

IN THE SUPREME COURT OF PENNSYLVANIA
No. 3 WAP 2024

COMMONWEALTH OF PENNSYLVANIA,

v.

DEREK LEE,

Petitioner.

***AMICUS CURIAE* BRIEF OF POWER**
INTERFAITH/POWER LIVE FREE
IN SUPPORT OF APPELLANT

On Appeal from the Judgement of the Superior Court of Pennsylvania at No. 1008
WDA 2021 dated June 13, 2023, Affirming the Judgement of Sentence of the
Court of Common Pleas of Allegheny County at CP- 02-CR-0016878-2014 dated
December 19, 2016

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Pa. Code § 81.502(a))

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STATEMENT OF INTEREST OF POWER INTERFAITH/POWER LIVE FREE

POWER Interfaith is a Pennsylvania faith-based, grassroots, interfaith, interdisciplinary, multi-racial coalition that promotes numerous social justice reforms. POWER Live Free, a subgroup within POWER Interfaith, focuses on policing and criminal law reforms, including seeking an end to mass incarceration and the harms it has created for people and communities of color in Pennsylvania. POWER Interfaith/POWER Live Free (“POWER”) seeks change primarily through protest, legislative advocacy, community organizing, litigation, and other actions, highlighting the need for grace, mercy, equity and redemption in the criminal legal system and beyond. In addition to fighting mass incarceration, POWER’s actions in criminal justice reform include working to prevent immigrant detention, end gun violence, promote police accountability, and develop alternatives for real community safety.

POWER has a particular interest in the legal issue before the Court. Members of the coalition represent an array of faith traditions that embrace the fundamental concepts of mercy and redemption. Moreover, members of the coalition represent congregations that are racially, ethnically, and economically diverse. As such, these congregations are especially impacted by the ills of the criminal legal system, including the disproportionate rate at which Black and brown Pennsylvanians are

convicted of felony murder, and by extension, sentenced to life without parole under the Commonwealth's current unduly harsh and unconstitutionally cruel mandatory sentencing regime.

RULE 531(B)(2) CERTIFICATION

Pursuant to Rule 531(b)(2), POWER certifies that no person or entity was paid in whole or in part to prepare this brief. Only *pro bono* counsel authored this brief.

INTRODUCTION

In the spring of 2021, at the request of then-Lieutenant Governor and current United States Senator John Fetterman, Philadelphia Lawyers for Social Equity (PLSE) released two sobering reports, *Life Without Parole for Second Degree Murder in Pennsylvania: An Objective Assessment of Sentencing* and *Life Without Parole for Second Degree Murder in Pennsylvania: An Objective Assessment of Race*, detailing the tragic consequences of the Commonwealth's current felony murder sentencing scheme. The reports provide a disturbing snapshot of the unfairness inherent in this practice and further supported Senator Fetterman's efforts, as then-Chairman of the Pennsylvania Board of Pardons, to advocate for second chances for individuals serving life sentences across the Commonwealth. Pennsylvania ranks worst in the entire country regarding its use of life-without-

parole sentences for youth, *see* Victoria Law, *Pennsylvania Reckons with Its Draconian Laws on Life Imprisonment*, BOLTS (March 12, 2024), <https://boltsmag.org/pennsylvania-case-life-without-parole-felony-murder/#:~:text=The%20state%20has%20the%20second,been%20convicted%20of%20felony%20murder>, and second-worst in its use of life-without-parole for everyone else, *see* Ashley Nellis & Niki Monazzam, *Left to Die in Prison: Emerging Adults 25 and Younger Sentenced to Life without Parole*, THE SENTENCING PROJECT (June 7, 2023), <https://www.sentencingproject.org/reports/left-to-die-in-prison-emerging-adults-25-and-younger-sentenced-to-life-without-parole/#footnote-ref-12>.

More specifically, PLSE found that: a staggering 73.3% of those convicted of felony murder in Pennsylvania were 25 years old or younger when they committed the offense; nearly 80% of those convicted of felony murder were people of color; and just under 70% were Black, despite the fact that Black people make up roughly 12% of the Commonwealth's population. *See* ANDREA LINDSAY & CLARA RAWLINGS, PHILADELPHIA LAWYERS FOR SOCIAL EQUITY, LIFE WITHOUT PAROLE FOR SECOND-DEGREE MURDER IN PENNSYLVANIA: AN OBJECTIVE ASSESSMENT OF RACE 1 (2021) [hereinafter AN OBJECTIVE ASSESSMENT OF RACE].

