

NO. 18 EAP 2018

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IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA

v.

MICHAEL FELDER

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**SUPPLEMENTAL BRIEF FOR THE COMMONWEALTH**

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Defense Appeal from the December 20, 2017 Judgment of the Superior Court of Pennsylvania (660 EDA 2015) Affirming the October 24, 2014 Judgment of Sentence of the Philadelphia Court of Common Pleas, at Docket No. CP-51-CR-0014896-2009.

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## INTRODUCTION

In 2012, Michael Felder received a mandatory term of life-without-parole (LWOP) sentence for a murder he committed when he was 17 years old. After the United States Supreme Court decided Miller v. Alabama, 567 U.S. 460 (2012), the Superior Court remanded his case for resentencing. (Felder’s direct appeal was then pending). Felder was resentenced in 2014 to 50 years to life. He appealed, arguing that a 50 years to life sentence is a *de facto* life sentence and so is unconstitutional. The Superior Court rejected Felder’s argument and affirmed the sentence. Commonwealth v. Felder, 105 A.3d 47 (Pa. Super. 2014), for text, see 2148 EDA 2012, 2014 WL 10919377 (Pa. Super. June 27, 2014).

This Court granted Felder’s *allocatur* petition on the question: “Does not a sentence of 50 to life imposed on a juvenile constitute a *de facto* life sentence requiring the sentencing court, as mandated by this Court in Commonwealth v. Batts, 163 A.2d 410 (Pa. 2017) (Batts II), first find permanent incorrigibility, irreparable corruption, or irretrievable depravity beyond a reasonable doubt.” The case was fully briefed and argued before this Court in September 2019.

On March 9, 2020, the United States Supreme Court granted *certiorari* in Jones v. Mississippi to determine whether sentencing authorities must make

implicit or explicit factual findings of incorrigibility before sentencing a juvenile convicted of murder to LWOP. This Court then entered an Order stating “the Appeal is HELD pending Jones v. Mississippi, 285 So. 3d 626 (Miss. Ct. App. 2017), cert. granted, \_\_ S.Ct. \_\_\_\_, 2020 WL 1124428 (March 9, 2020).” After the U.S. Supreme Court issued its decision in Jones, this Court ordered both parties to “file supplemental briefs addressing the United States Supreme Court’s decision in Jones v. Mississippi, \_\_ U.S. \_\_\_\_, 141 S. Ct. 1307 (2021), and its impact on the issue presented in this appeal.” This is the Commonwealth’s supplemental brief.

## ARGUMENT

### I. **Jones is limited to the issue of the minimum sentencing procedures required by the Eighth Amendment**

The question before the Court in Jones v. Mississippi was whether the Eighth Amendment requires sentencing authorities to find, as a matter of fact, that a juvenile convicted of murder is incorrigible before sentencing them to life-without-parole. 141 S. Ct. 1307, 1311 (2021). The Court held that such findings were not required. This is because “a discretionary sentencing procedure suffices to ensure individualized consideration of a defendant’s youth” after the juvenile offender receives “[a] hearing where youth and its attendant characteristics are considered as sentencing factors[.]” Id. at 1317-1318, 1321 (citing Miller v. Alabama, 567 U.S. 460, 479 (2012); Montgomery v. Louisiana, 577 U.S. 190, 206, 210-211 (2016)).

In support of its decision, the majority stressed that “Miller did not impose a formal factfinding requirement[.]” and declined to impose one because federal courts “should avoid intruding more than necessary upon the States’ sovereign administration of their criminal justice systems” or on the procedures states adopt to implement substantive Eighth Amendment precedents. Jones v. Mississippi, 141 S. Ct. 1307, 1321 (2021) (citing Montgomery, 577 U.S. at 211).

## **II. Jones has no impact on this case**

Jones does not affect Felder’s case because it is not material to the question before this Court – at what point does a term of years sentence become a *de facto* life sentence? Nothing in the opinion has any bearing on that question.

Moreover, Jones does not affect this case because it “did not overrule Miller or Montgomery[,]” but rather held that certain procedures for implementing those decisions satisfied the minimum requirements of the Eighth Amendment.<sup>1</sup> See 141 S. Ct. at 1321 (“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.”) (quoting Montgomery v. Louisiana, 577 U.S. 577 U.S. 190, 211 (2016)); id. at 1322-23 (“The Court’s precedents require a discretionary sentencing procedure in a case of this kind [and Mississippi] complied with those precedents because [Jones’] sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of [his] youth.”)).

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<sup>1</sup> The question of whether LWOP was appropriate for Jones in particular was not before the court. 141 S. Ct. at 1322.

Although the Jones Court held that “the U.S. Constitution . . . does not demand [any] particular policy approach” with respect to sentencing procedures for juvenile offenders, the Court explicitly stated that its decision “did not preclude the States from imposing additional sentencing limits[.]”. Jones, 141 S. Ct. at 13223. The Court offered several possibilities, including the one this Court already had adopted in Batts II, requiring “sentencers to make extra factual finding before sentencing an offender under 18 to life without parole.” Id. See Commonwealth. v. Batts, 163 A.3d 410, 415 (Pa. 2017) (“[T]o effectuate the mandate of Miller and Montgomery, procedural safeguards are 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.”); id. at 455 (“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.”).

The procedures this Court adopted in Batts II were not compelled by the Eighth Amendment issue in Jones, but rather by this Court’s exercise of its rulemaking authority under the state constitution and principles of due process. Batts II, 163 A.3d at 449 (quoting Pa. Const. art. V, § 10(c)) (“[T]he



Pennsylvania Constitution clearly and unambiguously bestows upon this Court ‘the power to prescribe general rules governing practice, procedure and the conduct of all courts . . . .’”); id. at 475 (“[W]e must consider the private interest affected; the risk of an erroneous deprivation . . . ; and the value of the government's interest, if any, including ‘the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.’”) (internal citations and quotations omitted).

For these reasons, the Commonwealth does not believe that Jones has any impact on the issue presented in this appeal.

**CONCLUSION**

For the reasons set forth in its merits briefing and argument before this Court, the Commonwealth respectfully requests that this Court vacate Felder’s sentence as illegal, and remand for a resentencing hearing.

Respectfully submitted,

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\_\_\_\_\_/s/

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