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IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA: EAL 2019

VS. : NO.

JOHN BLOUNT, :
Petitioner

PETITION FOR ALLOWANCE OF APPEAL FROM THE SUPERIOR TO THE SUPREME COURT

Petition To Allow An Appeal From The April 8, 2019, Judgment Of The Superior Court Of Pennsylvania (1278 EDA 2018) Affirming The March 26, 2018 Judgment Of Sentence Of The Philadelphia Court of Common Pleas at CP-51-CR-0124901-1990.

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PETITION FOR ALLOWANCE OF APPEAL FROM
THE SUPERIOR TO THE SUPREME COURT

TO THE HONORABLE, THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT:

John Blount, through Bradley S. Bridge, Assistant Defender, Karl Baker, Assistant Defender, Chief, Appeals Division, Keir Bradford-Grey, Defender, and co-counsel, Marsha Levick, Deputy Director, Juvenile Law Center, requests the allowance of an appeal in the captioned matter and respectfully represents:

1. This is a Petition for Allowance of Appeal from the published Superior Court decision of April 8, 2019, in which a panel of that Court rejected arguments that it was improper for the resentencing judge to consider as facts factors that were materially false, that it was permissible for the resentencing judge to refuse to recuse herself even though she had rejected the parties' negotiations as to sentence, and that upheld the imposition of a mandatory lifetime parole tail sentence imposed upon juvenile lifer John Blount. The United States Supreme Court in Miller v. Alabama,

567 U.S. 460 (2012) invalidated mandatory life sentences, requiring that a juvenile's sentence must be individualized. As that individualization must apply to the maximum as well as the minimum portion of a sentence, this Court should grant review of this important constitutional question and the other important procedural issues. The Superior Court's Opinion is attached hereto as Exhibit "A". The trial judge's opinion is attached hereto as Exhibit "B".

2. The following questions are presented by this Petition For Allowance Of Appeal:

> 1. Did Not The Sentencing Court Err By Denying A Recusal Motion Where That Court Declined To Follow The Negotiated Sentence Agreed Upon By The Commonwealth And The Defense?
>
> 2. Was It Not Improper For The Sentencing Court To Consider In Fashioning Her Sentence Two "Facts" That Were Palpably False: That John Blount Had Desecrated The Bodies Of the Murdered Victims And That John Blount Had An Expected Lifespan Of 90 Years?
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> 3. Does Not United States Supreme Court Decision In Miller v. Alabama, 567 U.S. 460 (2012), Which Invalidated Mandatory Life Imprisonment For Juveniles And Required That Juveniles' Sentences Be Individualized, Invalidate Mandatory Lifetime Parole Sentences For Juveniles?

3. The facts giving rise to the instant Petition For Allowance of Appeal:

John Blount was convicted of two murders in 1996 and given a mandatory sentence of life imprisonment. At the time of the crime, he was 17 years old. Because the United States Supreme Court in Miller v. Alabama, 567 U.S. 460 (2012) and Montgomery v. Louisiana, 136 S.Ct. 718 (2016) held such sentences to be unconstitutional, Mr. Blount came before the Honorable Barbara McDermott of the Philadelphia Court of Common Pleas on March 26, 2018[1] to be resentenced.[2] Prior

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[1] "N.T. 3/26/18" refers to the notes of testimony from the resentencing hearing before Judge McDermott on March 26, 2018.

[2] The facts upon which Mr. Blount's resentencing was based were put into the record by the prosecutor at sentencing. He noted that:

> [O]n the night of September 28, 1989, the defendant shot to death [Andre] Ramsey and Robert Robertson . . ., each with a single gunshot wound to the head at close range in Ramsey's bedroom.
>
> The defendant's girlfriend, Tahara Underwood, was in the next room, heard the shots, went to go see what's going on, heard -- the defendant told her, "Don't go in there. I dropped something." But she saw blood coming from under the door. After the killings, the defendant took Ramsey's money and jewelry, Ramsey's car, which he later got rid of, hid the murder weapon in his mother's room and then was aided by a friend by the name of Stackhouse, moved the bodies to a pit in the garage of the house. And after that, the defendant and family members cleaned up the blood in the bedroom and threw the evidence of the crime, including the bedding.
>
> . . .
>
> After that, the defendant hired two people known as Travis and Beetle to dispose of the corpses accompanied by the defendant's girlfriend, Ms. Underwood. He told them he killed them and put their bodies in a hole in the basement. After that, the defendant told Ms. Underwood to get a car to move the bodies and went inside.

continue...

to the resentencing hearing, the Commonwealth offered, and the defense accepted, a negotiated sentence of two concurrent sentences of 29 years to life for the murder convictions (N.T. 3/26/18, 46, 47; 4/26/18, 5-6).