In an effort to stem the tide of this massive sentencing disparity, then-Governor Tom Wolf, with the support of Fetterman and then-Attorney General and

current Pennsylvania Governor Josh Shapiro, presided over the second largest number of average annual sentence commutations in the Commonwealth in over 40 years. *See* STATE HISTORICAL CLEMENCY PROJECT, THE DEMISE OF CLEMENCY FOR LIFERS IN PENNSYLVANIA, CENTER ON THE ADMINISTRATION OF CRIMINAL LAW 6 (last visited April 26, 2024). Notably, pursuant to the Pennsylvania Constitution, commutations can only be granted with a unanimous recommendation from the Board of Pardons, PA. CONST. art. 4, § 9, which suggests that the increase in such relief is a reflection of more than just the personal preferences of the Governor’s office. The findings within the reports only buttress Governor Shapiro’s ongoing calls to the General Assembly to “change the law so second-degree murder is not an automatic life sentence.” *Fetterman: Study Confirms Immediate Need for Reform of Life Without Parole Sentences for Second-Degree “Felony” Murder*, PENNSYLVANIA PRESSROOM: OFFICE OF THE LIEUTENANT GOVERNOR (March 26, 2021), <https://www.media.pa.gov/pages/lieutenant-governor-details.aspx?newsid=112> [hereinafter *Study Confirms Immediate Need for Reform*].

Inherent in these efforts, and in the existence of the parole and clemency systems more generally, is a recognition of the need for grace, mercy, and opportunities for redemption and rehabilitation in our criminal legal system. They are also a tacit acknowledgment that all of us—even those convicted of serious or violent crimes—should be given the chance to grow into our best selves,

notwithstanding our past mistakes, and to contribute meaningfully to our families and communities.

POWER writes in full support of Mr. Lee's petition, including the constitutional arguments that have already been well-articulated by Mr. Lee's counsel, as well as other *amici*. We focus here on one dimension of the constitutional analysis that extends beyond the question of whether or not the practice is unconstitutional as a matter of law (and we firmly believe that it is). We argue that the practice is irrational, inequitable, and ultimately harmful to society as a matter of policy, as demonstrated by the conclusions of objective, well-respected research institutions and the ongoing efforts of Commonwealth officials to ensure that those convicted of felony murder in Pennsylvania are not condemned to die in prison. Further, given the disproportionate impact of felony murder convictions on Black people across the Commonwealth, the grace and mercy bestowed by invalidating the current regime will have a tremendous impact on families and communities across Pennsylvania. For these reasons, we urge the Court to end the mandatory imposition of life without parole sentences on those convicted of felony murder.

ARGUMENT

I. In Determining the Lawfulness of Pennsylvania's Felony Murder Sentencing Scheme, the Court Must Consider the Policy Implications of the Statute.

This Court has articulated a four-factor analysis for determining whether an existing Pennsylvania constitutional provision should be interpreted more broadly than the analogous federal provision. *Commonwealth v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991). Under the last prong of that analysis, the court must consider “policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.” *Id.*

In addition to the policy arguments articulated by Mr. Lee and other *amici* in this case, POWER asks the Court to consider another significant policy issue related to mandatory life without parole (“LWOP”) sentences for people convicted of felony murder in Pennsylvania—namely, the need for mercy and redemption in Pennsylvania’s criminal legal system, as reflected by the recent efforts of current and former high-ranking public officials; Pennsylvania’s evolving system of parole; and the significant racial disparities in felony murder conviction rates. *See supra Study Confirms Immediate Need for Reform.*

As a related policy consideration, POWER notes the need for viable alternative sentencing options that reflect the value of rehabilitation and redemption, particularly as they relate to communities of color that have been historically marginalized and disproportionately affected by the operation of Pennsylvania’s criminal legal system.

