

IN THE SUPREME COURT OF PENNSYLVANIA

NO. _____

COMMONWEALTH OF PENNSYLVANIA,
Respondent,

v.

MICHAEL P. FOUST,
Petitioner.

PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal from Judgment of the Superior Court of Pennsylvania (No. 1306 WDA 2023) dated July 26, 2024, Affirming the Final Order of the Venango County Court of Common Pleas Denying PCRA Petition (No. CP-61-CR-0000679-1993), dated October 10, 2023

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TABLE OF CONTENTS

	Page
I. OPINIONS DELIVERED IN THE COURTS BELOW	III
II. THE ORDER IN QUESTION.....	1
III. QUESTIONS PRESENTED	1
IV. STATEMENT OF PLACE OF RAISING OR PRESERVATION OF ISSUES	2
V. STATEMENT OF THE CASE	5
VI. MR. FOUST’S PETITION FOR ALLOWANCE OF APPEAL SHOULD BE GRANTED.....	10
A. This Petition Presents a Question of First Impression Regarding Whether an Aggregate De Facto Life Sentence Is Unconstitutional.	12
1. An Aggregate Term of Years Sentence Can Amount to a De Facto Life Without Parole Sentence.	13
2. Mr. Foust’s Aggregate Sixty-Years-to-Life Sentence Does Not Provide a Meaningful Opportunity for Release.....	15
B. This Petition Presents a Question of First Impression Regarding Whether a Life Sentence Is Unconstitutional Where There Was a Finding That the Crime Reflected Transient Immaturity.....	15
1. Under the Eighth Amendment, A Sentencing Court Is Not Free to Impose a Life Without Parole Sentence Where the Crime Reflected Transient Immaturity.	16
2. The Sentencing Court Found Mr. Foust’s Crime to Reflect Transient Immaturity Yet Imposed a De Facto Life Without Parole Sentence.....	17

TABLE OF CONTENTS

(continued)

Page

C.	The Courts Below Failed to Conduct the Mandatory Edmunds Analysis of Mr. Foust’s State Constitutional Claim.	18
1.	The Plain Text of Section 13 Supports an Independent Meaning.	19
2.	The History of Section 13 Is Starkly Different from That of the Eighth Amendment.	20
3.	Other Jurisdictions Have Interpreted Similar Provisions More Broadly Than the Eighth Amendment.	23
4.	Policy Considerations Also Weigh in Favor of Interpreting Section 13 as Distinct from the Eighth Amendment.	27
5.	Mr. Foust’s Sentence Is Cruel Under the Pennsylvania Constitution.	31
D.	The Questions Presented Are of the Utmost Public Importance and Require a Prompt and Definitive Resolution.	32
VII.	CONCLUSION.....	33
Appendix A:	July 26, 2024 Superior Court Opinion.	A1
Appendix B:	October 4, 2024 Superior Court Order Denying Application for Reargument.....	B1
Appendix C:	Excerpt of October 10, 2023 PCRA Hearing Transcript Containing Oral Opinion.....	C1
Appendix D:	October 10, 2023 Order Denying PCRA Petition.....	D1
Appendix E:	January 4, 2024 Statement in Lieu of 1925 Opinion.	E1

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bucklew v. Precythe</i> , 587 U.S. 119 (2019).....	21
<i>Burnor v. State</i> , 829 P.2d 837 (Alaska Ct. App. 1992).....	24
<i>Carter v. State</i> , 192 A.3d 695 (Md. 2018)	13, 14, 15
<i>Commonwealth v. Barnes</i> , 637 Pa. 493 (2016).....	3
<i>Commonwealth v. Batts</i> , 163 A.3d 410 (Pa. 2017)	16, 17, 30, 31
<i>Commonwealth v. Batts</i> , 66 A.3d 286 (Pa. 2013).....	28
<i>Commonwealth v. Bonner</i> , 135 A.3d 592 (Pa. Super. Ct. 2016).....	19
<i>Commonwealth v. Brensinger</i> , 218 A.3d 440 (Pa. Super. Ct. 2019).....	4
<i>Commonwealth v. Carluccetti</i> , 85 A.2d 391 (Pa. 1952).....	23
<i>Commonwealth v. Collins</i> , 585 Pa. 45 (2005).....	4
<i>Commonwealth v. Concepcion</i> , 164 N.E.3d 842 (Mass. 2021).....	24
<i>Commonwealth v. Edmunds</i> , 586 A.2d 887 (Pa. 1991).....	<i>passim</i>
<i>Commonwealth v. Elliot</i> , 89 A.2d 782 (Pa. 1952).....	23

<i>Commonwealth v. Felder</i> , 269 A.3d 1232 (Pa. 2022)	4, 12, 15, 31
<i>Commonwealth v. Fisher</i> , 62 A. 198 (Pa. 1905)	27, 28
<i>Commonwealth v. Foust</i> , 180 A.3d 416 (Pa. Super. Ct. 2018)	10, 13
<i>Commonwealth v. Foust</i> , 279 A.3d 39 (Pa. 2022) (per curiam)	10
<i>Commonwealth v. Foust</i> , No. 1306 WDA 2023 (Pa. Super. Ct. July 26, 2024)	19
<i>Commonwealth v. Jones</i> , 932 A.2d 179 (Pa. Super. Ct. 2007)	<i>passim</i>
<i>Commonwealth v. Prinkey</i> , 277 A.3d 554 (Pa. 2022)	3
<i>Commonwealth v. Ritter</i> , 13 Pa. D. & C. 285 (Pa. 1930)	23
<i>Commonwealth v. Williams</i> , 475 A.2d 1283 (Pa. 1984)	29
<i>Commonwealth v. Zettlemyer</i> , 454 A.2d 937 (Pa. 1983)	19
<i>Ex parte Crouse</i> , 4 Whart. 9 (Pa. 1839)	28
<i>Graham v. Florida</i> , 560 U.S. 48 (2010)	12, 13, 14, 31
<i>Hale v. State</i> , 630 So.2d 521 (Fla. 1993)	24
<i>Harmelin v. Michigan</i> , 501 U.S. 957 (1991)	21, 22

<i>Henry v. State</i> , 175 So. 3d 675 (Fla. 2015)	14
<i>Ira v. Janecka</i> , 419 P.3d 161 (N.M. 2018)	13
<i>James v. Commonwealth</i> , 12 Serg. & Rawle 220 (Pa. 1825)	23
<i>Jones v. Mississippi</i> , 141 S. Ct. 1307 (2021)	16
<i>Jones v. Mississippi</i> , 593 U.S. 98 (2021)	5, 16, 17, 18
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012)	<i>passim</i>
<i>Montclair v. Ramsdell</i> , 107 U.S. 147 (1883)	20
<i>Montgomery v. Louisiana</i> , 577 U.S. 190 (2016)	<i>passim</i>
<i>People v. Anderson</i> , 493 P.2d 880 (Cal. 1972)	24
<i>People v. Baker</i> , 229 Cal. Rptr. 3d 431 (Cal. Ct. App. 2018)	24
<i>People v. Caballero</i> , 282 P.3d 291 (Cal. 2012)	14
<i>People v. Carmony</i> , 26 Cal. Rptr. 3d. 365 (Cal. Ct. App. 2005)	24
<i>People v. Rainer</i> , No. 10CA2414, 2013 WL 1490107 (Colo. App. 2013)	14
<i>State v. Bassett</i> , 428 P.3d 343 (Wash. 2018)	25

<i>State v. Boston</i> , 363 P.3d 453 (Nev. 2015).....	14
<i>State v. Dodd</i> , 838 P.2d 86 (Wash. 1992)	25
<i>State v. Fain</i> , 617 P.2d 720 (Wash. 1980)	25
<i>State v. Kelliher</i> , 873 S.E.2d 366 (N.C. 2020)	13, 26
<i>State v. Mitchell</i> , 577 N.W.2d 481 (Minn. 1998)	24
<i>State v. Vang</i> , 847 N.W.2d 248 (Minn. 2014)	24
<i>Stollar v. Cont’l Can Co.</i> , 180 A.2d 71 (Pa. 1962).....	20
<i>White v. Premo</i> , 443 P.3d 597 (Or. 2019)	13
Statutes	
42 Pa.C.S.A. § 6301	30
Other Authorities	
S.B. 439, 1971-1972 Reg. Sess. (Pa. 1972).....	29
Justin D. Okun & Lisle T. Weaver, <i>Critical Issues Regarding Juvenile Justice in Pennsylvania: Life Without the Possibility of Parole and Use of Juvenile Adjudications to Enhance Later Adult Sentencing</i> , 93 Pa. Bar Ass’n Q. 62 (2022).....	27
Kevin Bendesky, <i>The Key-Stone to the Arch: Unlocking Section 13’s Original Meaning</i> , 26 Univ. of Pa. J. Const. L. 201 (2023).....	4, 20, 21
Pa. Juv. Ct. Judges’ Comm’n, <i>Pennsylvania Juvenile Delinquency Benchbook 3.2</i> (2018).....	29
Pa. R.A.P. 1114.....	10, 11, 12

Pennsylvania Constitution*passim*
Robert James Turnbull, *A Visit to the Philadelphia Prison* (1797).....22

I. OPINIONS DELIVERED IN THE COURTS BELOW

A three-judge panel of the Superior Court of Pennsylvania issued an opinion affirming denial of Petitioner’s petition for relief under the Post Conviction Relief Act on July 26, 2024.¹ The Superior Court panel denied reargument of the appeal on October 4, 2024.²

On October 10, 2023, the Venango County Court of Common Pleas (“PCRA Court”) delivered an oral opinion³ and entered an order denying Mr. Foust’s Post-Conviction Relief Act Petition (“PCRA Petition”).⁴ The PCRA Court issued a Statement in Lieu of 1925 Opinion on January 4, 2024.⁵

II. THE ORDER IN QUESTION

On July 26, 2024, the Superior Court of Pennsylvania issued an unreported opinion stating: “[W]e affirm the PCRA court’s order denying Appellant’s petition for relief.” *See* Appendix A at A12. On October 4, 2024, the Superior Court of Pennsylvania issued an order denying Mr. Foust’s application for reargument. *See* Appendix B.

III. QUESTIONS PRESENTED

1. Do two 30-year sentences that run consecutively amount to a *de facto* life without parole sentence?

¹ Attached hereto as Appendix A.