Judge McDermott began the resentencing hearing by describing the sentencing options available to her. After describing the Miller factors, she noted that the factor in the "Court's mind is the fact that there's two deaths here." (N.T. 3/26/18, 13). In determining her sentence, Judge McDermott "recognizes that a life expectancy is in the 90s these days. That's where we are" (N.T. 3/26/18, 13). The prosecutor agreed that Mr. Blount had "done extraordinarily well in" prison (N.T. 3/26/18, 47). In fact, Mr. Blount had but a single write-up in his 28 years of incarceration and that was for having a radio while he was death row (N.T. 3/26/18, 65-66). That was unique as very few inmates would not have multiple write-ups over 28 years (N.T. 3/26/18, 66).

Judge McDermott heard from numerous witnesses. She agreed that John Blount's prison record was one of the best that she had ever seen (N.T. 3/26/18, 85). However, she explained that she was troubled by the fact that there were two murders

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[2]...continue

. . .

> On October 3rd, police discovered the victims' bodies decomposing on 69th Avenue between 11th and 12th Streets. They were wrapped in drapes. Neither had a wallet or jewelry, no identification.

N.T. 3/26/18, 7-11.

here (N.T. 3/26/18, 85). She was also troubled by the sophistication in the crime and the additional pain that he had put the decedents' families through "by hiding the bodies and then desecrating the bodies" (N.T. 3/26/18, 85).

Defense counsel requested that she recuse herself if she was "disinclined to accept the offer" made by the Commonwealth and agreed to by the defense; Judge McDermott denied the recusal motion (N.T. 3/26/18, 92). She imposed two concurrent sentences of 35 years to life on the first degree murder convictions (N.T. 3/26/18, 92).

On April 4, 2018, Mr. Blount petitioned for reconsideration of sentence. On April 25, 2018 counsel amended his petition for reconsideration of sentence and included transcripts from four juvenile lifer resentencing cases before Judge McDermott where she indicated that she would recuse herself if she rejected the agreed upon sentencing offer between the prosecution and defense.[3] On April 26, 2018 Judge McDermott denied the post-sentence motions.

4. Reasons for granting this Allowance Of Appeal.

There are three issues presented for this Court's review. The first issue presents a policy question that should be resolved by this Court. The judge at Mr.

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[3] Counsel's amended post-sentence motion is attached hereto as Exhibit "C."

Blount's resentencing rejected the negotiated sentence. The proper procedure should be for the judge to grant a recusal motion in such a circumstance. Here, the judge erred by not granting that motion. The second issue concerns the fairness of the resentencing proceeding here because the sentencing judge improperly relied upon "facts" that were not true: the "fact" that Mr. Blount would be expected to live into his 90s and that he had "desecrated" the decedents' bodies. Lastly, the Superior Court asserted that it was mandatory to impose a lifetime parole sentence in every juvenile lifer resentencing case, relying on this Court's decisions in Commonwealth v. Batts, 66 A.3d 286, 294-297 (2013) ("Batts I") and Commonwealth v. Batts, 163 A.3d 410, 439-441 (2017) ("Batts II"). However, in Batts I and Batts II the question presented was whether a sentence of life imprisonment was constitutionally imposed. This Court was not presented with the issue here: whether it is unconstitutional to mandate a maximum sentence of lifetime parole. Each of these three issues merits this Court's consideration.

1. THIS COURT SHOULD GRANT REVIEW WHERE THE SENTENCING COURT IMPROPERLY DENIED A RECUSAL MOTION WHEN THAT COURT REFUSED TO FOLLOW THE NEGOTIATED SENTENCE AGREED UPON BY THE COMMONWEALTH AND THE DEFENSE.