II. Redemption and Rehabilitation Must Play an Essential Role in

the Administration of Pennsylvania’s Criminal Legal System.

a. The Recent Efforts of Pennsylvania’s Public Officials to Reform the Felony Murder Sentencing Scheme and Increase Commutations Demonstrate the Commonwealth’s Interest in Increasing Opportunities for Redemption and Rehabilitation.

i. The PLSE Reports

In 2019, at the request of then-Lieutenant Governor John Fetterman, in his capacity as Chair of the Pennsylvania Board of Pardons, Philadelphia Lawyers for Social Equity (“PLSE”) conducted a two-part audit of those currently incarcerated for second degree murder in Pennsylvania, focused both on those serving LWOP sentences for felony murder generally and the extent to which people of color have been disproportionately impacted by the administration of such sentences. The overarching goal of the report was “to provide Pennsylvania’s [Board of Pardons] and Governor with objective data by which they can discharge their constitutional duty to consider applications for commutation of life sentences from individuals who have been in prison for decades and demonstrated their suitability for release.” ANDREA LINDSAY, LIFE WITHOUT PAROLE FOR SECOND-DEGREE MURDER IN PENNSYLVANIA: AN OBJECTIVE ASSESSMENT OF SENTENCING 9 (2021) [hereinafter AN OBJECTIVE ASSESSMENT OF SENTENCING]. The first phase of the audit, published in January 2021, “examines demographic information and public court dockets for the second-degree population as of September 25, 2019.” *Id.* at 11.

Among other key findings, researchers found that more than 73% of those currently serving LWOP sentences were under the age of 25 at the time of the offense, highlighting the lack of redemption and rehabilitation opportunities even for young people; that the average age of those serving LWOP sentences is slightly over 48 years old, placing them among the least likely to commit any further crimes upon release; and that nearly 70% of that population are Black (and nearly 80% are people of color), demonstrating the ongoing racial disparities in Pennsylvania’s criminal legal system. *See id.* The report laid bare a simple truth: Pennsylvania’s current felony murder sentencing scheme is unjust, unfairly administered, and fails to provide appropriate opportunities for redemption and rehabilitation. As now-Senator Fetterman noted following the release of the report, “the mandatory life-without-parole sentence for second-degree murder in Pennsylvania ruins lives that could be rehabilitated while costing taxpayers billions and leaving them no safer as a result.” *Supra Study Confirms Immediate Need for Reform.*

The second phase of the audit report was released in April 2021. That report analyzed the racial demographics of those serving LWOP sentences in Pennsylvania and the extent to which Black and brown people are disproportionately impacted by such sentences. The auditors found significant racial disparities. For instance, the report concluded that, as of September 2019, Black people were almost six times overrepresented in the population of those serving LWOP sentences compared to

their percentage of the overall Commonwealth population. *See supra* AN OBJECTIVE ASSESSMENT OF RACE at 4. Put another way, Black people comprised 69.9% of those serving LWOP in Pennsylvania, despite comprising just 12% of the Commonwealth's total population. And people of color more broadly comprised almost 80% of those serving LWOP sentences. *Id.* at 1. The report also found that at the time of the offense, Black and Hispanic/Latinx people were younger than white people, *id.* at 6, bringing into stark relief the unique harm this sentencing scheme causes to young people of color, and by extension, to the long-term futures of their families and communities.

In the wake of the PLSE reports, Governor Josh Shapiro, then in his role as Attorney General and member of the Board of Parole, stated that “[t]he findings in this report also support the call I have made on the General Assembly to change the law so second-degree murder is not an automatic life sentence and to provide additional sentencing options, and I renew that call today.” *Supra Study Confirms Immediate Need for Reform.*

ii. The Clemency System and Increased Use of Commutations

Beyond advocating for the repeal of the current felony murder sentencing statute, public officials have also increased the number of overall commutations granted in recent years, including for people convicted of felony murder. Between 2015 and 2022, under the leadership of former Governor Tom Wolf, more than half

of the commutation requests heard by the Board of Pardons (53 out of 100) were granted, all with the unanimous consent of the Board, as required by the Pennsylvania constitution. *See Commutation of Life Sentences (1971 - Present)*, PENNSYLVANIA BOARD OF PARDONS: COMMUTATIONS OF LIFE SENTENCES, <https://www.bop.pa.gov/Statistics/Pages/Commutation-of-Life-Sentences.aspx> (last updated Dec. 4, 2023). By comparison, between 1979 and 2014, spanning six gubernatorial administrations, there were a total of just 40 commutations granted. *Id.* This trend suggests a growing appreciation for the importance of using executive discretion to extend opportunities for redemption and rehabilitation to those who would otherwise have no such chance.