² Attached hereto as Appendix B.

³ Attached hereto as Appendix C.

⁴ Attached hereto as Appendix D.

⁵ Attached hereto as Appendix E.

Suggested answer: Yes.

2. Where a litigant claims that a Pennsylvania constitutional provision provides greater protection than an analogous federal constitutional provision, are courts required to conduct the analysis set forth by this Court in *Commonwealth v. Edmunds*?

Suggested answer: Yes.

3. Is the imposition of a *de facto* life sentence unconstitutional under Article I, Section 13 of the Constitution of Pennsylvania where the evidence plainly established that Petitioner was redeemable?

Suggested answer: Yes.

4. Is the imposition of a *de facto* life sentence unconstitutional under the Eighth Amendment to the United States Constitution where the evidence plainly established that Petitioner's crime reflected transient immaturity?

Suggested answer: Yes.

IV. STATEMENT OF PLACE OF RAISING OR PRESERVATION OF ISSUES

In his Petition, Mr. Foust raised two issues regarding the legality of his sentence: (1) whether his sentence is illegal under the United States Constitution, and (2) whether his sentence is illegal under the Pennsylvania Constitution. Mr. Foust challenged the legality of his sentence under the Eighth Amendment of the United States Constitution on direct appeal, and therefore preserved that issue. Although Mr. Foust did not challenge the legality of his sentence under Pennsylvania Constitution on direct appeal, a challenge to the legality of a sentence cannot be waived and is therefore preserved.

In identifying a legal challenge to a sentence, this Court has explained that:

[t]he inquiry is whether, assuming the appellant’s claim prevails, the result would be that the trial court lacked authority to impose the sentence at issue. If so, then the appellant’s challenge implicates the legality of his sentence.

Commonwealth v. Prinkey, 277 A.3d 554, 563 (Pa. 2022).

This is exactly the issue Mr. Foust raised in his PCRA Petition: merely because the sentencing court has discretion does not mean that a court has authority to impose an unconstitutional life without parole sentence. This argument, made under both the Federal and Pennsylvania Constitutions, is independent from the specific facts of Mr. Foust’s sentence and any intermediate discretion applied in reaching that sentence. To suggest otherwise would lead to the untenable conclusion that unconstitutional sentences borne out of an exercise of judicial discretion are insulated from challenge. *See, e.g., Commonwealth v. Barnes*, 637 Pa. 493, 502 (2016) (finding that any sentence that “the sentencing court had no jurisdiction or authority to impose” is an illegal sentence).

It is clear that “legality-of-sentence claims are non-waivable and thus not required to have been preserved at any prior stage of litigation in order to obtain review thereof.” *Commonwealth v. Jones*, 932 A.2d 179, 183 (Pa. Super. Ct. 2007). Mr. Foust’s claims therefore “are simply not subject to the waiver provision of the PCRA.” *Id.* Accordingly, Mr. Foust has preserved the issues of whether his sentence is illegal under either the United States Constitution or the Pennsylvania Constitution. Although the Superior Court found that the issues of whether Mr.

Foust's sentence is illegal under either the Constitution or the Pennsylvania Constitution were previously litigated, these claims "rel[y] upon different theories and allegations than the discrete legal ground already raised and decided." *Commonwealth v. Brensinger*, 218 A.3d 440, 446 n.2 (Pa. Super. Ct. 2019) (citing *Commonwealth v. Collins*, 585 Pa. 45, 55 (2005)).

First, Mr. Foust did not raise any arguments related to the Pennsylvania Constitution on direct appeal. Moreover, Mr. Foust relies in part on Justice Donohue's invitation in 2022 to mount a Pennsylvania constitutional challenge to lengthy and life sentences as well as new research casting persuasive light on a different interpretation of Article I, Section 13 of the Pennsylvania Constitution than Pennsylvania courts previously relied upon. *See Commonwealth v. Felder*, 269 A.3d 1232, 1247 (Pa. 2022). (Donohue, J., concurring) ("Today's decision does not foreclose further developments in the law as to the legality of juvenile life without parole sentences (or their de facto equivalent as alleged here) under the Pennsylvania Constitution nor as to how appellate courts will review the discretionary aspects of such sentences."); *see also* Kevin Bendesky, *The Key-Stone to the Arch: Unlocking Section 13's Original Meaning*, 26 Univ. of Pa. J. Const. L. 201 (2023), <https://ssrn.com/abstract=4457030>. Accordingly, Mr. Foust's claim that his aggregate sentence is illegal under the Pennsylvania Constitution has not been previously litigated.

Second, Mr. Foust next argues that his sentence is illegal under the Eighth Amendment of the United States Constitution under *Jones v. Mississippi*, 593 U.S. 98 (2021)—a case that was not decided at the time of his direct appeal. While *Miller* and *Montgomery* held that a mandatory juvenile life without parole sentence violates the Eighth Amendment of the United States Constitution, *Jones* explained that states may not impose a discretionary juvenile life without parole sentence where the crime “reflects transient immaturity.” Compare *Miller v. Alabama*, 567 U.S. 460, 465 (2012), with *Jones*, 593 U.S. at 106 n.2 (“[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.”). This change in Supreme Court precedent created a new issue that Mr. Foust did not raise (and could not have raised) on direct appeal. Accordingly, Mr. Foust’s claim that his aggregate sentence is illegal under the United States Constitution pursuant to *Jones* has not been previously litigated.

V. STATEMENT OF THE CASE

Mr. Foust was found guilty of two counts of first-degree murder in 1994 at Docket No. CP-61-CR-0000679-1993 in the Venango County Court of Common Pleas. Mr. Foust was sentenced to two consecutive terms of life without the possibility of parole.

On February 24, 2016, Mr. Foust filed a petition pursuant to the Post Conviction Relief Act (“PCRA”) on the basis that his life without parole sentences violated the Eighth Amendment of the United States Constitution as interpreted by *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). On May 12, 2016, Mr. Foust’s PCRA Petition was granted and his sentence was vacated.

The resentencing hearing was conducted by Judge H. William White of the Venango County Court of Common Pleas. Counsel was appointed on May 12, 2016 and the resentencing hearing occurred less than two months later on July 5, 2016.

Counsel presented arguments that, because he was a minor at the time of his crimes, Mr. Foust had a greater capacity than an adult to change and rehabilitate himself. (N.T. 7/5/16, 142:15-148:23). Counsel offered the testimony of Ms. Karla Webb, Mr. Foust’s corrections counselor, that Mr. Foust had positively changed in his ability to express his emotions and in the way he thinks. (N.T. 7/5/16, 70:4-8, 79:1-16). Three additional SCI Albion staff members testified as to Mr. Foust’s success in numerous prison programs. (N.T. 7/5/16, 87:104). Counsel also introduced the following evidence to demonstrate Mr. Foust’s rehabilitation during his incarceration:

1. Certificate in Paralegal Studies from the Blackstone Career Institute. (N.T. 7/5/16, 150:15-17).

2. Yearly Course of Continuing Education Certificate as a Certified Peer Specialist, June 2015. (N.T. 7/5/16, 150:20-22).
3. Certified Peer Specialist Training Certificate from Recovery Opportunity Center, 2014 (N.T. 7/5/16, 150:23-25).
4. Support Specialist Certification, April 2014, including 76 hours of training. (N.T. 7/5/16, 150:25-151:2).
5. A Certificate of Awesomeness for Presentation Mindfulness, May 2016. (N.T. 7/5/16, 149:21-22).
6. QPR Gatekeeper Certificate for Suicide Prevention Gatekeeper Program. (N.T. 7/5/16, 149:23-24).
7. Emotional Balance Group Certificate of Completion, 2016. (N.T. 7/5/16, 150:1-2)
8. Act 143 Victim Awareness Class Certificate of Completion, May 2016. (N.T. 7/5/16, 150:3-5).
9. Green Environment Certificate of Completion, March 2016 (N.T. 7/5/16, 150:6-9).
10. Emotional Balance Group Certificate of Completion, October 2015. (N.T. 7/5/16, 150:10-11).
11. Testimony from four individuals who work at SCI Albion where the defendant is incarcerated. (N.T. 7/5/16, 148:20-23).
12. Certificate of Exceptional Achievement for the preparation of two dogs through the prison's program training support dogs. (N.T. 7/5/16, 151:3-6, 13-15).
13. Certificate of Completion on First Annual Day of Responsibility at SCI Albion, January 2013. (N.T. 7/5/16, 151:7-9).
14. Peer Leader in Low Intensity Violence Prevention Class, 2011. (N.T. 7/5/16, 151:16-18).
15. Completion of hundreds of hours of instruction in business practices. (N.T. 7/5/16, 151:22-152:17).

16. Completion of Study Course for Custodial Maintenance, 2006. (N.T. 7/5/16, 152:18-19).
17. Student of the Year Certificate from SCI Albion's Education Department, 2005. (N.T. 7/5/16, 152:20-21).
18. Violence Prevention Group Certificate of Completion, 2003. (N.T. 7/5/16, 152:22-23).
19. AOD Group Therapy Certificate of Completion, 2002 (N.T. 7/5/16, 152:24-25).
20. Classroom Instructor Aide, 2002. (N.T. 7/5/16, 153:1-3).
21. Stress and Anger Management Certificate of Completion, 1997. (N.T. 7/5/16, 153:4-5).
22. Mental Health First Aid Certificate of Completion, May 2016. (N.T. 7/5/16, 153:10-12).
23. Several Vocational Training Certificates (insulation, vinyl fencing, etc.). (N.T. 7/5/16, 152:13-19).

The Commonwealth did not introduce any rebuttal to the above evidence of rehabilitation. (N.T. 7/5/16, 154:7-9). After taking a 24-minute recess to deliberate, Judge White explained his ruling and sentenced Mr. Foust to two 30-years-to-life consecutive terms. (N.T. 7/5/16, 154:10-13, 171:9-11, 174:3).

The Court expressly found that Mr. Foust had been rehabilitated and that he “earned the opportunity to be considered for parole at some time in his life, if he lives long enough.” (N.T. 7/5/16, 170:1-5). Judge White found that Mr. Foust “convinced [him] that [he’s] trying . . . [and] doing some good with [his] life in the prison.” (N.T. 7/5/16, 172:17-20). In fact, Judge White found “a significant change in his person between the time of his sentencing at age 18 and his person today.”