Pennsylvania law is clear that when negotiating a sentence the prosecutor has

the absolute authority to waive imposition of a mandatory sentence or even a semblance of one. Here, the Commonwealth agreed to exactly that and the parties agreed to a negotiated sentence of 29 years to life. When the resentencing judge indicated that she would not go along with the negotiated sentence, counsel immediately moved for her to recuse herself. She denied the recusal motion and imposed concurrent sentences of 35 years to life. While there are no cases directly on point where a request for recusal was made when the judge indicated that she would not agree to impose the negotiated sentence, policy considerations demonstrate that recusal should have been granted. This Court should grant review to evaluate whether those policy considerations required recusal.

The facts underlying this argument are simple. At the conclusion of the sentencing hearing but prior to the imposition of sentence, Judge McDermott indicated that she did not intend on imposing the sentence agreed upon by the parties. Counsel immediately moved for recusal (N.T. 3/26/18, 92). The motion was denied and Judge McDermott imposed two concurrent sentences of 35 years to life (N.T. 3/26/18, 92).

It has long been true that under Pennsylvania law a negotiated sentence is the preferred manner to resolve cases. In fact, the entire criminal justice system would break down without such a preference as the system does not have the resources were

each case to require a trial and separate sentencing hearing:

> It is well recognized that the guilty plea and the frequently concomitant plea bargain are valuable implements in our criminal justice system. See Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977); Commonwealth v. Alvarado, 442 Pa. 516, 276 A.2d 526 (1971); Commonwealth v. McKee, 226 Pa.Super. 196, 313 A.2d 287 (1973). "The disposition of criminal charges by agreement between the prosecutor and the accused, ... is an essential component of the administration of justice. Properly administered, it is to be encouraged." Santobello v. New York, 404 U.S. 257, 260, 92 S.Ct. 495, 498, 30 L.Ed.2d 427 (1971) (emphasis added). In this Commonwealth, the practice of plea bargaining is generally regarded favorably, Commonwealth v. Zuber, 466 Pa. 453, 353 A.2d 441 (1976); Commonwealth v. Alvarado, *supra*, Commonwealth ex rel. Kerekes v. Maroney, 423 Pa. 337, 223 A.2d 699 (1966), and is legitimized and governed by court rule. Pa.R.Crim.P. 319(b). The desirability of disposing of criminal charges through plea bargaining is based on the premise that frequently a plea agreement is advantageous to all concerned.

Commonwealth v. Schmoyer, 280 Pa. Super. 406, 421 A.2d 786, 789–90 (1980).

While case law establishes that a negotiated resolution is advantageous to all concerned and is to be encouraged, the trial court retains the authority to reject a negotiated plea. The Sentencing Code, 42 Pa.C.S.A. §§ 9701–9799.41, obligates judges to impose a sentence "that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant." 42 Pa.C.S.A. § 9721(b).

However, if a judge rejects such a negotiated sentence, the matter should be sent to another judge for sentencing. As this Court held in Commonwealth v. Evans, 434 Pa. 52, 57, 252 A.2d 689, 691, n. 1 (1969):

> Moreover, if a judge refuses to accept a plea bargain agreed to by the defense and the Commonwealth, or if plea of guilty or nolo contendere is withdrawn because the trial judge decides that his original agreement was inappropriate, then the trial should be held where practical before another judge who has no knowledge of the prior plea bargaining.

Because there is a policy preference in resolving cases through negotiations, it should not make a difference that here only the sentence was negotiated while in other cases it is often guilt as well as the sentence. In fact, if you look at the Rules established by the First Judicial District regarding juvenile lifer cases, there is a clear preference established for negotiated sentences.[4] The Rules require that, "Should negotiations result in a stipulation addressing all issues prior to the resentencing hearing, the case shall be slated forthwith for immediate disposition before the assigned presiding judge." General Court Regulation No. 1 of 2016, 4c.

Judge McDermott in her written opinion noted that, "The mere fact that the Defendant negotiated with the Commonwealth for a stipulated sentence does not

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[4] The First Judicial District rules regarding Juvenile Lifer Resentencing procedures are attached hereto as Exhibit "D".

obligate this Court to accept the negotiations." Opinion of McDermott, J., Exhibit "B", at 4. Judge McDermott is correct that she is not obligated to impose the agreed upon sentence. While the Sentencing Code places an independent obligation upon a judge to impose a sentence the judge finds appropriate, 42 Pa.C.S.A. § 9721(b), the refusal of the judge to impose the stipulated sentence requires that the judge recuse herself.