To be clear, POWER does not believe that the Commonwealth can or should rely solely on commutations to provide more opportunities for redemption and rehabilitation. But they are an important and longstanding tool that embodies the concepts of grace and mercy. As the PLSE researchers note, influential commentators have described a pardon as ““an act of grace... [with an] exceedingly wide range [of] prerogative discretion to draw from,” including: “[s]tate policy, mercy, propriety of the law or the particular prosecution, kind and quantity of the punishment, the condition, history and prospects of the convict and the general security of the public.”” *Supra* AN OBJECTIVE ASSESSMENT OF SENTENCING at 9 (quoting WILLIAM W. SMITHERS WITH GEORGE D. THORN, TREATISE ON EXECUTIVE

CLEMENCY IN PENNSYLVANIA, 69-70, 160 (1909)). Even dating back to the middle of the 19th century, efforts to limit or place conditions upon executive clemency powers were met with opposition. During the Pennsylvania constitutional convention of 1837, the governor's pardoning powers came under attack. *See* Timothy Kane et al., *Preserving "The Character of Mercy": Commonwealth v. Williams and the 300-Year History of the Reprieve Power in Pennsylvania*, 23 WIDENER L. REV. 95, 105 (2017). In an effort to increase scrutiny into the nature of such decisions, one proposed amendment would have required the executive to "assign his reasons for all reprieves and pardons granted." *Id.* Many of the delegates, however, rejected any such amendments on the grounds that clemency should "preserve the character of mercy—if extended, unmerited mercy. The moment you fix restraints, there is an end of it." *Id.* (quoting PROCEEDINGS AND DEBATES OF THE CONVENTION OF THE COMMONWEALTH OF PENNSYLVANIA, TO PROPOSE AMENDMENTS TO THE CONSTITUTION 420 (1837)). This recognition of the need for mercy—even if controversial—should be at the center of the policy debate around Pennsylvania's current felony murder sentencing scheme.

It is clear then that, particularly in the face of objective data spotlighting the injustice and lack of mercy inherent in the current felony murder sentencing scheme, high-ranking public officials in Pennsylvania—including those tasked with evaluating and determining the appropriateness of one's release from prison—have

acknowledged the need for increased opportunities for redemption and rehabilitation in this context. Moreover, the uptick in commutations, while insufficient to solve the problem, signals a renewed commitment to public policy that recognizes the importance of mercy in our criminal legal system. This Court should follow suit in its own analysis and strongly consider these larger policy implications of the current felony murder sentencing regime.

b. Recent Changes to Pennsylvania’s Parole System Demonstrate an Increased Recognition of the Need for Opportunities at Redemption and Rehabilitation.

The Pennsylvania Parole System was established with the passage of the Parole Act of 1941. The system was initially founded with the intent to “promote public safety and reduce recidivism.” 61 PA. CONS. STAT. § 6131(a)(16) (2021). However, some of the amendments made to the Act in the past two decades indicate Pennsylvania’s increased interest in providing more opportunities for rehabilitation for formerly incarcerated individuals. Most notably, Act 122, passed in 2012, implemented the Justice Reinvestment Initiative (JRI) in order “to expand the tools available for crime prevention and offender reformation.” *Legislative History*, PENNSYLVANIA PAROLE BOARD: LAW LIBRARY, <https://prdparole.pwpca.pa.gov/Information/Law-Library/Pages/Legislative-History.aspx#.VhUzNxjD-os> (last updated March 18, 2019). Ultimately, the JRI aims to aid with re-entry, “helping offenders get back on their feet and become

productive citizens.” *Id.* Implicit in the partnership with JRI was the recognition that opportunities for rehabilitation and re-integration into society are worth pursuing, and that people must be given the support and resources to take advantage of such opportunities. *See id.*