(N.T. 7/5/16, 160:20-161:2). Judge White further concluded that Mr. Foust had “demonstrated remorse” for his crimes and “[m]ore importantly, he’s demonstrated a sincere effort to rehabilitate” and made “very substantial strides at rehabilitation.” (N.T. 7/5/16, 168:12-169:7).

Notwithstanding those findings, the Court imposed two consecutive sentences of 30 years to life for an aggregate term of 60 years to life. (Re-Sentence Order 2, July 5, 2016 (“The total aggregate sentence imposed is a term of imprisonment of 60 years to Life.”)). Judge White explained that “[w]hat [drove] this case is the fact that it was Murder 1, and there were two victims.” (N.T. 7/5/16, 172:20-23). Judge White elaborated that he could not “in any way rationalize a sentence that is not consecutive. This case—there are two distinct victims. . . . And the effect of that is that [he had] to, in [his] mind, run these sentences consecutively.” (N.T. 7/5/16, 169:15-21).

On July 15, 2016, counsel for Mr. Foust filed a post-sentence motion challenging the imposition of two consecutive 30-years-to-life sentences as unconstitutional and an abuse of discretion. (Post-Sentence Mot. 7/15/16). On July 19, 2016, the sentencing court denied the motion without a hearing. (Order 7/19/16). After a timely appeal, the Superior Court affirmed Mr. Foust’s sentence:

As an initial matter, we hold that because the Supreme Court of the United States has severely limited the circumstances under which juvenile defendants may be sentenced to LWOP, a de facto LWOP sentence is illegal in certain circumstances when imposed upon a

juvenile offender. We also conclude that, in cases such as the present one that involves multiple killings, we must evaluate the sentence for each crime separately when determining if a term-of-years sentence constitutes a de facto LWOP sentence.

Commonwealth v. Foust, 180 A.3d 416, 420 (Pa. Super. Ct. 2018).

Mr. Foust petitioned on March 23, 2018 for allowance of appeal, which was denied by the Pennsylvania Supreme Court on May 25, 2022. *Commonwealth v. Foust*, 279 A.3d 39 (Pa. 2022) (per curiam).

On May 22, 2023, Mr. Foust filed a Post-Conviction Relief Act Petition in the Venango County Court of Common Pleas. On October 10, 2023, the PCRA Court entered an Order denying his Petition. The PCRA Court found that Mr. Foust's two consecutive 30-years-to-life sentences did not violate the Pennsylvania Constitution and did not violate the United States Constitution. Mr. Foust timely appealed the Order.

On July 26, 2024, the Superior Court of Pennsylvania issued an opinion affirming the PCRA Court's dismissal of Mr. Foust's PCRA Petition. Mr. Foust filed an application for reargument on August 9, 2024. The Superior Court denied the application on October 4, 2024. Mr. Foust now seeks review in this Court.

VI. MR. FOUST'S PETITION FOR ALLOWANCE OF APPEAL SHOULD BE GRANTED

The Supreme Court of Pennsylvania's review of an order of the Superior Court is discretionary. Pa. R.A.P. 1114(a). The Rules of Appellate Procedure set

forth seven reasons a petition for allowance of appeal may be granted, any one of which is sufficient to grant the petition. Pa. R.A.P. 1114(b). Mr. Foust's petition invokes three of these reasons in the questions presented for review. Each of these reasons is sufficient and provides compelling grounds, both alone and when considered together, for this Court to grant Mr. Foust's Petition for Allowance of Appeal.

First, the Superior Court's holding conflicts with holdings of this Court on the same legal questions. Pa. R.A.P. 1114(b)(2). The Superior Court affirmed the PCRA Court's holding that Mr. Foust's sentence was constitutional under Pennsylvania's constitution because courts have previously ruled that Pennsylvania's "cruel punishments" clause is coextensive with the United States Constitution's prohibition on "cruel and unusual" punishment. That holding conflicts with this Court's holdings in *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), and its progeny that courts must conduct an independent analysis each time a litigant properly raises a claim that a state constitutional provision provides greater protection than an analogous federal constitutional provision.

Mr. Foust's Petition also involves questions of first impression. Pa. R.A.P. 1114(b)(3). His Petition asks this Court to determine, for the first time following significant jurisprudential developments, the proper analytical framework for adjudicating his challenge to the constitutionality of a 60 year to life sentence—a *de*

facto life without parole sentence—under the United States and Pennsylvania Constitutions, as well as the ultimate resolution of those questions.

Finally, Mr. Foust’s Petition is of substantial public importance and requires immediate redress in this Court. Pa. R.A.P. 1114(b)(4). Pennsylvania history demonstrates a longstanding commitment to protecting minors against the full weight of criminal punishment, and of meting out punishment for the purposes of deterrence and reformation. Nonetheless, Pennsylvania has fallen out of step by failing to acknowledge that a *de facto* life sentence for youthful offenders is unconstitutional, and out of keeping with its longstanding tradition of protecting and reforming youth.

A. This Petition Presents a Question of First Impression Regarding Whether an Aggregate *De Facto* Life Sentence Is Unconstitutional.

The constitutionality of a sentence depends on the actual impact of the sentence upon the individual, not the label of the sentence. *See, e.g., Graham v. Florida*, 560 U.S. 48, 70-74 (2010); *Miller*, 567 U.S. at 579. A *de facto* life sentence therefore violates the Eighth Amendment’s prohibition against “cruel and unusual punishment.” *See Felder*, 269 A.3d at 1248 (suggesting *de facto* life without parole sentence may be unconstitutional and/or an abuse of discretion).

1. An Aggregate Term of Years Sentence Can Amount to a *De Facto* Life Without Parole Sentence.

This Court has not determined whether an *aggregate* sentence may be considered in determining whether a sentence constitutes a *de facto* life without parole sentence. The Superior Court previously held that only the “the individual sentences must be considered when determining if a juvenile received a de facto LWOP sentence.” *Foust*, 180 A.3d at 438. However, other states have declined to make such a bright-line rule. *E.g.*, *State v. Kelliher*, 873 S.E.2d 366, 381 (N.C. 2020) (two 25-year sentences to run consecutively is a *de facto* life without parole sentence); *White v. Premo*, 443 P.3d 597, 604 (Or. 2019) (finding an aggregate 66-years-and-8-months sentence to be “the functional equivalent of life”); *Ira v. Janecka*, 419 P.3d 161, 166 (N.M. 2018) (“We are persuaded by the Supreme Court’s rationale in *Roper*, *Graham*, and *Miller* that [consideration of] the cumulative impact of consecutive sentences on a juvenile is required by the Eighth Amendment.”). For example, the Maryland Supreme Court recently rejected the argument that “[w]hether a sentence, stacked or otherwise, is excessive under the Eighth Amendment ‘can never be litigated in the abstract but must be assessed on a case-by-case basis.’” *Carter v. State*, 192 A.3d 695, 730 (Md. 2018). Rather, there is a spectrum of situations—on one end a “serious crime spree . . . over weeks or months or even years” and on the other end “one event or [] one bad decision that, for various reasons, may involve several separate crimes that do not merge into one

another for sentencing purposes.” *Id.* at 731. Courts must give consideration “where the stacked sentence falls on the spectrum as well as to the differences between adult and juvenile offenders.” *Id.* at 734.

The *Carter* rationale comports with *Miller*’s reasoning that a juvenile offender must have “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Miller*, 567 U.S. at 479. Considering only individual sentences allows “the Eighth Amendment proscription against cruel and unusual punishment in the context of a juvenile offender [to] be circumvented simply by stating the sentence in numerical terms that exceed any reasonable life expectancy rather than labeling it a ‘life’ sentence.” *Carter*, 192 A.3d at 737 (Barbera, C.J., concurring).

Similarly, in the context of addressing relief through *Graham v. Florida*, 560 U.S. 48 (2010), in which the U.S. Supreme Court banned life without parole sentences for juveniles convicted of non-homicide offenses, the majority of courts agree that the rationale of *Graham* and *Miller* extends to children with multiple offenses serving *de facto* life sentences. *See, e.g., Henry v. State*, 175 So. 3d 675, 676 (Fla. 2015) (eight separate felony offenses running a consecutive 90-year sentence); *State v. Boston*, 363 P.3d 453, 458 (Nev. 2015) (14 parole-eligible life sentences and a consecutive 92 years in prison); *People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012) (three attempted murder counts constituting a 110-years-to-life

sentence); *People v. Rainer*, No. 10CA2414, 2013 WL 1490107, at *1 (Colo. App. 2013) (aggregate 112-year sentence), *cert. granted*, No. 13SC408, 2014 WL 7330977 (Colo. Dec. 22, 2014).

2. Mr. Foust’s Aggregate Sixty-Years-to-Life Sentence Does Not Provide a Meaningful Opportunity for Release.

Mr. Foust was convicted of more than one count of the same violation, all stemming from the same incident, and received a term-of-years sentence for each count to run consecutively. Therefore, like Mr. McCullough, Mr. Foust’s consecutive 30-years-to-life sentences must be considered “no differently than a single sentence.” *Carter*, 192 A.3d at 735. Mr. Foust will not be eligible for parole until he is in his late 70s. Such a sentence does not provide him with a meaningful opportunity to obtain release before the expiration of his sentence and is therefore a *de facto* life without parole sentence.

B. This Petition Presents a Question of First Impression Regarding Whether a Life Sentence Is Unconstitutional Where There Was a Finding That the Crime Reflected Transient Immaturity.

This Court has held that a life without parole (or *de facto* life without parole) sentence does not violate the Eighth Amendment “so long as the sentence imposed is discretionary.” *Felder*, 269 A.3d at 1248. Yet this Court has not considered whether, when the sentencing court makes a finding that the crime reflected transient immaturity, it may nevertheless impose a life without parole or *de facto* life without parole sentence. This Court should find that it may not.

1. Under the Eighth Amendment, A Sentencing Court Is Not Free to Impose a Life Without Parole Sentence Where the Crime Reflected Transient Immaturity.

