 24 (2003) (discussing how services like Lexis's Shepard's and Westlaw's KeyCite fail to note all negative treatment). Ultimately, these services are simply the result of legal analysis by an editor. As Westlaw's Senior Director for Research and Development described in 2003, "[a]dding history tags to a citation index calls for judgment and legal analysis, which is one of the reasons that all of the history in both KeyCite and Shepard's is supplied by legal editors rather than by automated systems." Id. at 26. Notably, several cases that were not cited in the *Jones* opinion were not marked as abrogated despite directly contradicting its holding. *See, e.g., People v. Holman*, 91 N.E.3d 849, 863 (Ill. 2017) (holding that a finding of permanent incorrigibility was necessary prior to sentencing a young person to life without parole); *State v. Seats*, 865 N.W.2d 545, 558 (Iowa 2015) (holding same); *Luna v. State*, 387 P.3d 956, 963 (Okla. Crim. App. 2016) (holding same); *Davis v. State*, 415 P.3d 666, 695-96 (Wyo. 2018) (holding same); *State v. Riley*, 110 A.3d 1205, 1217-18 (Conn. 2015) (holding same).

for Pennsylvania sentencing practice and procedure permits this Court to go beyond the floor established by the Federal Constitution.

In *Jones*, the Supreme Court, bound by prior precedent, explicitly acknowledged states' authority to create additional sentencing protections. *Jones*, 141 S. Ct. at 1322-23 ("Under our precedents, this Court's more limited role is to safeguard the limits imposed by the Cruel and Unusual Punishments Clause of the Eighth Amendment.").

> [O]ur holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder. States may categorically prohibit life without parole for all offenders under 18. Or States may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole. Or States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth. States may also establish rigorous proportionality or other substantive appellate review of life-without-parole sentences.

Id. at 1323. In *Jones*, the Court reasoned that

> [w]hen a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems." *See Ford v. Wainwright*, 477 U.S. 399, 416–417, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) ("[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences").

Id. at 1315 n.2 (quoting *Montgomery*, 577 U. S. at 211).

The *Miller* Court set forth specific factors[2] that must be considered to appropriately account for youth in sentencing. *Miller,* 567 U.S. at 477-78. However, the United States Supreme Court expressly left to the States *how* to implement *Miller* in state court proceedings. *Montgomery*, 136 S. Ct. at 735. Indeed, other states have interpreted *Miller* and *Montgomery* to require procedural protections beyond the scope of *Jones*. *See, e.g., People v. Holman*, 91 N.E.3d 849, 863 (Ill. 2017) (holding that a finding of permanent incorrigibility was necessary prior to sentencing a young person to life without parole); *State v. Seats*, 865 N.W.2d 545, 558 (Iowa 2015) (holding same); *Luna v. State*, 387 P.3d 956, 963 (Okla. Crim. App. 2016) (holding same); *Davis v. State*, 415 P.3d 666, 695-96 (Wyo. 2018) (holding same); *State v. Riley*, 110 A.3d 1205, 1217-18 (Conn. 2015) (holding same). In *Batts* this Court did what *Jones* explicitly said it was permitted to do—establish appropriate procedures to implement *Miller* and *Montgomery*.

The additional safeguards adopted in *Batts* stem from this Court's exercise of its "constitutional authority . . . to set forth the manner in which resentencing will proceed in the courts of this Commonwealth." *Commonwealth v. Batts*, 163 A.3d

[2] These factors include: (1) the child's "chronological age" and related "immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) the child's "family and home environment that surrounds him"; (3) "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"; (4) the "incompetencies associated with youth" in dealing with law enforcement and a criminal justice system designed for adults; and (5) "the possibility of rehabilitation." *Miller,* 567 U.S. at 477-78.

410, 449-51 (Pa. 2017) ("the Pennsylvania Constitution clearly and unambiguously bestows upon this Court 'the power to prescribe general rules governing practice, procedure and the conduct of all courts'" (quoting Pa. Const. art. V, § 10 (c)); *see also Commonwealth v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991) ("each state has the power to provide broader standards, and go beyond the minimum floor which is established by the federal Constitution" (citing *Commonwealth v. Sell,* 470 A.2d 457, 467 (Pa. 1983)); *Commonwealth v. Johnson*, 247 A.3d 981, 983 n.1 (Pa. 2021) (determining that this Court has power to establish rules governing practice and procedure that is broader than federal constitutional law). Because the procedures set forth by *Batts* explicitly rely upon state constitutional authority to establish procedures to be followed in Pennsylvania Courts, they are not affected by the United States Supreme Court's decision in *Jones*; indeed, as noted above, they are entirely consistent with *Jones*.

The *Batts* Court determined 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,* 163 A.3d at 451-52, and that the Commonwealth must bear the burden of proving beyond a reasonable doubt that a youth is "permanently incorrigible and that rehabilitation would be impossible." *Id.* at 454-55, 459. These procedural requirements that must be followed before a child can be sentenced to life without

parole "effectuate the mandate of *Miller* and *Montgomery* . . . 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.'" *Id.* at 415–16. This Court's language emphasizing that *Batts* intends to effectuate the mandates of *Miller* and *Montgomery*, which the *Jones* opinion left in place, provide strong support for the enduring validity—and retroactive application—of the *Batts* opinion.

CONCLUSION

For the foregoing reasons, the United States Supreme Court's decision in *Jones v. Mississippi* does not alter Mr. Stahley's claim and his life without parole sentence should be vacated and the case remanded for a resentencing consistent with *Batts*.

Respectfully submitted,

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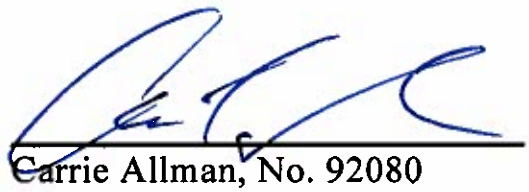

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CERTIFICATE OF COMPLIANCE

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 1,825 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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