To demonstrate that Judge McDermott knew that it was legally appropriate for her to recuse herself if she rejected the negotiated sentence, counsel filed an amended post-sentence motion that included transcripts from four other juvenile lifer resentencing hearings before her.[5] In each case Judge McDermott indicated that she would recuse herself if the negotiated sentence was not accepted.[6]

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[5] Counsel's amended post-sentence motion is attached hereto as Exhibit "C". The transcripts from the four other juvenile lifer resentencing hearings were attached to that exhibit.

[6] In Commonwealth v. Ellery Little, Docket No. CP-51-CR-0517261-1991, Judge McDermott declared: "So, here's what's going to happen once I accept this, and I'm going to get some more information. I have enough information – well, I think I have enough information to tell you that I will be accepting this, because if I wasn't going to accept it, you would have the right to go back to 1105 [the homicide calendar courtroom], and then you might be able to go to another judge." (N.T. 1/17/18, 12-13).

In Commonwealth v. Rondell Carrero, Docket No. CP-51-CR-0543541-1993, Judge McDermott stated: "Do you understand that you're giving up your right to the sentencing hearing and that what will happen today is, I will still listen

continue...

These four cases demonstrate that Judge McDermott knew that while she did not have to accept the parties' agreed upon sentence, if she were to reject that agreed upon sentence she should recuse herself and the matter would go before another sentencing judge. There is nothing that distinguishes Mr. Blount's matter from the other four cases except that in Mr. Blount's case Judge McDermott refused to follow her own well-established procedure outlined in those four cases. To not follow that process in Mr. Blount's case deprived him of due process of law and equal protection under the Federal Constitution and the parallel provisions under the Pennsylvania Constitution. U.S.CONST., Amend. XIV; PA.CONST., Art. 1, Sec. 1, 9.

The Superior Court panel suggests that counsel waived this issue because counsel should have sought recusal when Judge McDermott first indicated that she had the discretion to NOT accept the negotiations. Commonwealth v. Blount, slip

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[6]...continue
to people. You have a right to talk and express what's called the right of allocution. And then, if for some reason I would not accept the agreement, you would be able to withdraw your decision and go to another judge. Do you understand that?" (N.T. 1/18/18, 9-10).

In Commonwealth v. Johnny Berry, Docket No. CP-51-CR-1104081-1994, Judge McDermott declared: "Do you understand that if I do accept that sentence, you know, you would be sentenced. If for some reason I would not accept the recommendation, you could go to another judge, do you understand that?" (N.T. 2 12/18, 10).

In Commonwealth v. Neil Lyew, Docket No. CP-51-CR-0641221-1994, Judge McDermott declared: "So if for some reason I was not to accept this recommended sentence, then you would go to another judge." (N.T. 2/21/18, 18).

opinion, Exhibit "A", at 6-9. However, the judge always retains the authority to not accept the negotiations so counsel cannot be faulted for not objecting when the judge accurately stated the law. 42 Pa.C.S.A. § 9721(b). A recusal motion was only appropriately made when Judge McDermott indicated that she was not going to accept the negotiations and the moment that Judge McDermott indicated that she was not inclined to accept the negotiations, counsel immediately moved for a recusal.

The issue presented here presents this Court with an important policy question regarding negotiated sentences. Typically, the parties agree on a particular sentence and the defendant agrees to plead guilty in exchange for imposition of that sentence. In such a circumstance, while the judge has discretion to accept the plea and sentence, if the judge rejects the negotiated plea and sentence, the judge must recuse him/herself. The instant situation is a slight variant on that paradigm. Here, the parties sought a particular sentence as guilt had already been determined. However, the same rule should apply: should the judge reject the negotiated sentence, the judge should recuse him/herself. This Court should consider the policy considerations requiring the granting of a timely recusal motion and whether that rule should be adopted throughout the Commonwealth.

2. THIS COURT'S SUPERVISORY AUTHORITY SHOULD BE EXERCISED WHERE THE INTERMEDIATE APPELLATE COURT IGNORED THE IMPACT OF THE SENTENCING COURT CONSIDERING TWO "FACTS" THAT WERE PALPABLY FALSE: THAT JOHN BLOUNT HAD DESECRATED THE BODIES OF THE MURDERED VICTIMS AND THAT JOHN BLOUNT HAD AN EXPECTED LIFESPAN OF 90 YEARS.

