

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

18 EAP 2018

COMMONWEALTH OF PENNSYLVANIA

V.

MICHAEL FELDER, APPELLANT

SUPPLEMENTAL BRIEF OF APPELLANT

Appeal from the Superior Court decision at 660 EDA 2015 of December 20, 2017 which affirmed the October 24, 2014 Judgment of Sentence in the Court of Common Pleas, Philadelphia County, Docket CP-51-CR-0014896-2009 which had imposed a Sentence of Fifty Years to Life.

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I. ARGUMENT

JONES V. MISSISSIPPI, 141 S.Ct. 1307 (2021), DOES NOT ALTER THE LAW IN PENNSYLVANIA THAT THE FIFTY YEARS TO LIFE SENTENCE IMPOSED ON MICHAEL FELDER, A JUVENILE, CONSTITUTED A *DE FACTO* LIFE SENTENCE REQUIRING THAT THE COMMONWEALTH ESTABLISH BEYOND A REASONABLE DOUBT THAT MR. FELDER IS INCAPABLE OF REHABILITATION, A FINDING ABSENT ON THIS RECORD.

This matter was argued before this Court in 2019. This Court held its decision pending a decision in Jones v. Mississippi after the United States Supreme Court granted certiorari. Jones was decided in April 2021 and on June 22, 2021, this Court asked the parties to address the impact of Jones on this case. The short answer is that Jones has no impact on Pennsylvania law. This Court in Commonwealth v. Batts, 163 A.3d 410 (Pa. 2017) (“Batts II”) utilized its broad state constitutional power of judicial administration to establish Pennsylvania procedures for the sentencing of juveniles convicted of murder. In fact, the Supreme Court in Jones specifically encouraged states to do precisely what this Court had presciently done in Batts II. Jones does not alter the law in Pennsylvania or change the authority of this Court to conclude that Michael Felder

was improperly given a *de facto* life sentence and to remand for resentencing.

The United States Supreme Court in Jones v. Mississippi, 141 S.Ct. 1307, 1321 (2021) reaffirmed its holdings in both Miller v. Alabama, 567 U.S. 460 (2012) and Montgomery v. Louisiana, 577 U.S. 190 (2016): “The Court’s decision today carefully follows both Miller and Montgomery.” Jones agreed that it was unconstitutional to sentence a juvenile whose crime was a result of transient immaturity to a term of life imprisonment without parole (“JLWOP”).¹ Jones held that Miller and Montgomery did not mandate that the sentencing judge implicitly or explicitly provide the basis for a decision to impose JLWOP. *Id.* at 1318-1319. Jones also held that states were free to establish appropriate procedures to prevent improper sentences. *Id.* at 1315, n. 2. This Court in Batts II had presciently done what it was invited to do by Jones: pursuant to its constitutional power, this Court set up appropriate practice and procedures governing the sentencing of juveniles convicted of first-degree murder. Batts II is still good law and established that Mr. Felder, who was not permanently incorrigible, received an improper *de facto* life sentence.

¹ Jones, quoting Montgomery, is clear that Miller established that a discretionary life without parole sentence may not be imposed upon a juvenile “whose crime reflects transient immaturity.” It may only be imposed upon those permanently incorrigible. *See Jones, supra.* at 1315, fn. 2.

Jones quoted Montgomery regarding the power to state courts to implement Miller's mandate. "When 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”).” Jones, *supra*. at 1315, n. 2, quoting Montgomery, *supra* at 211.

Importantly, like Miller and Montgomery, our 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. All of those options, and others, remain available to the States.

Jones, *supra*. at 1323.

In Batts II this Court precisely did what Jones explicitly said this Court was

permitted to do: set up appropriate procedures to implement Miller and Montgomery. This Court did not need Jones' permission to do so. As discussed below, this Court in Batts II utilized its state constitutional power to set up procedures for the courts to implement Miller and Montgomery. *Id.* at 447. As relevant here, the Batts Court's created presumptions, notice requirements, and placed upon the Commonwealth of the burden to establish permanent incorrigibility beyond a reasonable doubt in order to make sure that imposition of life without parole sentences are only meted out against the rare juvenile whose conduct was not influenced by the transient immaturity of youth. Batts did precisely what Jones envisioned states doing by "developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." *Id.* at 1315 n.2, citing Ford v. Wainwright, 477 U.S. 399, 416-417 (1986). Without these procedures, there would be little assurance that a reviewing court would be able to ensure that JLWOP sentence was deserved and overcame the presumption of youthful immaturity.

This Court's decision in Batts II not only remains intact following Jones. Jones provides additional authority for this Court to do what it did in Batts II. Rather than calling into question this Court's decision in Batts II, Jones puts its imprimatur upon the procedures established by this Court in Batts II.