Moreover, Act 122 created a new provision which allows for leniency for people who commit technical violations of their parole conditions. The law “provides that technical parole violators are not returned to prison unless their violation is severe and that those who are committed to prison are automatically re-paroled if they have no significant prison infractions, have complied with prison programming, and have not been convicted of a new criminal offense.” *Id.* In this way, the Commonwealth has raised the threshold to re-incarcerate individuals and demonstrated an evolution—albeit modest—in the goals of the Pennsylvania parole system. Pennsylvania has chosen to promote public safety and limit recidivism by increasing people’s chances of redemption and rehabilitation when they are released from prison. Whether these recent changes will actually result in more opportunities for redemption and rehabilitation remains to be seen, but it is worth noting that the Commonwealth has at least taken steps toward that important goal.

This relatively recent increase in interest in promoting rehabilitation is also illustrated by the Board’s launch of the Safe Return Program that was implemented during the fall of 2020 to take into account the effects of the COVID-19 pandemic

on parole supervision compliance. The Program allowed people who fell out of compliance with parole supervision requirements during the pandemic to turn themselves into their parole officer and receive “favorable consideration[s]” that did not forefront returning back to prison. *See PA Department of Corrections and PA Parole Board Offer Safe Return for Parolees with Active State Warrants*, PENNSYLVANIA PRESSROOM: DEPARTMENT OF CORRECTIONS (August 18, 2020), https://www.media.pa.gov/Pages/corrections_details.aspx?newsid=469. Initiatives like this are indicative of an incremental, yet crucial shift in the policy goals of Pennsylvania’s parole system towards encouraging fair treatment and rehabilitation of formerly incarcerated people. The Court should strongly consider this emerging public policy trend in its analysis of the Commonwealth’s mandatory felony murder sentencing scheme.

III. Pennsylvania Should Consider Alternative Sentencing Mechanisms that Reflect the Values of Redemption and Rehabilitation.

a. Opportunities for Redemption and Rehabilitation Create a Necessary Reservoir of Hope for Incarcerated Individuals

“The American concept of prisons traditionally has been that they exist for rehabilitation and release as much as for incarceration.” Julian H. Wright, Jr., *Life-Without-Parole: An Alternative to Death or Not Much of a Life at All?*, 43 VANDERBILT L. REV. 529, 532 (1990). Central to this notion of rehabilitation is the idea of redemption and hope. What, then, are the implications when we deny hope

entirely to those who have committed certain crimes? When individuals are sentenced to life without parole—whatever the crime of conviction may be—they are denied even a glimmer of hope or a spark of redemption. For these individuals (and their families) nothing short of commutation will provide an opportunity for reintegration. As such, they are told effectively by the state that there is nothing they can do to change who they are, and that they will be forever defined by the worst mistake of their lives.

There are unique psychological impacts to being told you will never be released from prison, that “[your life] is over... [that you] don't have another chance at life.” See *A Living Death*, ACLU FOUNDATION, 183 (Nov. 2013), <https://www.aclu.org/publications/living-death-life-without-parole-nonviolent-offenses>. These kinds of death by incarceration (“DBI”) sentences lead people to feelings of loneliness, anger, and tension, and in turn, these feelings and the “loss of responsibility” and “hampers efforts at rehabilitation and reintegration into society.” Penal Reform International, *Alternatives to the death penalty: the problems with life imprisonment*, 1 PENAL REFORM BRIEFING. 2007 at 6. “Removing the possibility of release, consequently removes the recognition of the potential for rehabilitation or reform.” *Id.* at 9.

The strikingly similar testimonies of those currently serving LWOP sentences in Pennsylvania confirm these sentiments. According to David Lee, who has been