It has long been the law in Pennsylvania that while a trial judge has wide discretion in fashioning an appropriate sentence, the judge cannot consider erroneous or false "facts." "If a sentencing court considers improper factors in imposing sentence upon a defendant, although the sentence thereby imposed is not rendered illegal, the court has committed an abuse of discretion. Commonwealth v. Archer, 722 A.2d 203, 210 (Pa.Super., 1998) *(en banc)*." Commonwealth v. McAfee, 849 A.2d 270, 274 (Pa. Super., 2004). Here, the sentencing judge considered as facts two conclusions that were palpably false. The Superior Court panel merely stated in conclusory terms that it agreed with the trial court, thereby abdicating its own responsibility to review the sentencing court's discretion. This Court should, therefore, exercise its supervisory authority to vindicate the principle that the sentencing court must rely upon facts, not falsehoods, when sentencing.

In fashioning her sentence, Judge McDermott considered as a fact that John

Blount had not only murdered, but had desecrated the bodies. There was no evidence in the record to support that there was any desecration or that Mr. Blount had done anything more than assist in hiding and later paying someone to remove the bodies (N.T. 3/26/18, 85). John Blount's sentence improperly included an element of punishment for something that had not occurred.

The Superior Court "conclude[d] the facts of the crime support the sentencing court's conclusion that Appellant desecrated the bodies after the killings." Commonwealth v. Blount, slip opinion, Exhibit "A", at 15 (footnote deleted). In a footnote the Superior Court panel noted because Mr. Blount was found guilty of "abuse of corpse", that was synonymous with "desecration of corpse." Commonwealth v. Blount, slip opinion at 15, fn. 6. "Abuse of corpse" requires "treat[ing] a corpse in a way that . . . would outrage ordinary family sensibilities." 18 Pa.C.S.A. § 5510. Merely concealing a corpse is sufficient to constitute abuse of corpse, Commonwealth v. Smith, 389 Pa.Super. 606, 567 A.2d 1070 (1989), *appeal denied*, 526 Pa. 648, 585 A.2d 468 (1990), and here Mr. Blount and his stepfather placed the bodies in a pit in the garage and then paid someone to remove the bodies. "Desecration" would require some act upon the body itself, such as mutilation or

dismemberment[7]. That did not occur here though Judge McDermott erroneously concluded that Mr. Blount had done more than hide the bodies, declaring that he had "hid[den] the bodies and then desecrat[ed] the bodies" (N.T. 3/26/18, 85). There were no facts that supported that assertion by the sentencing court. For the Superior Court to simply sign off on the sentencing court's assertions was an abdication of the Superior Court's responsibilities to oversee accuracy at sentencing.

In addition, here the sentencing judge concluded that the current life expectancy for Mr. Blount would be in the 90s (N.T. 3/26/18, 13). Not only was there was no evidence introduced at Mr. Blount's resentencing hearing regarding life expectancy, the judge's assertion that Mr. Blount would be expected to live into his 90s is factually incorrect. That error was particularly prejudicial because in fashioning her sentence Judge McDermott concluded that if Mr. Blount would be paroled after 35 years of incarceration and lived into his 90s he would have maybe four decades of freedom before his death.

While the sentencing court had no evidence regarding the projected lifespan

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[7] *Cf.* Desecration of Flag, 18 Pa. C.S.A. § 2102:

> **(a) Offense defined.**--A person is guilty of a misdemeanor of the third degree if, in any manner, he:
>
> . . .
>
> (4) publicly or privately mutilates, defaces, defiles, or tramples upon, or casts contempt in any manner upon any flag.

of a juvenile lifer, there is ample evidence about significant decline in life expectancy caused by incarceration. On average among all prisoners there is a two year decline in life expectancy for each year of incarceration. Casiano v. Comm'r of Correction, 317 Conn. 52, 57-58, 115 A.3d 1031, 1035 (2015), *cert. denied sub nom.* Semple v. Casiano, 136 S. Ct. 1364, 194 L. Ed. 2d 376 (2016); Evelyn J. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, 103 AM. J. OF PUB. HEALTH 523, 526 (2013). In fact, one study cited in Casiano v. Comm'r of Correction, concluded that Michigan juveniles sentenced to natural life sentences have average life expectancy of 50.6 years. *Id.* at 57-58.