As suggested above, however, this Court did not need the authorization provided by Miller, Montgomery and Jones to set up procedures governing the sentencing of juveniles convicted of first-degree murder. In Batts II this Court examined its authority to create in Pennsylvania the “Procedure for Sentencing Juveniles Convicted of First-Degree Murder.”² Commonwealth v. Batts II, *supra*. at 447. This Court concluded that “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’ . . . Pa. Const. art. V, § 10 (c).” Commonwealth v. Batts II, *supra*. at 449. In Batts II this Court set up appropriate procedures for the sentencing of juveniles convicted of first-degree murder. This Court’s broad authority to establish Pennsylvania practice and procedure permits this Court to go beyond the floor established by the federal constitution. As a result, the sentencing procedures this Court set up in Batts II remain fully intact following Jones because this Court was empowered to do so by the Pennsylvania Constitution.

Earlier this year this Court compared its power to establish rules governing

² Though this Court specifically indicated that it was establishing the procedures to be following when sentencing a juvenile for first-degree murder, these procedures should similarly apply when sentencing a juvenile for second- or third-degree murder.

practice and procedure with federal constitutional law and determined that its powers were broader:

Previously, a plurality of Justices grounded the decision to judicially require compulsory joinder upon federal constitutional law under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, made applicable to the states via the Fourteenth Amendment. *See Commonwealth v. Campana*, 452 Pa. 233, 304 A.2d 432, *vacated and remanded*, Pa. v. Campana, 414 U.S. 808, 94 S. Ct. 73, 38 L.Ed.2d 44 (1973). However, upon certiorari sought and granted, that opinion was vacated by the Supreme Court of the United States, which remanded for clarification. *See Campana*, 414 U.S. 808, 94 S. Ct. 73. Upon remand, this Court recharacterized its previous, divided decision as having been predicated on an exercise of its supervisory powers under Article V, Section 10(c) of the Pennsylvania Constitution. *See Campana*, 455 Pa. at 627, 314 A.2d at 56.

Commonwealth v. Johnson, 247 A.3d 981, 983 (Pa. 2021), fn. 1.

In establishing rules of practice and procedure, this Court can go beyond the minimum established by United States Supreme Court precedent and provide greater protections for the citizens of this Commonwealth:

This Court has long emphasized that, in interpreting a provision of the Pennsylvania Constitution, we are not bound by the decisions of the United States Supreme Court which interpret similar (yet distinct) federal constitutional provisions. *See Commonwealth v. Sell*, 504 Pa. 46, 470 A.2d 457 (1983); Commonwealth v. Melilli, 521 Pa. 405, 555 A.2d 1254 (1989);

Commonwealth v. Bussey, 486 Pa. 221, 404 A.2d 1309 (1979); Commonwealth v. DeJohn, 486 Pa. 32, 403 A.2d 1283 (1979), *cert. denied*, 444 U.S. 1032, 100 S.Ct. 704, 62 L.Ed.2d 668 (1980). Commonwealth v. Triplett, 462 Pa. 244, 341 A.2d 62 (1975); Commonwealth v. Richman, 458 Pa. 167, 320 A.2d 351 (1974); Commonwealth v. Campana, 452 Pa. 233, 304 A.2d 432, vacated, 414 U.S. 808, 94 S.Ct. 73, 38 L.Ed.2d 44 *on remand*, 455 Pa. 622, 314 A.2d 854, *cert. denied*, 417 U.S. 969, 94 S.Ct. 3172, 41 L.Ed.2d 1139 (1974).

As Mr. Chief Justice Nix aptly stated in Sell, the federal constitution establishes certain minimum levels which are “equally applicable to the [analogous] state constitutional provision.” *Id.* 504 Pa. at 63, 470 A.2d at 466, *quoting*, Commonwealth v. Platou, 455 Pa. 258, 260 n. 2, 312 A.2d 29, 31 n. 2 (1973). However, each state has the power to provide broader standards, and go beyond the minimum floor which is established by the federal Constitution. Sell, 504 Pa. at 63, 470 A.2d at 467.

Commonwealth v. Edmunds, 586 A.2d 887, 894 (Pa., 1991).

In Batts II this Court set up the procedures sentencing courts must follow in Pennsylvania when sentencing juveniles convicted of first-degree murder. Because these procedures explicitly rest upon Pa. Const. art. V, § 10 (c), the state constitutional authority for this Court to establish procedures to be followed in Pennsylvania Courts, they are not impacted by the United States Supreme Court’s decision in Jones.

II. CONCLUSION

Jones v. Mississippi reinforces the procedures this Court adopted in Batts II governing implementation in Pennsylvania of Miller and Montgomery. Based upon Jones, Miller and Montgomery this Court should vacate Michael Felder's *de facto* life without parole sentence as unconstitutional and remand the instant matter for resentencing.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH RULE 127, PA.R.A.P.

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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