In *Jones v. Mississippi*, the Supreme Court reaffirmed its holdings in *Miller* and *Montgomery* that a mandatory juvenile life without parole sentence “poses too great a risk of disproportionate punishment” and is therefore barred by the Eighth Amendment. *Jones v. Mississippi*, 141 S. Ct. 1307, 1316 (2021) (quoting *Montgomery*, 577 U.S. at 195). Although *Miller* did not impose a “formal factfinding” requirement, the sentencer must have the “discretion to ‘consider the mitigating qualities of youth’” and to impose a punishment less than life without parole. *Id.* at 1314-15 (citing *Miller*, 567 U.S. at 476). *Jones* further explained that the fact “that *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.” *Id.* at 1315 n.2.

The Pennsylvania Supreme Court considered the definition of “transient immaturity” in *Commonwealth v. Batts*. 163 A.3d 410, 443-44 (Pa. 2017) (“*Batts I*”), *rev’d on Eighth Amendment grounds*, *Commonwealth v. Felder*, 269 A.3d 1232 (Pa. 2022). *Batts II* held that a juvenile’s crime does not reflect transient immaturity when (1) “the offender is entirely unable to change,” (2) “there is no possibility that the offender could be rehabilitated at any point later in his life,” and (3) “the crime committed reflects the juvenile’s true and unchangeable personality and character.”

Id. It is “‘rare’ and ‘uncommon’” that a juvenile offender possesses these characteristics. *Id.* (citing *Montgomery*, 577 U.S. at 208). Under *Jones*’s explanation of *Miller* and *Montgomery*, where a juvenile offender does not possess these characteristics, he may not be sentenced to life without parole. *Jones*, 593 U.S. at 106 n.2. Accordingly, where the sentencing court makes factual findings that the crime reflects transient immaturity, it may not impose a life without parole, or de facto life without parole, sentence.

2. The Sentencing Court Found Mr. Foust’s Crime to Reflect Transient Immaturity Yet Imposed a De Facto Life Without Parole Sentence.

At Mr. Foust’s resentencing hearing, the court found that there had been a “significant change in [Mr. Foust] between the time of his [original] sentencing and his person today.” (N.T. 7/5/2016, 160:23-161:2). The court acknowledged that even at the time of his trial, the court recognized that Mr. Foust had the capacity for change. (N.T. 7/5/2016, 159:3-8). The court further found that Mr. Foust had “demonstrated remorse” and “demonstrated a sincere effort to rehabilitate” and was convinced that Mr. Foust “ha[d] made strides—very substantial strides—at rehabilitation.” (N.T. 7/5/2016, 169:5-7).

The sentencing court’s findings go to the heart of the inquiry of whether Mr. Foust’s crime “reflected transient immaturity.” The court specifically found that Mr. Foust *is capable* of rehabilitation and that he is able to change—and that he had, in

fact, changed. Nevertheless, the court sentenced Mr. Foust to a *de facto* life without parole sentence. Yet, in view of the court’s findings, it was not “free to sentence [Mr. Foust,] whose crime reflects transient immaturity[,] to life without parole.” *Jones*, 593 U.S. at 106 n.2. Mr. Foust’s sentence is thus disproportionate under the Eighth Amendment.

Because Mr. Foust’s sentence is disproportionate under the Eighth Amendment, his sentence must be vacated.

C. The Courts Below Failed to Conduct the Mandatory *Edmunds* Analysis of Mr. Foust’s State Constitutional Claim.

A *de facto* life sentence violates the Pennsylvania Constitution’s prohibition against “cruel punishment.” The Pennsylvania Constitution’s prohibition against “cruel punishment” is broader than the United States Constitution’s prohibition against “cruel *and* unusual punishment.” The body of Pennsylvania case law interpreting these two provisions coextensively has failed to consider the factors set forth by the Pennsylvania Supreme Court for analyzing provisions of the Pennsylvania Constitution—as did the courts below in the instant matter—and must be re-evaluated.

This Court “set forth certain factors to be briefed and analyzed by litigants in each case . . . implicating a provision of the Pennsylvania constitution.” *Edmunds*, 586 A.2d at 895. Those factors include “(1) the text of the Pennsylvania constitutional provision; (2) history of the provision, including Pennsylvania case-

law; (3) related case-law from other states; (4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.” *Id.*

This Court has more recently stated that it will not depart from the Eighth Amendment in interpreting Section 13 because there is no unique Pennsylvania history related to the “cruel” punishments provision. *See, e.g., Commonwealth v. Bonner*, 135 A.3d 592, 597 n.18 (Pa. Super. Ct. 2016) (“The Pennsylvania prohibition against cruel and unusual punishment is coextensive with the Eighth and Fourteenth Amendments of the United States Constitution. Therefore, we do not conduct a separate analysis of Appellant’s state constitutional claim.”). In support of this conclusion, the Court cited *Commonwealth v. Zettlemyer*, 454 A.2d 937 (Pa. 1983), which surmised that, because Pennsylvania law had originally tolerated the death penalty, the punishment could not be considered “cruel” today. However, *Zettlemyer*, which predated *Edmunds*, failed to consider the history of Section 13, as did the Superior Court in this matter. *See Commonwealth v. Foust*, No. 1306 WDA 2023 (Pa. Super. Ct. July 26, 2024).

1. The Plain Text of Section 13 Supports an Independent Meaning.

The Pennsylvania provision is not identical to the Federal Constitution; it diverges in one crucial area, barring any *cruel* punishment (PA) as compared to punishments which are both *cruel and unusual* punishment (U.S.). A plain reading

makes clear that these distinct phrases cannot be interpreted coextensively. *Cf. Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883) (basic principle of statutory interpretation is that courts should “give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.”); *Stollar v. Cont’l Can Co.*, 180 A.2d 71, 74 (Pa. 1962) (“To fail to give effect to all of the provisions of a statute or to give them an unreasonable or absurd construction violates the fundamental rules of statutory interpretation.”).

2. The History of Section 13 Is Starkly Different from That of the Eighth Amendment.

The history of a Pennsylvania constitutional provision must be evaluated when a court endeavors to interpret the provision. *Edmunds*, 586 A.2d at 895. The history of Section 13 demonstrates a focus on deterrence and reform, not retribution, that mandates a unique interpretation of the provision. The drafters of Section 13 had a distinct interpretation of “cruelty.” Whereas the United States Constitution’s Eighth Amendment has a foundation in English criminal law, the Pennsylvania Constitution’s Section 13 is based on Enlightenment philosophy. See Kevin Bendesky, *The Key-Stone to the Arch: Unlocking Section 13’s Original Meaning*, 26 Univ. of Pa. J. Const. L. 201 (2023), <https://ssrn.com/abstract=4457030>, at 208-18 (discussing the disparate historical underpinnings of the Eighth Amendment and Section 13). This is not a distinction without a difference. The Pennsylvania

Constitution’s drafters were students of the Enlightenment and believed that the purpose of punishment was to deter and reform; that punishments ought to be proportional to crimes; and, most importantly, that no punishment was permissible unless it was “necessary” for these purposes. *See id.* at 219-35.

The Eighth Amendment originally sought to prohibit only methods of punishment that amounted to a “(cruel) ‘superadd[ition]’ of terror, pain, or disgrace.” *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019). “In all the[] contemporaneous discussions” surrounding the enactment of the Declaration of Rights, as well “as in the prologue of the Declaration,” wrote Justice Scalia, “a punishment is not considered objectionable because it is disproportionate.” *Harmelin v. Michigan*, 501 U.S. 957, 973 (1991). It is objectionable “because it is ‘out of [the Judges’] Power,’ ‘contrary to Law and ancient practice,’ without ‘Precedents’ or ‘express Law to warrant,’ ‘unusual,’ ‘illegal,’ or imposed by ‘Pretence to a discretionary Power.’” *Id.* at 974. The Federal Constitution’s framers knew that, of the state constitutions, “two prohibited ‘cruel’ punishments, Pa. Const. Art. IX, § 13 (1790); S.C. Const. Art. IX, § 4 (1790). The new Federal Bill of Rights, however, tracked Virginia’s prohibition of ‘cruel and unusual punishments.’” *Harmelin*, 501 U.S. at 966. Then, shortly after Congress proposed the Bill of Rights, it promulgated the nation’s first Penal Code, which permitted excessive punishments. In *Harmelin*, Justice Scalia conceded that a long mandatory prison

sentence “may be cruel,” but held that the punishment was outside the purview of the Eighth Amendment only because it “was not unusual in the constitutional sense.” *Id.* at 994.

By comparison, in 1776, the Commonwealth’s first Constitution mandated proportional punishments and demanded less “sanguinary”—that is, less “cruel; bloody; and mur[d]erous”—ones. See Robert James Turnbull, *A Visit to the Philadelphia Prison*, 6 (1797). In 1790, the Commonwealth adopted a new Constitution—its current constitution—prohibiting “cruel punishments.” In 1793, the Commonwealth’s first governor, Thomas Mifflin, asked William Bradford⁶ to study the necessity of capital punishments. It was “from satisfactory evidence,” Mifflin told the Assembly, “that the experiment in rendering the penal laws of Pennsylvania less sanguinary, has been attended with an obvious decrease of the number and atrocity of offences.” Mifflin, in referring the legislature to Bradford’s work, declared that “while we consider the prevention of crimes to be the sole end of punishment, we, also, admit, that every punishment, which is not absolutely necessary for that purpose, is an act of tyranny and cruelty.” *Journal of the Senate of Pennsylvania* 14 (Zacharia Poulson, 1792).

⁶ William Bradford served as both the Pennsylvania Attorney General and a Supreme Court Justice of the Commonwealth. In the former position, he attended the 1790 Constitutional Convention. Not long after, he became the second Attorney General of the United States, appointed by George Washington.

Early Pennsylvania case law confirms that deterrence and reformation were indeed the guiding principles of Pennsylvania criminal law. *See, e.g., James v. Commonwealth*, 12 Serg. & Rawle 220 (Pa. 1825) (holding the state could not punish a “common scold” by plunging her into water three times with a “ducking stool,” rejecting that punishment as incompatible with goals of reformation and deterrence, which were “the just foundation and object of all punishments”); *Commonwealth v. Ritter*, 13 Pa. D. & C. 285 (Pa. 1930) (rejecting retribution as a justification for punishment because it “looks to the past, not the future, and rests solely upon the foundation of vindictive justice” and instead holding “the two elements which should be taken into consideration are those of restraint and deterrence”). The Pennsylvania Supreme Court later “quote[d] with approval” *Ritter*’s “demonstrat[ion] that the necessity for appropriate punishment in criminal cases is chiefly in the interest of the protection of society.” *Commonwealth v. Elliot*, 89 A.2d 782, 784 (Pa. 1952); *see also Commonwealth v. Carluccetti*, 85 A.2d 391, 400 (Pa. 1952). This Court must conduct an analysis of Section 13 through the lens of *Edmunds* to determine whether the current interpretation of this provision is sound.