incarcerated in Pennsylvania for more than 35 years, “Living with a DBI sentence is traumatizing for many reasons. First and foremost the sentence suggests that human beings cannot change and should spend decades suffering inside cages rather than receiving the sort of treatment [they] need to transform a person away from a criminal mindset.” LETTER FROM DAVID LEE, *Letters from People Impacted by Death by Incarceration Sentences*, DEATH BY INCARCERATION IS TORTURE: STATEMENTS FROM PENNSYLVANIA 49 (2022), https://www.deathbyincarcerationistorture.com/_files/ugd/22acfc_0dee1a45b6ea4de2a11ffa9e8d69a2fc.pdf. Chanel Wiest, also serving an LWOP sentence in Pennsylvania, put it this way: “To not be given a chance, to say someone can’t change is unheard of. To say someone is the same at age 20 as age 60 is just unrealistic.... Given the sentence of life without parole can make a person disrespectful, angry, and bitter, or worse. They don’t see a chance or any hope.” LETTER FROM CHANEL WIEST, *Letters from People Impacted by Death by Incarceration Sentences*, DEATH BY INCARCERATION IS TORTURE: STATEMENTS FROM PENNSYLVANIA 46-47 (2022), https://www.deathbyincarcerationistorture.com/_files/ugd/22acfc_58930bce04904b8ea51280d01d4d0da9.pdf. Similarly, Dannielle Hadley, who has also been behind bars for more than 35 years, noted that “When [we have] never been given the opportunity to show our individual personal growth and forever being punished for

the worst day of our lives, hope is often time fleeting.” LETTER FROM DANNIELLE HADLEY, *Letters from People Impacted by Death by Incarceration Sentences*, DEATH BY INCARCERATION IS TORTURE: STATEMENTS FROM PENNSYLVANIA 48 (2022),

https://www.deathbyincarcerationistorture.com/_files/ugd/22acfc_a9458b433aad4f24b73a4b8579a3f5bd.pdf.

Emphasizing the larger societal harm caused by LWOP sentences, David Mandeville, who began serving his sentence more than 25 years ago at the age of 18, added, “Prison is like someone choking the life out of you. Quite literally we are getting older and dying physically. We also lose life in other ways. Our families grow distant. New family members are strangers. Prisons disconnect you from your family.” LETTER FROM DAVID MANDEVILLE, *Letters from People Impacted by Death by Incarceration Sentences*, DEATH BY INCARCERATION IS TORTURE: STATEMENTS FROM PENNSYLVANIA 52 (2022),

https://www.deathbyincarcerationistorture.com/_files/ugd/22acfc_c4f13b9dd7f940e7bb8dc173c774665a.pdf. Finally, Carl Sheldon Daniels, who has also been locked

up for almost 35 years, describes the mentorship he provides to younger people serving time alongside him, noting that he makes “no excuse for my own destructive behaviors and accept none from the young men whose presence I’m constantly in. I refuse to be shackled as a man by poor decisions made as a boy. My desire is to be

a servant of the community, a bridge over the gaps, and a beacon for those still trying to find their way. For this I am ever willing.” LETTER FROM CARL SHELDON DANIELS, *Letters from People Impacted by Death by Incarceration Sentences*, DEATH BY INCARCERATION IS TORTURE: STATEMENTS FROM PENNSYLVANIA 43-44 (2022) https://www.deathbyincarcerationistorture.com/_files/ugd/22acfc_2ea16db995474076bc200f14196c2726.pdf. And as Mr. Daniels so rightly points out: “If men and women can be pillars of rehabilitation exemplified in penitentiaries, only revenge says ‘so what, you’re still no good for the community.’” *Id.* at 44.

As Mr. Mandeville’s testimony indicates, this complete denial of hope and total exclusion from society impacts not only the incarcerated person, but families, friends, and entire communities. “By permanently removing people from their communities, DBI sentences deprive them and their families of hope and fail to provide incentives to rehabilitation and transformation.” *A Way Out: Abolishing Death by Incarceration in Pennsylvania*, ABOLITIONIST LAW CENTER 20 (Sept. 2018), https://abolitionistlawcenter.org/wp-content/uploads/2023/07/A-Way-Out_Abolishing-DBI-in-PA.09.18.18.full_.pdf [hereinafter *A Way Out*]. “Children, spouses, parents, and love ones face lifelong stress, trauma, and financial strain as they work to maintain relationships that will never be the same again.” Katie Rose Quandt, *Life Without Parole is No Moral Alternative to the Death Penalty*, AMERICA: THE JESUIT REVIEW (April 10, 2018), <https://www.americamagazine.org/politics->

[society/2018/04/10/life-without-parole-no-moral-alternative-death-penalty](https://www.society/2018/04/10/life-without-parole-no-moral-alternative-death-penalty).