However, rather than citing more evidence demonstrating the diminution in life expectancy caused by incarceration, the issue here is that there was no evidence to support the sentencing court's demonstrably false assertion that Mr. Blount would be expected to live into his 90s and the Superior Court's failure to appropriately review the sentencing court. The Superior Court agreed "that no such evidence [of lifespan] was presented during the sentencing hearing." Commonwealth v. Blount, slip opinion, Exhibit "A", at 15. Then the Superior Court quibbled with the sentencing court's language: "the sentencing court did not affirmatively state Appellant would live into his 90s; but rather, the court merely noted that, generally, 'a life expectancy is in the 90s these days.'" Commonwealth v. Blount, slip opinion, Exhibit "A", at 15,

fn. 7. How that overcame the sentencing court's error is never explained by the Superior Court.

The Superior Court then quotes from the sentencing court's opinion that no prejudice was shown by the sentencing court's false declaration of lifespan because Mr. Blount would be eligible for parole when he would be 52 years old. Commonwealth v. Blount, slip opinion at 16. That the sentencing judge determined that if she imposed a sentence of 35 years to life, Mr. Blount would statistically have about 40 years of freedom during his remaining life is precisely that prejudice because, statistically Mr. Blount would have very little lifespan remaining if he was paroled at 52 years of age. This is because at 52 it would be as if he were 87, having aged two years for each year of incarceration. The Superior Court and Judge McDermott each quoted the Michigan study of juvenile lifers that found their lifespan to be 50.6 years. See Opinion of McDermott, J., Exhibit "B", at 11, fn. 8; Commonwealth v. Blount, slip opinion, Exhibit "A", at 16. Hence, statistically Mr. Blount may not even live long enough to be considered for parole when he is 52.

The sentencing court considered as facts two matters that were demonstrably false: that Mr. Blount had "desecrated" the bodies of the decedents and that statistically he would live into his 90s. The Superior Court did not provide oversight of the sentencing court's erroneous reliance on these falsities. This Court's

supervisory authority is needed because the Superior Court panel so departed from accepted judicial practices and abused its discretion when it approved of the sentencing court's actions that should have been condemned.

3. THIS COURT SHOULD REVIEW MANDATORY LIFETIME PAROLE SENTENCES FOR JUVENILES BECAUSE THE SUPERIOR COURT'S MISREADING OF THIS COURT'S DECISIONS IN COMMONWEALTH V. BATTS, 66 A.3D 286 (2013) ("BATTS I") AND COMMONWEALTH V. BATTS, 163 A.3d 410 (PA. 2017) ("BATTS II") RENDERED THOSE DECISIONS INCONSISTENT WITH THE UNITED STATES SUPREME COURT DECISION IN MILLER V. ALABAMA, 567 U.S. 460 (2012), WHICH INVALIDATED MANDATORY LIFE IMPRISONMENT FOR JUVENILES AND REQUIRED THAT JUVENILES' SENTENCES BE INDIVIDUALIZED THEREBY INVALIDATING MANDATORY LIFETIME PAROLE SENTENCES FOR JUVENILES.

The issue of the propriety of imposing a mandatory term of lifetime parole is currently pending before this Court in Commonwealth v. Ligon, 207 EAL 2019. The issue here is precisely the same: the resentencing judge determined that she was required to impose a term of mandatory lifetime parole. The Superior Court in each case affirmed based upon a misreading of this Court's decisions in Batts I and Batts

II. However, in Batts I and Batts II the question presented was whether the sentence there of life imprisonment had been constitutionally imposed. This Court was not presented with the issue here: whether it is unconstitutional to mandate a maximum sentence of lifetime parole.

In order to understand why mandatory lifetime parole is unconstitutional and violates both Miller and Montgomery, it is important to examine what this Court's two decisions in Batts decided and, more importantly, what they did not decide.