3. Other Jurisdictions Have Interpreted Similar Provisions More Broadly Than the Eighth Amendment.

Pennsylvania’s ban on cruel punishments is not unique; several other jurisdictions have likewise banned cruel punishments, or cruel *or* unusual punishments. Many of these state constitutional provisions have been interpreted to

provide greater protections than the Eighth Amendment. *See State v. Vang*, 847 N.W.2d 248, 263 (Minn. 2014) (holding the difference between Minnesota’s nearly identical “cruel or unusual” punishment provision as “‘not trivial’ because the ‘United States Supreme Court has upheld punishments that, although . . . cruel, are not unusual’” (quoting *State v. Mitchell*, 577 N.W.2d 481, 488 (Minn. 1998))); *Hale v. State*, 630 So.2d 521, 526 (Fla. 1993) (“The federal constitution protects against sentences that are both cruel and unusual. The Florida Constitution, arguably a broader constitutional provision, protects against sentences that are either cruel or unusual.”); *Commonwealth v. Concepcion*, 164 N.E.3d 842, 855 (Mass. 2021) (noting that Article 26 of the Massachusetts Constitution “affords defendants greater protections than the Eighth Amendment”); *People v. Anderson*, 493 P.2d 880, 883 (Cal. 1972), *superseded by constitutional amendment*, Cal. Const. art. 1, § 27 (rejecting the idea that the California Constitution was “coextensive” with the Eighth Amendment, and holding that use of the disjunctive “or” in the state constitution was significant and purposeful); *People v. Baker*, 229 Cal. Rptr. 3d 431, 442 (Cal. Ct. App. 2018) (California Court of Appeal construed the state constitutional provision separate from its federal counterpart and found that the distinction between Eighth Amendment wording and the California Constitution was “purposeful and substantive rather than merely semantic” (quoting *People v. Carmony*, 26 Cal. Rptr. 3d. 365, 378 (Cal. Ct. App. 2005))); *see also Burnor v. State*, 829 P.2d 837, 839-40

(Alaska Ct. App. 1992) (applying its own “single test to determine whether a statutory penalty constitutes cruel and unusual punishment”).

The Washington Supreme Court has also interpreted its constitution as more protective than the Eighth Amendment, and its reasoning is instructive here. *State v. Fain*, 617 P.2d 720, 723 (Wash. 1980) (en banc). In *Fain*, the court reasoned that “[e]specially where the language of our constitution is different from the analogous federal provision, we are not bound to assume the framers intended an identical interpretation.” *Id.* This was clear from historical evidence that revealed that the framers viewed the word “cruel” as sufficient to express their intent and “refused to adopt an amendment inserting the word unusual.” *Id.* In 2018, after an *Edmunds*-like analysis, the court confirmed its broader interpretation in the context of youth sentencing. *State v. Bassett*, 428 P.3d 343, 346 (Wash. 2018). It reasoned that “on its face” the Washington Constitution offers greater protection because it prohibits “merely cruel” punishments. *Id.* at 349 (quoting *State v. Dodd*, 838 P.2d 86, 96 (Wash. 1992) (en banc)). The court also recognized how the state has evolved, through legislation and case-law, to recognize that children warrant special protection. *Id.* at 350. The court reasoned that, in the context of juvenile sentencing, the Washington Constitution provided greater protection than the Eighth amendment. *Id.*

Most recently, in *State v. Kelliher*, decided after *Jones*, the North Carolina Supreme Court found that it violates both the Eighth Amendment and “article I, section 27 of the North Carolina Constitution to sentence a juvenile homicide offender” who is “‘neither incorrigible nor irredeemable’ to life without parole.” *Kelliher*, 873 S.E.2d at 370. The court found that the North Carolina Constitution, which prohibits “cruel *or* unusual punishments,” N.C. Const. art. I, § 27 (emphasis added), offers protections that are distinct and broader than those provided under the Eighth Amendment. *Kelliher*, 873 S.E.2d at 382. The court noted the different language and presumed that the framers of the North Carolina Constitution intentionally chose the words “cruel or unusual punishment” to prohibit punishments that were either cruel or unusual, “consistent with the ordinary meaning of the disjunctive term ‘or.’” *Id.* The court looked at the constitutional text, precedent illustrating the court’s “role in interpreting the North Carolina Constitution, and the nature of the inquiry used to determine whether a punishment violates the federal constitution” to hold that the state constitution is *not* in “lockstep” with the Eighth Amendment. *Id.* at 383. The court also noted how its interpretation changed to conform with contemporary understanding of adolescent development recognized by the court. *Id.* at 384.

Notably, the North Carolina Supreme Court further held that any sentence, or combination of sentences, which requires youth to serve more than 40 years in prison

before parole eligibility is a *de facto* life without parole sentence “because it deprives the juvenile of a genuine opportunity to demonstrate he or she has been rehabilitated and to establish a meaningful life outside of prison” and that such sentences also violate the Eighth Amendment. *Id.* at 370. The court reasoned that adopting a position that under *Jones*, “the Eighth Amendment requires nothing more than that ‘sentencing courts . . . take children’s age into account before condemning them to die in prison’” would repudiate core principles articulated in *Miller* and *Montgomery*. *Id.* at 379 (alteration in original) (quoting *Montgomery*, 577 U.S. at 209). This interpretation is “irreconcilable” with the Supreme Court’s own stated characterization of its holding: that *Jones* did not abrogate *Miller*, and the Supreme Court only intended to reject the appendage of new procedural requirements to *Miller* and *Montgomery*. *Id.* “To hold otherwise would require us to read *Jones* far more expansively” than intended, “the very sin that *Jones* warns us against committing.” *Id.* at 380.

4. Policy Considerations Also Weigh in Favor of Interpreting Section 13 as Distinct from the Eighth Amendment.

Policy considerations also support a broader interpretation of Article I, Section 13. Pennsylvania has a long history of protecting youth. As early as 1905, the Pennsylvania Supreme Court spoke of saving youth from becoming criminals or continuing careers in crime. *Commonwealth v. Fisher*, 62 A. 198, 200 (Pa. 1905); *see also* Justin D. Okun & Lisle T. Weaver, *Critical Issues Regarding Juvenile*

Justice in Pennsylvania: Life Without the Possibility of Parole and Use of Juvenile Adjudications to Enhance Later Adult Sentencing, 93 Pa. Bar Ass'n Q. 62, 63 (2022).

The state was the protector of youth, “not its punishment.” *Fisher*, 62 A. at 200. Decades later, the Pennsylvania Supreme Court correctly noted that “there is an abiding concern, in Pennsylvania, that juvenile offenders be treated commensurate with their stage of emotional and intellectual development and personal characteristics.” *Commonwealth v. Batts*, 66 A.3d 286, 299 (Pa. 2013).

Pennsylvania history reveals a longstanding commitment to providing special protections for minors against the full weight of criminal punishment. Over 150 years ago, well before the Commonwealth enacted the Juvenile Act, the Pennsylvania Supreme Court approved the detention of children in reform schools or Houses of Refuge. While the creation of these detention centers was concerning for many reasons, the Court articulated that the goal was explicitly “reformation, and not punishment.” *Ex parte Crouse*, 4 Whart. 9, 9 (Pa. 1839). Years later, in 1901, Pennsylvania passed its first Juvenile Act. It was immediately subject to constitutional challenge. *See Case of Mansfield*, 22 Pa. Super. 224, 225 (1903). While the *Mansfield* court declared the act unconstitutional, it commended the purpose of the law—to shield the young from the grave punishments of the criminal legal system. *Id.* at 235. Later amendments to the Juvenile Act expanded the court’s jurisdiction beyond minor offenses and gave the court jurisdiction of youth up to age

18. Pa. Juv. Ct. Judges' Comm'n, *Pennsylvania Juvenile Delinquency Benchbook* 3.2 (2018), https://www.jcjc.pa.gov/Publications/Documents/Juvenile%20Delinquency%20Benchbook/Pennsylvania%20Juvenile%20Delinquency%20Benchbook_10-2018.pdf. These jurisdictional changes reflected a shift to ensure the full and complete separation of juvenile courts. The 1972 Juvenile Act further ensured that youth should be treated with care and differentiated from their adult counterparts. The Act provided that children must be placed in juvenile facilities and not adult facilities, unless there are no other appropriate facilities available, in which case they must be kept separate from adults. *See* S.B. 439, 1971-1972 Reg. Sess. (Pa. 1972).

Likewise, Pennsylvania courts have consistently held that children are entitled to a special place of reform and care within the legal system. The Pennsylvania Supreme Court has recognized the special status of adolescents and has held, for example, that a court determining the voluntariness of a youth's confession must consider the youth's age, experience, comprehension, and the presence or absence of an interested adult. *Commonwealth v. Williams*, 475 A.2d 1283, 1288 (Pa. 1984). In *Commonwealth v. Kocher*, involving the prosecution of a nine-year-old for murder, the Pennsylvania Supreme Court referred to the common law presumption that children under the age of 14 are incapable of forming the requisite criminal intent to commit a crime. 602 A.2d 1307, 1313 (Pa. 1992). While this common law

presumption was replaced by the Juvenile Act, its existence for decades demonstrates that Pennsylvania's common law was especially protective of minors. The Juvenile Act also recognizes the special status of minors in its aim "to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community." 42 Pa.C.S.A. § 6301(b)(2). This focus on rehabilitation and competency development underscores Pennsylvania's recognition that children are still changing and deserve special protections under the law.