Without any chance for parole, these families know that their circumstances will never change, regardless of how they or their loved one might have grown or matured over time. These sentences do not just harm the individuals in a person's life, but the community as a whole. "Banishing such a large number of people *for the rest of their lives*... deprives these communities of the influence and guidance of those who...have proven themselves to be redeemable and adept at facilitating the redemption of others." *Supra A Way Out* at 49.

b. Viable Alternatives to Harsh Sentencing Practices, Including Restorative Justice, Already Exist

Restorative justice exemplifies a meaningful alternative to address serious harm like felony murder. Rather than taking a retributive approach to conflict, restorative justice focuses on repairing harm, restoring losses, and healing for the impacted parties through participatory, community-based processes. According to restorative justice scholar Susan Sharpe, the five key principles of restorative justice are as follows: (1) "Invite full participation and consensus," (2) "Heal what has been broken," (3) "Seek full and direct accountability," (4) "Reunite what has been divided," and (5) "Strengthen the community, to prevent further harms." *What is Restorative Justice?*, INSIGHT PRISON PROJECT: RESTORATIVE JUSTICE, <http://www.insightprisonproject.org/a-restorative-justice-agency.html> (last visited April 26, 2024).

When given the option, victims and their families opt into restorative justice processes not only in cases of low-level crimes, but also in response to higher-level crimes such as homicide and capital cases. *Sentencing Alternatives: Restorative Justice*, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/policy-issues/sentencing-alternatives/restorative-justice>. Those impacted by crimes choose restorative justice because it offers “empowerment,” healing, and holistic accountability that the criminal legal system does not. *Id.* In comparison to traditional criminal legal processes, restorative justice processes yield lower general recidivism rates, see Lindsay Fulham et. al, *The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Relevant Outcomes.*, 0 CRIMINOLOGY & CRIM. JUST. 2023 at 23, as well as higher victim and offender satisfaction and increased rates of completed restitution, while also lowering victims’ fear of re-victimization, see Mark S. Umbreit, *Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment*, 1 WESTERN CRIMINOLOGY REV. 1998, <https://www.westerncriminology.org/documents/WCR/v01n1/Umbreit/Umbreit.html>.

Restorative justice is not new, nor is it unrealistic. In fact, Pennsylvania’s juvenile justice system already incorporates restorative justice principles. Moreover, the Commonwealth’s Office of Victim Advocate endorses and provides restorative

justice programming as a meaningful way to deal with crime and conflict. *See Restorative Justice*, PENNSYLVANIA OFFICE OF VICTIM ADVOCATE: RESTORATIVE JUSTICE, <https://www.ova.pa.gov/RestorativeJustice/Pages/default.aspx> (last visited April 26, 2024). Other Pennsylvania-based programs such as the Inmate Apology Bank, Victim Offender Dialogue, and Resilient Voices all rely on restorative principles to address harm caused by criminal offenses and could serve as valuable resources in the process of reimagining the Commonwealth’s sentencing practices. *See* Pennsylvania Legal Aid Network, *Restorative Justice*, PALAWHELP.ORG, <https://www.palawhelp.org/resource/restorative-justice> (last visited April 26, 2024).

In considering the constitutionality of Pennsylvania’s second degree murder sentencing regime, the Court has an opportunity to follow the lead of government officials, researchers, local advocates, and restorative justice practitioners in their recognition that harm is healed through participatory, restorative processes that embrace the humanity of all involved, rather than sentencing people to a life in prison without any chance at redemption and rehabilitation. Invalidating the current unjust, overly harsh, and unconstitutionally cruel LWOP sentencing regime for felony murder is an important further step in the right direction.

CONCLUSION

For all these reasons, Pennsylvania's practice of requiring life without parole for those convicted of felony murder should be deemed unconstitutional and antithetical to the principles of mercy, redemption, and rehabilitation that have animated recent shifts in public policy and declarations of political leaders concerning the need to reform the administration of the criminal legal system in this Commonwealth.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the length of the foregoing brief complies with the 7,000-word limit set forth in Pa.R.A.P. 531(b)(1)(i) for an *amicus curiae* brief and the typeface requirements of Pa.R.A.P. 124(a)(4).

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