In Batts I this Court was presented with its first opportunity to assess the impact of Miller on Pennsylvania law that previously had mandated life imprisonment for a juvenile convicted of either first or second degree murder. This Court described the issues before it:

> This Court granted allowance of appeal, limited to the questions of whether Roper rendered imposition of a sentence of life imprisonment without the possibility of parole on a juvenile unconstitutional and whether Appellant's Eighth and Fourteenth Amendment rights were violated by the mandatory nature of his sentence. See Commonwealth v. Batts, 603 Pa. 65, 981 A.2d 1283 (2009) (*per curiam*).
>
> . . .
>
> In light of the Supreme Court's opinion in Miller, we directed the parties to submit supplemental briefing and conducted oral argument on two additional issues:
> 1) What is, as a general matter, the appropriate remedy on

> direct appeal in Pennsylvania for a defendant who was sentenced to a mandatory term of life imprisonment without the possibility of parole for a murder committed when the defendant was under the age of eighteen?
> 2) To what relief, if any, is appellant entitled from the mandatory term of life imprisonment without parole for the murder he committed when he was fourteen years old?
>
> *See* Commonwealth v. Batts, No. 79 MAP 2009, July 9, 2012 Order (*per curiam*).

Commonwealth v. Batts I, *supra.* at 290, 293.

In Commonwealth v. Batts II, this Court described the issues before it:

> [Qu'eed Batts'] case returns for the second time on discretionary review for this Court to determine whether the sentencing court imposed an illegal sentence when it resentenced him to life in prison without the possibility of parole. After careful review, we conclude, based on the findings made by the sentencing court and the evidence upon which it relied, that the sentence is illegal in light of Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (holding that a mandatory sentence of life in prison without the possibility of parole, imposed upon a juvenile without consideration of the defendant's age and the attendant characteristics of youth, is prohibited under the Eighth Amendment to the United States Constitution), and Montgomery v. Louisiana, ___ U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) (holding that the Miller decision announced a new substantive rule of constitutional law that applies retroactively and clarifying the limited circumstances in which a life-without-parole sentence is permissible for a crime committed when the defendant was a juvenile).

Commonwealth v. Batts II, 163 A.3d 410, 415 (Pa. 2017).

In Batts II this Court established certain procedural safeguards to effectuate Miller and Montgomery, e.g., a requirement that there be a presumption against a life without parole sentence and that the Commonwealth bears the burden of overcoming that presumption beyond a reasonable doubt. This Court determined that these protections were not in place at Mr. Batts' first resentencing hearing so the matter was remanded yet again for a new resentencing hearing consistent with Batts II.

This Court in Batts I and Batts II did not directly consider the issue presented here: the constitutionality of a lifetime parole tail. There was no reason to do so because that issue was not before the Court in either case. Rather the issue presented in both cases was the constitutionality of the life without parole sentence imposed on Mr. Batts. The Superior Court panel below quoted from the Superior Court's decision in Commonwealth v. Seskey, 170 A.3d 1105 (Pa.Super. 2017) that had cited to this Court's Batts II decision:

> For those defendants [convicted of first or second-degree murder prior to June 25, 2012.] for whom the sentencing court determines a [life without parole] sentence is inappropriate, it is our determination here that they are subject to a mandatory maximum sentence of life imprisonment as required by Section 1102.1(a), accompanied by a minimum sentence determined by the common pleas court upon resentencing[.]

Commonwealth v. Blount, slip opinion, Exhibit "A", at 21 (footnote deleted).

The lower court panel did not quote Batts I where this Court suggested a different result:

> We recognize, as a policy matter, that Miller's rationale-emphasizing characteristics attending youth-militates in favor of individualized sentencing for those under the age of eighteen both in terms of minimum and maximum sentences.

Commonwealth v. Batts I, *supra.* at 296.

In Batts I and Batts II this Court was not presented with a legal challenge to the lifetime parole tail. It was presented with a challenge to lifetime imprisonment sentences generally and what resentencing procedures were required specifically. To answer this question, this Court determined that the life sentences mandated in 18 Pa.C.S.A. §1102 could be severed by the Parole Board's disempowerment to grant parole to life sentences in 61 Pa.C.S.A. § 6137(a)(1). This Court concluded that after Miller the State Parole Board was empowered to grant parole for juveniles convicted of first or second degree murder following a resentencing.