Additionally, in *In re J.B.*, the Pennsylvania Supreme Court held that the Sex Offender Registration and Notification Act "violates juvenile offenders' due process rights through use of an irrebuttable presumption." 107 A.3d 1, 2 (Pa. 2014). The Court recognized that youth commit sexual offenses due to "impulsivity and sexual curiosity, which diminish with rehabilitation and general maturation," and make them less likely than adults to reoffend. *Id.* at 17. Similarly, in *Batts II* the Court adopted expansive procedural safeguards to protect youth potentially eligible for life without parole sentences. *See Batts II*, 163 A.3d at 443-44. The Court noted the unique attributes of youth (that youth are impetuous, have an underdeveloped sense of responsibility, lessened culpability and greater capacity for change and

rehabilitation than adults) recognized in *Roper, Graham, Miller* and *Montgomery*. See *Batts II*, 163 A.3d at 428-34. The Pennsylvania Supreme Court only reversed these safeguards after the Supreme Court's ruling in *Jones* and only upon an interpretation that they were not required under the Eighth Amendment. *Felder*, 269 A.3d at 1243-44. As outlined above, the text, history and policy in Pennsylvania favor a broader reading of its prohibition against cruel punishment. And as noted above, other state courts have moved away from coextensive interpretations towards independent analysis, especially in the context of youth sentencing.

5. Mr. Foust's Sentence Is Cruel Under the Pennsylvania Constitution.

The framers' intent in proposing Article 1, Section 13, would plainly void Mr. Foust's two consecutive 30-years-to-life sentences as they are an unconstitutional *de facto* life without parole sentence and unreasonably cruel. As outlined above, anything that is not necessary to deter or reform *is* cruel under the Pennsylvania Constitution. This is especially true for an individual sentenced as a youth, who will serve "more years and a greater percentage of [their] life in prison than an adult offender." *Graham*, 560 U.S. at 70; see also *Miller*, 567 U.S. at 475. The unique characteristics of youth "diminish penological justifications" for imposing life without parole sentences. *Miller*, 567 U.S. at 472; *Montgomery*, 577 U.S. at 207. Deterrence cannot be rationalized, as the same characteristics that render youth less culpable "make them less likely to consider potential punishment." *Miller*, 567 U.S.

at 472. The need for incapacitation is also lessened because adolescent development diminishes the likelihood that youth will forever be a danger to society. *Id.* at 472-73. A life behind bars also “forfeits” rehabilitation as one will never have the opportunity at a rehabilitated life outside of prison walls. *Id.* at 473.

Mr. Foust was 17 years old at the time of his offenses. He has already served over 30 years in prison. As noted by the court below, he has also shown significant signs of rehabilitation and has more than demonstrated his capacity for reform. Currently he will not be eligible for parole until he has served at least 60 years in prison, well beyond his life expectancy. Such a sentence—essentially a sentence to die in prison—serves neither deterrence nor rehabilitation. Given Mr. Foust’s youth at the time of conviction, this sentence is unreasonably cruel and unconstitutional under the Pennsylvania Constitution.

D. The Questions Presented Are of the Utmost Public Importance and Require a Prompt and Definitive Resolution.

As explained more fully above, Mr. Foust’s Petition presents claims that seek to vindicate his fundamental right to be free from cruel punishments in a state that is an outlier in both the severity of and the frequency with which it imposes that punishment. While Mr. Foust argues that his aggregate sentence of 60 years to life violates the Eighth Amendment under *Jones*, it also runs afoul of Pennsylvania’s own constitutional guarantees. Where there is substantial historical evidence that the drafters of this provision were determined to restrict punishments to those serving

only “deterrence and reform,” combined with the State as well national consensus that youth must be treated differently than adult offenders with regard to sentencing, this Court must clarify that Article I, Section 13 does indeed provide more sweeping protections for young offenders than the Eighth Amendment. This Court must address and remedy the continued infliction of *de facto* life sentences on youth.

VII. CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Allowance of Appeal.

Respectfully submitted,

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COUNSEL FOR PETITIONER

Dated: November 4, 2024

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 1115(f) of the Pennsylvania Rules of Appellate Procedure. This brief contains 7,483 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 require filing confidential information and documents differently than non-confidential information and documents.

/s/ Marsha L. Levick
Marsha L. Levick

Dated: November 4, 2024

APPENDIX A

July 26, 2024 Superior Court Opinion

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
MICHAEL P. FOUST	:	
	:	
Appellant	:	No. 1306 WDA 2023

Appeal from the PCRA Order Entered October 11, 2023
 In the Court of Common Pleas of Venango County Criminal Division at
 No(s): CP-61-CR-0000679-1993

BEFORE: KUNSELMAN, J., MURRAY, J., and McLAUGHLIN, J.

MEMORANDUM BY MURRAY, J.:

FILED: July 26, 2024

Michael P. Foust appeals from the order denying his Post Conviction Relief Act ("PCRA")¹ petition, which he filed following his resentencing and subsequent appeal of his new sentence. After careful review, we affirm.

This Court previously described the history underlying this appeal:

On November 22, 1993, Appellant, then 17 years old, and Kevin Zenker ("Zenker") drove from Oil City to Donald Foust's [Appellant's father's] residence. Appellant and Zenker stole one of Donald Foust's handguns and then returned to Oil City. While they were driving past Darla Bump's ("Bump's") and Russel Rice's ("Rice's") residence, Zenker fired at Bump's dog. Appellant turned the vehicle around and passed the residence again. Bump and Rice got in their vehicle and began following Appellant and Zenker. Eventually, Appellant slowed the car to a stop, grabbed the firearm, jumped out of the vehicle, approached Bump's and Rice's vehicle, and opened fire[.]. Bump and Rice died from multiple gunshot wounds sustained during Appellant's assault.

¹ 42 Pa.C.S.A. §§ 9541-9546.

On February 1, 1994, the Commonwealth charged Appellant[,] via criminal information[,] with two counts of first-degree murder. [18 Pa.C.S.A. § 2502(a) (West 1994).] On May 13, 1994, Appellant moved to transfer his case to the Juvenile Division of the Court of Common Pleas of Venango County. **See** 42 Pa.C.S.A. § 6355 (West 1994). The trial court denied that motion ... and trial commenced on June 22, 1994. Appellant was convicted of both counts of first-degree murder. On June 30, 2014, the trial court sentenced Appellant to two consecutive terms of [life without parole (LWOP)]. On direct appeal, this Court affirmed and our Supreme Court denied allowance of appeal. **Commonwealth v. Foust**, 667 A.2d 418 (Pa. Super. 1995) (unpublished memorandum), **appeal denied**, 672 A.2d 304 (Pa. 1995).

Commonwealth v. Foust, 180 A.3d 415, 420 (Pa. Super. 2018) (footnotes omitted; citation added).

Appellant timely filed a first PCRA petition on January 5, 1998. After the appointment of counsel and an evidentiary hearing, the PCRA court dismissed the petition on October 18, 2010. This Court affirmed, and our Pennsylvania Supreme Court denied allowance of appeal. **Commonwealth v. Foust**, 828 A.3d 397 (Pa. Super. 2003) (unpublished memorandum), **appeal denied**, 837 A.2d 1177 (Pa. 2003).

Appellant's next two PCRA petitions were unsuccessful. However, [o]n February 24, 2016, Appellant filed his fourth *pro se* PCRA petition, which he amended on March 28, 2016. In that petition, [Appellant] argued that his LWOP sentences violated the Eighth Amendment of the United States Constitution[,] as interpreted by **Miller v. Alabama**, 567 U.S. 460 (2012)[,] and **Montgomery v. Louisiana**, 136 S. Ct. 718 (2016). On May 12, 2016, the PCRA court granted the petition and vacated Appellant's judgment of sentence.

... On July 5, 2016, the trial court sentenced Appellant to 30 years to life for each first-degree murder conviction and ordered

those two sentences to run consecutively. Hence, the trial court sentenced Appellant to an aggregate term of 60 years to life imprisonment. On July 15, 2016, Appellant challenged the legality of his sentence in a post-sentence motion. The trial court denied that motion on July 19, 2016....

Foust, 180 A.3d at 420 (footnotes omitted).

Appellant timely appealed his new judgment of sentence. On appeal, Appellant claimed his consecutive 30-year sentences constitute a *de facto* LWOP sentence. **Id.** at 421. Appellant challenged the validity of his sentences absent a finding that he “is one of the rare and uncommon juveniles who is permanently incorrigible, irreparably corrupt[,] or irretrievably depraved.” **Id.** at 422.

This Court first concluded Appellant’s sentences were not unconstitutional:

A sentence of 30 years to life imprisonment does not constitute a *de facto* LWOP sentence which entitles a defendant to the protections of **Miller**.

Foust, 180 A.3d at 438. Regarding Appellant’s challenge to the discretionary aspects of his sentence, we opined as follows:

[T]he trial court considered all relevant documents, court filings, reports, and testimony when sentencing Appellant. It carefully weighed all of these factors and determined that sentences below the applicable guidelines ranges, *i.e.*, 30 years instead of 35 years, were appropriate in this case. Then, the trial court reached the crux of Appellant’s discretionary aspects challenge and explained why it chose to run Appellant’s sentences consecutively instead of concurrently. It stated that:

[The court] cannot in any way rationalize a sentence that is not consecutive. ... **[T]here are two distinct victims. Each victim’s possible life and loss of life has to be**

recognized and has to be, in my view, acknowledged in the sentence. And the effect of that is that I have to, in my mind, run these sentences consecutively.

N.T., 7/5/16, at 169 [(emphasis added)].

We ascertain no abuse of discretion in this decision. The trial court determined that separate punishments were necessitated by the nature of the offenses and the lives taken, notwithstanding the rehabilitation Appellant demonstrated while imprisoned for the past two decades.

Appellant will be eligible for parole when he is in his seventies. Although he may not live this long, he has a chance of being released into society. It was within the trial court's discretion to conclude that an individual who viciously took the lives of two innocent people is not entitled to be released into society at an earlier age, even with the reduced culpability recognized in [*Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010),] and *Miller*. Accordingly, we conclude that the trial court did not abuse its discretion in sentencing Appellant to consecutive terms of 30 years to life imprisonment

Id. at 440-41 (footnotes omitted, emphasis added). This Court thus affirmed Appellant's judgment of sentence. *See id.* at 441. On May 25, 2022, the Pennsylvania Supreme Court denied allowance of appeal. *Commonwealth v. Foust*, 279 A.3d 39 (Pa. 2022).

On May 22, 2023, Appellant timely filed the instant, counseled PCRA petition again claiming an unconstitutional LWOP sentence. PCRA Petition 5/22/23, ¶¶ 15-16. On October 11, 2023, after a hearing, the PCRA court denied Appellant's petition. PCRA Court Order, 10/11/23. Thereafter, Appellant filed the instant timely appeal. Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

Appellant presents the following issues:

1. Do two 30-year sentences[,] which run consecutively[,] amount to a *de facto* [LWOP] sentence?
2. Did the PCRA [c]our err in interpreting the Pennsylvania Constitution's prohibition against "cruel punishment" coextensively with the United States Constitution's prohibition against "cruel and unusual punishment"?
3. Is the imposition of a life (or *de facto* life) sentence unconstitutional under the federal and/or Pennsylvania constitutions where the evidence plainly established that Appellant was redeemable?

Appellant's Brief at 3 (issues renumbered).

Our Supreme Court stated our standard and scope of review of an order denying PCRA relief:

On appeal we review the PCRA court's holding for a determination of whether the ruling is supported by the record and free of legal error. We apply a *de novo* standard of review to the PCRA court's legal conclusions. The scope of review is limited to the findings of the PCRA court and the evidence of record, viewed in the light most favorable to the prevailing party at the PCRA court level.

Commonwealth v. Conforti, 303 A.3d 715, 725 (Pa. 2023) (citations and quotation marks omitted).

As our Supreme Court has explained,

[t]o be entitled to PCRA relief, a petitioner must establish, by a preponderance of the evidence, that the conviction or sentence resulted from one or more of the enumerated errors set forth in 42 Pa.C.S.[A.] § 9543(a)(2). These include, *inter alia*, a constitutional violation or ineffective assistance of counsel, which "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa.C.S.[A.] § 9543(a)(2)(i)-(ii)....

Commonwealth v. Johnson, 289 A.3d 959, 979 (Pa. 2023).

With this in mind, we address Appellant's first two issues together, as they are related. Appellant first argues that an aggregate prison term of 60 years to life constitutes a *de facto* LWOP sentence. Appellant's Brief at 13. Appellant directs our attention to case law in other jurisdictions holding that a minimum sentence of sixty years in prison constitutes a *de facto* LWOP sentence. **Id.** at 13-15. Relatedly, Appellant challenges this Court's prior conclusion that

only [Appellant's] 30-years-to-life sentences, and not the aggregate 60-years-to-life sentence, should be considered in determining there his sentence constitutes a *de facto* [LWOP] sentence....

Id. at 16. Appellant points out the Pennsylvania Supreme Court has not yet opined on this issue. **Id.**

Appellant directs our attention to the decision of the Maryland Supreme Court in **Carter v. State**, 192 A.3d 695 (Md. 2018). According to Appellant, the Maryland Supreme Court stated, "Whether a sentence, stacked or otherwise, is excessive under the Eighth Amendment can never be litigated in the abstract, but must be assessed on a case-by-case basis." Appellant's Brief at 17 (quoting **Carter**, 192 A.3d at 730 (quotation marks omitted)). Relying on **Carter**, Appellant argues that sentences arising from a single event should be considered no differently than a single sentence. **Id.** at 18.

Appellant points out decisions in other jurisdictions concluding that an aggregate term-of-years sentence may give rise to a *de facto* LWOP sentence.

See id. at 18-19 (citing case law from California, Colorado, Florida, and Nevada). In summary, Appellant argues that his

[c]onsecutive 30-year sentences result in an aggregate 60-years-to-life sentence. He will not be eligible for parole until he is in his late 70s. Such a sentence does not provide him with a meaningful opportunity to obtain release before the expiration of his sentence and is therefore a *de facto* [LWOP] sentence....

Id.

In his second issue, Appellant argues that a *de facto* LWOP sentence violates Section 13 of the Pennsylvania Constitution, which prohibits cruel punishment. **Id.** at 25-26; **see** Pa. Const. § 13. Appellant claims that the body of Pennsylvania case law deeming Section 13 coextensive with the Eighth Amendment, does not employ the four-factor analysis provided by our Supreme Court in **Commonwealth v. Edmunds**, 586 A.2d 887, 890 (Pa. 1991). Appellant specifically distinguishes the following statement by this Court in **Commonwealth v. Bonner**, 135 A.2d 592, 597 n.18 (Pa. Super. 2016):

The Pennsylvania prohibition against cruel and unusual punishment is coextensive with the Eighth and Fourteenth Amendment of the United States Constitution. Therefore, we do not conduct a separate analysis of Appellant's state constitutional claim.

Appellant's Brief at 27 (quoting **Bonner**, 135 A.2d at 597 n.18). According to Appellant, the **Bonner** Court relied on **Commonwealth v. Zettlemyer**, 454 A.2d 937 (Pa. 1983), which was decided before **Edmunds**. Appellant's Brief at 27.

Conducting an **Edmunds** analysis, Appellant argues that (1) the history of Section 13 is “starkly different” from that of the Eighth Amendment, **see id.** at 28; (2) other jurisdictions interpreted similar provisions more broadly, **see id.** at 31; (3) policy considerations weigh in favor of interpreting Section 13 as distinct from the Eighth Amendment, **see id.** at 35; and (4) Appellant’s sentence is cruel under the Pennsylvania Constitution, **see id.** at 39.

Before addressing Appellant’s substantive claim, we first address whether Appellant is eligible for PCRA relief. To be eligible for PCRA relief, a petitioner must show the claim has not been previously litigated or waived, and that “the failure to litigate the issue prior to or during trial, ... or on direct appeal could not have been the result of any rational, strategic[,], or tactical decision by counsel.” 42 Pa.C.S.A. § 9543(a)(3), (a)(4). An issue is previously litigated if “the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue[.]” 42 Pa.C.S.A. § 9544(a)(2). An issue is waived if the petitioner “could have raised it but failed to do so before trial, at trial[,], ... on appeal[,], or in a prior state postconviction proceeding.” 42 Pa.C.S.A. § 9544(b).

Our review discloses Appellant previously appealed his new, post-**Miller** sentences imposed by the trial court. **See Foust**, 180 A.3d at 438. In that appeal, Appellant raised the following issue:

Is it unconstitutional to impose a sentence of 60 years to life, a *de facto* sentence of [LWOP], on a juvenile absent a finding that the juvenile is one of the rare and uncommon juveniles who is

permanently incorrigible, irreparably corrupt[,] or irretrievably deprived?

Id. at 421-22. In addressing Appellant’s direct-appeal challenge, this Court comprehensively reviewed Pennsylvania’s prior statutory scheme for juveniles convicted of first- and second-degree murder; the history of punishment for juvenile offenders; United States Supreme Court precedent; Pennsylvania statutory reform; and Pennsylvania Supreme Court precedent. **See id.** at 422-30. Further, this Court addressed Appellant’s claim of a *de facto* LWOP sentence, and his challenge to the constitutionality of his *de facto* life sentence. **See id.** at 430-34.

Significantly, in his appeal following resentencing, this Court expressly addressed Appellant’s challenge to his aggregate sentence. **Id.** at 434-36. We addressed the application of **Roper, Graham, and Miller** “regarding the decreased deterrent effect that accompanies harsher punishments for juveniles.” **Id.** This Court further considered holdings from other jurisdictions. **See id.** at 434-35 (“[T]his issue has arisen in our sister states where courts reached differing conclusions on whether individual sentences or the aggregate sentence determine the presence of a *de facto* LWOP sentence.” (citing cases)). Ultimately, this Court concluded as follows:

We have scrutinized relevant Pennsylvania case law, prior decisions of the Supreme Court of the United States, and persuasive authority from other jurisdictions. Although we acknowledge that there is ground for differing views, we believe that we are on sound legal footing and consistent with Pennsylvania law. Accordingly, we hold that we must consider the individual sentences, not the aggregate, to determine if the trial

court imposed a term-of-years sentence which constitutes a *de facto* LWOP sentence.

Id. at 437-38. Consequently, this Court upheld the constitutionality of Appellant's sentence. **See id.** at 438.

Instantly, Appellant again challenges the constitutionality of his aggregate sentence as a *de facto* LWOP sentence. As stated above, Appellant previously challenged his sentences as a *de facto* LWOP sentence, as well as the constitutionality of a LWOP sentence for juvenile offenders. As this issue was previously litigated, Appellant is not eligible for relief under the PCRA. **See Commonwealth v. Davido**, 106 A.3d 611, 627 (Pa. 2014) ("[A] PCRA petitioner cannot obtain additional review of previously litigated claims by presenting new theories of relief[.]" (citation omitted)). Appellant's first two issues merit no relief.²

² We additionally observe that in **Commonwealth v. Felder**, 269 A.3d 1232 (Pa. 2022), our Supreme Court held at

[a] life-without-parole sentence for a juvenile murderer is thus constitutional, and hence no violable **Miller** claim exists, **so long as the sentence is not mandatory** – that is, [] so long as the sentencer has discretion to consider the mitigating qualities of youth and impose a lesser punishment....

Id. at 1243 (emphasis added, internal quotation marks and citation omitted). In her concurrence, Justice Donohoe noted that the **Felder** decision "does not foreclose further developments in the law as to the legality of juvenile life without parole sentences (or their de facto equivalent as alleged here) under the Pennsylvania Constitution nor as to how appellate courts will review the discretionary aspects of such sentences." **Id.** at 1247. However, those developments are best left to the Supreme Court and the General (Footnote Continued Next Page)

In his third issue, Appellant challenges the discretionary aspects of his sentence. Appellant's Brief at 19. Appellant again challenges the constitutionality of his sentences. **Id.** However, Appellant additionally asserts that the sentencing court "failed to meaningfully take into account any factor other than the crime itself." **Id.** He additionally argues that his sentence is unconstitutional because "the sentencing court found that [Appellant's] crime reflected transient immaturity, but nonetheless sentenced him to *de facto* [LWOP]." **Id.** at 20.

Appellant argues the sentencing court improperly failed to consider his youth and attendant circumstances, and improperly sentenced him based solely on the nature of the crime. **Id.** at 21. Appellant challenges the adequacy of the sentencing court's reasons for imposing its sentence. **Id.** Appellant has included in his brief a statement of reasons relied upon for challenging the discretionary aspects of his sentence. **See id.** at 11-12; **see also** Pa.R.A.P. 2119(f) (requiring a separate statement of the reasons relied upon for allowance of appeal, when challenging the discretionary aspects of sentencing).