The United States Supreme Court in Graham v. Florida, 560 U.S. 48 (2010) recognized that sentencing juveniles "makes relevant th[e] Court's cases demanding individualized sentencing." Miller, 567 U.S. at 475. The Supreme Court has held mandatory schemes related to the harshest penalties to be flawed if they "gave no significance to the character and record of the individual offender or the

circumstances of the offense, and excluded from consideration . . . the possibility of compassionate or mitigating factors." *Id.* (citations omitted) (quotation marks omitted).

Morever, the United States Supreme Court in Montgomery v. Louisiana, 136 S. Ct. 718 (2016) held that the imposition of a life without parole sentence only be imposed on children who are "permanently incorrigible", "irreparably corrupt" or "irretrievably depraved." That same standard must be applied to mandatory minimum life sentences as well as mandatory maximum lifetime parole tails.

In considering mandatory life without parole in juvenile cases, the Supreme Court in Miller found objectionable that "every juvenile will receive the same sentence as every other [despite age], the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one." *Id.* at 477. Therefore, a trial court has the obligation to fashion a sentence that appropriately reflects the individual circumstances of each juvenile and the offense. Treating each juvenile the same by imposing a mandatory maximum sentence of life ignores the obligation of the court to fashion a sentence which reflects a careful balance of the Miller factors.

United States District Court Judge Savage in Commonwealth v. Songster, 201 F.Supp.3d 639 (E.D.Pa. 2016) recognized this requirement:

> Routinely fixing the maximum of each sentence at life contradicts a sense of proportionality and smacks of categorical uniformity. A sentencing practice that results in every juvenile's sentence with a maximum term of life, regardless of the minimum term, does not reflect individualized sentencing. Placing the decision with the Parole Board, with its limited resources and lack of sentencing expertise, is not a substitute for a judicially imposed sentence. . . . If the sentencing court finds that the defendant is not corruptible and not incorrigible, it must impose a maximum sentence less than life to reflect that finding. . . . No one can doubt that there are defendants who should be released immediately after a weighing of all the factors. There are those whose rehabilitation will be beyond question. . . [These individuals], some now graying adults, should not be required to suffer delay and another proceeding before gaining the freedom they already deserve had the sentencing judge conducted a thorough sentencing hearing applying the principles prescribed by Miller and Montgomery.

Songster, 201 F.Supp.3d at 642.

In Pennsylvania an individual is not entitled to release on parole. Rather, parole eligibility is a procedure through which an individual can be granted release in exchange for continued supervision on the outside. A mandatory life maximum sentence invariably provides the Parole Board with the ability to effectively impose a life without parole sentence by the denial of parole. A court, though, would not be capable of forcing the Parole Board to release an individual even if the individual has demonstrated consistent rehabilitation. Rather, imposing a mandatory life maximum

sentence "reflects an abdication of judicial responsibility" by "[p]assing off the ultimate decision to the Parole Board in every case." Songster v. Beard, 201 F.Supp.3d 639, 642 (E.D. Pa. 2016). Thus, "[L]ife without parole remains a possibility regardless of the individual's peculiar situation." *Id.*

Even if an individual is granted parole, though, he is still subjected to extensive monitoring that may not be warranted. Such restrictions include the inability to travel outside of their home county without permission, a curfew that impedes complete reentry, and the risk of serving time for minor or technical parole violations that would not otherwise demand incarceration.

A maximum sentence of life assumes that the individual will never be fully rehabilitated despite the overwhelming likelihood that as children become adults they will naturally rehabilitate themselves and desist from further criminal conduct. A lifetime of parole does little to promote rehabilitation and instead risks trapping individuals in minor violations that are not indicative of future crime, but rather more indicative of technical challenges in state supervision. Since the vast majority of individuals can and will be rehabilitated, subjecting all of them to a lifetime of parole makes a judgment contrary to that reality and contrary to the constitution.

CONCLUSION

For the reasons stated above, John Blount requests that this Honorable Court agree to review: the propriety of his sentencing judge to deny recusal, the improper reliance by his sentencing judge upon two factors that were palpably false and the constitutionality of a mandatory sentence of lifetime parole.

Respectfully submitted,

/S/

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CERTIFICATION OF COMPLIANCE WITH RULE 1115

I do hereby certify on this 8th day of May, 2019, that the Petition For Allowance of Appeal filed in the above captioned case on this day does not exceed 9,000 words. Using the word processor used to prepare this document, the word count is 5,969 as counted by WordPerfect.

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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