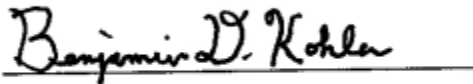
Assembly. **See e.g., In re Adoption of J.M.B.**, 308 A.3d 1262, 1277 (Pa. Super. 2024) ("It is not the prerogative of an intermediate appellate court to enunciate new precepts of law or to expand existing legal doctrines. Such is a province reserved to the Supreme Court and to the General Assembly.")

To the extent that Appellant challenges his sentence as an unconstitutional *de facto* LWOP sentence, we conclude Appellant is ineligible for relief, as stated above. Although Appellant additionally challenges the discretionary aspects of his sentence, his claim merits no relief. “Challenges to the discretionary aspects of sentencing are not cognizable under the PCRA.” ***Commonwealth v. Fowler***, 930 A.2d 586, 593 (Pa. Super. 2007). As such, the PCRA court properly denied relief. Appellant’s third issue merits no relief.

For the foregoing reasons, we affirm the PCRA court’s order denying Appellant’s petition for relief.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 07/26/2024

APPENDIX B

October 4, 2024 Superior Court Order Denying Application for Reargument

**IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA	:	No. 1306 WDA 2023
	:	
	:	
v.	:	
	:	
	:	
MICHAEL P. FOUST	:	
	:	
Appellant	:	

ORDER

IT IS HEREBY ORDERED:

THAT the application filed August 9, 2024, requesting reargument of the decision dated July 26, 2024, is **DENIED**.

PER CURIAM

APPENDIX C

Excerpt of October 10, 2023 PCRA Hearing Transcript Containing Oral Opinion

1 evaluating this sentence. A statement that he
2 made to Mr. Foust on the record after he had
3 handed down the sentence, he said, Mr. Foust, I
4 want to make it clear to you, you've convinced
5 me that you're trying and you've convinced me
6 that, you know, you're doing some good with
7 your life in prison. What drives this case is
8 the fact that it was murder one and there were
9 two victims. Each one was a valuable life, and
10 I just can't discount their lives.

11 THE COURT: Okay. I'm going to give you my
12 decision now on this case and because I will
13 take a little bit of time in explaining this.
14 I have also extensively reviewed the file, the
15 transcripts of the sentencing hearing, all of
16 the things that Judge White read in preparing
17 for that. I also know Judge White extremely
18 well. I've worked with him over the years. I
19 was his law clerk early on in his career.

20 Judge White has been a mentor to me
21 throughout my entire career. So I am familiar.
22 The language he uses and it's typical and it's
23 typical of a lot of judges. When they say,
24 I've considered all these things but, and it
25 goes into things, what he's doing is he's

SHAYNA SMITH

C1

1 giving you his exercise of discretion. In
2 other words, he's telling you this is why this
3 sentence is here. This is what I have decided
4 is an important overriding factor of
5 everything. He's exercising his discretion,
6 when he says there are two victims and goes
7 through the statements of, you know, I can't
8 avoid that or this is what I need to do or am
9 required to do. I am paraphrasing at this
10 time.

11 It is his ultimate saying he considered all
12 the factors. And it's every sentence a judge
13 gives. You consider all of the factors, but
14 something drives the sentence, whether it's
15 lenient, whether it's middle of the road,
16 whether it's on the high end, something is
17 driving that sentence. And a lot of judges
18 tell the person what it is that is driving the
19 sentence and why they gave what the sentence is
20 so they give an understanding. Judges could
21 simply sit here and just announce the sentence
22 and be quiet, and you don't know why, what was
23 there.

24 I looked at the *Jones* opinion. I've looked
25 at the *Felder* opinion. I've looked at the

SHAYNA SMITH

C2

1 previous *Foust* opinion. I've read all of them.
2 The Pennsylvania Supreme Court had an
3 opportunity to hear this case on appeal. In
4 fact, they tabled pending *Felder*. I saw the
5 note. They didn't just automatically deny the
6 allowance of appeal in this case. They tabled,
7 pending their decision in *Felder*. And in
8 between time, *Jones* came down which colored
9 their *Felder* opinion, which also, you know,
10 came back to the original *Foust* opinion which
11 states, specifically abrogated, because even in
12 the original *Foust* opinion, the superior court
13 upheld the sentence but it also laid out
14 factors about things that should be of record
15 and all of the details and specifically in
16 *Felder*, based on *Jones*, they said, No. That is
17 not necessary. You don't have to state all of
18 those.

19 All of that litany that Judge White put in
20 that, he wouldn't have had to have done that,
21 as long as it was considered, as long as it was
22 presented. There was testimony. I read
23 extensive testimony and documents were
24 presented to the court that he went through and
25 he applied all of those. He applied

SHAYNA SMITH

C3

1 everything. And that's what the exercise of
2 discretion means is that you look at and review
3 everything and then you decide based on all of
4 that what you think is appropriate.

5 Not perfect science, and judges vary
6 greatly out there. Sometimes we get it
7 absolutely right. Sometimes we get it wrong.
8 Sentencing, I used to say to individuals at
9 times when I would sentence them, especially if
10 I gave them a lenient sentence, I said, "Prove
11 me right. Don't prove me wrong."

12 Unfortunately, there have been many times I
13 was proven wrong on giving them a light
14 sentence to begin with.

15 The case law unfortunately does not support
16 what you are asking for on relief. The case
17 has been litigated. There's little nuances.
18 Supreme Court had the opportunity. The fact
19 that they chose not to take it also sends a
20 message that they agree with the opinion and
21 there was nothing new or novel that they wanted
22 to hear.

23 I know they selectively pick case. I don't
24 remember what the current statistics are. Once
25 upon a time I think it was about seven or eight

SHAYNA SMITH

C4

1 hundred cases a year. The Pennsylvania Supreme
2 Court would hear over eight to ten thousand
3 cases. The superior court would hear -- you
4 know, it's a drastic difference, and they hand
5 select. This is an issue that I don't think
6 they were attempting to shy away from. I think
7 they were very specific when they did the
8 *Felder* opinion and felt that this covered
9 anything and everything they would have done
10 with the *Foust* case, had they heard it. There
11 was nothing that was going to change the
12 outcome of that case.

13 I feel it was strained on the fact of
14 looking at the appellate opinions that the case
15 has been litigated and it's really not a proper
16 issue for a PCRA. I am not making that
17 finding. I am just telling you that I believe
18 it. Even though I am going to give you that
19 comment, my specific finding is that the
20 sentence is not a de facto life sentence. It
21 does not violate the Pennsylvania Constitution
22 and it does not violate the U.S. Constitution.
23 And I will craft an opinion to that effect
24 because even though, as I said, I don't believe
25 that it would properly be a PCRA issue because

SHAYNA SMITH

C5

1 it has previously been litigated, that's not my
2 finding. I'm going to base my finding on the
3 fact that it does not violate the constitution.
4 So actually the opinion is going to be a simple
5 Order.

6 Order of the Court. And now, this 10th day
7 of October 2023, the Court has taken argument
8 on the PCRA Petition in this matter and has
9 thoroughly considered all arguments of counsel.
10 The Court has also reviewed the entire file
11 from this case, including the sentence hearing,
12 the factors that Judge White listed as he
13 considered and specifically looked at the
14 language that Judge White used in posing the
15 Sentence. Considering all arguments and all
16 facts of record, this Court finds that the
17 Sentence of thirty (30) years to life on two
18 separate counts running consecutive does not
19 violate the Pennsylvania Constitution and does
20 not violate the U.S. Constitution on the
21 prohibition against cruel and unusual
22 punishment. Therefore, the PCRA Petition is
23 hereby DENIED. By the Court.

24 That's it.

25 ATTORNEY WHITE: Thank you, Your Honor.

SHAYNA SMITH

C6

APPENDIX D

October 10, 2023 Order Denying PCRA Petition

IN THE COURT OF COMMON PLEAS
OF VENANGO COUNTY, PENNSYLVANIA

CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA

}

- vs -

} CR NO 679-1993

MICHAEL FOUST

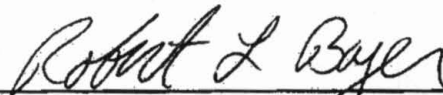
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ORDER

FILED
COMMON PLEAS COURT
VENANGO COUNTY
2023 OCT 11 PM 12:44
PROthonotary AND
Clerk of the Court

AND NOW, this 10th day of October, 2023, the Court has taken argument on the PCRA Petition in this matter and has thoroughly considered all arguments of counsel. The Court has also reviewed the entire file from this case including the sentence hearing, the factors that Judge White listed as he considered and specifically looked at the language that Judge White used in imposing this Sentence. Considering all arguments and all facts of record, this Court finds that the Sentence of thirty (30) years to life on two separate counts running consecutive, does not violate the Pennsylvania Constitution and does not violate the U.S. Constitution on the prohibition on cruel and unusual punishment therefore, the PCRA Petition is hereby DENIED.

BY THE COURT:



SENIOR JUDGE ROBERT L. BOYER,
Specially Presiding.

10/11/23

cc: Marshchewick, Esq 215-625-2908

for < Dora Becker, Esq 215-963-5001

APPENDIX E

January 4, 2024 Statement in Lieu of 1925 Opinion

IN THE COURT OF COMMON PLEAS OF VENANGO COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

v.

MICHAEL PAUL FOUST,
Petitioner.

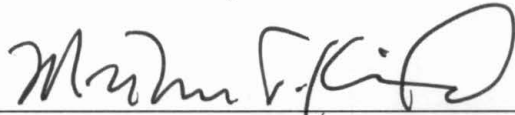
CR No. 679-1993

FILED
COMMON PLEAS COURT
VENANGO COUNTY
2024 JAN -4 AM 9:43
PROTHONOTARY AND
CLERK OF COURTS

STATEMENT IN LIEU OF 1925 OPINION

AND NOW, this 4th day of January 2024, this matter comes before the Court after
Petitioner filed a Notice of Appeal of the Order of Court entered October 10, 2023, which denied
Petitioner's PCRA Petition. The Court submits this statement that it relies upon the record,
particularly the Order of Court entered October 10, 2023, in all matters on appeal. A copy of
which is attached as Exhibit A.

BY THE COURT,


MATTHEW T. KIRTLAND, President Judge
for ROBERT L. BOYER, Senior Judge

1/4/24
cc: DA
Dana E. Becker, Esq. 215-963-5001
Marsha L. Levick, Esq. 215-625-2808
for