

No. 626 MDA 2024

IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

MICHAEL LEE BOURGEOIS,

Appellant.

REPLY BRIEF OF APPELLANT

Appeal from Final Order of April 8, 2024 Denying
PCRA Petition in the Lancaster County Court of Common Pleas,
Case No. CP-36-CR-0004224-2001

The Honorable David L. Ashworth, Judge Presiding.

Dana E. Becker (PA 209513)
Julia Jacovides (PA 328792)
Abigail V. Greene (PA 334754)
MORGAN, LEWIS & BOCKIUS LLP
2222 Market St.
Philadelphia, PA 19103
(215) 963-5000
dana.becker@morganlewis.com
julia.jacovides@morganlewis.com
abigail.greene@morganlewis.com

Marsha L. Levick (PA 22535)
JUVENILE LAW CENTER
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
(215) 625-0551
mlevick@jlc.org

COUNSEL FOR APPELLANT

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STATEMENT OF THE CASE

This matter comes before this Court following a timely filed appeal. Appellant Michael Bourgeois timely filed his principal brief on October 4, 2024. The Commonwealth filed its appellee's brief on October 24, 2024. Mr. Bourgeois now timely files this reply brief. Mr. Bourgeois relies upon the Statement of the Case in his original brief.

SUMMARY OF THE ARGUMENT

In his opening brief, Mr. Bourgeois made two distinct arguments. *First*, Mr. Bourgeois argued that a *de facto* life without parole sentence of 80 years to life is unconstitutional under the Eighth Amendment of the United States Constitution. *Second*, Mr. Bourgeois argued that a *de facto* life without parole sentence of 80 years to life is unconstitutional under Article 1, Section 13 of the Pennsylvania Constitution, whose prohibition against “cruel punishment” should be interpreted more broadly than the U.S. Constitution’s prohibition against cruel and unusual punishment.

The Commonwealth first argues that our courts have previously settled that the U.S. and Pennsylvania Constitutions are co-extensive. In support, it only cites *Commonwealth v. Elia*, 83 A.3d 254 (Pa. Super. 2013). This argument misses the mark, as the *Elia* decision considers the constitutionality of the Pennsylvania statute governing sentences for offenses against infant persons.

The Commonwealth then argues that Mr. Bourgeois' sentence is constitutional under the standards of the Eighth Amendment. However, this argument fails to adequately take into consideration Mr. Bourgeois' demonstrated rehabilitation or scientific research on juvenile brain development.

ARGUMENT

I. The Commonwealth's Reliance on *Commonwealth v. Elia* Is Misplaced.

Mr. Bourgeois argues that the PCRA court erred as a matter of law in imposing two consecutive 40-years-to-life sentences – an aggregate of 80 years to life – in violation of both the federal and Pennsylvania Constitutions.

In *Commonwealth v. Edmunds*, our Supreme Court held that each case implicating a provision of the Pennsylvania Constitution required, *inter alia*, “an independent analysis” of the history of the provision being challenged. *Commonwealth v. Edmunds*, 586 A.2d 887, 894-95 (Pa. 1991). The Commonwealth argues that the Pennsylvania Supreme Court has already “examined” the co-extensiveness of Section 13 in light of the *Edmunds* framework. In support, it cites *Commonwealth v. Elia*, 83 A.3d 254 (Pa. Super. 2013).

However, the Pennsylvania Superior Court's decision in *Elia* is irrelevant to Mr. Bourgeois' case. *Elia* addresses the constitutionality of the Pennsylvania statute governing sentences for offenses against infant persons (42 Pa.C.S. § 9718(a)). Unlike Mr. Bourgeois, who was convicted at age 17 and sentenced to life without

parole, Elia was 25 when charged with involuntary deviate sexual intercourse with a child under 16 and related charges. *See Elia*, 83 A.3d at 259. He was sentenced to the mandatory minimum of 10-20 years of incarceration, and challenged his sentence as “an unconstitutionally cruel punishment” that violated Section 13. *Id.* at 260.

Although our Supreme Court acknowledged that *Elia* “set[] forth a comprehensive analysis pursuant to” *Edmunds*, it did not engage in the type of independent analysis that *Edmunds* requires. In other words, the *Elia* decision is wholly irrelevant to the question of the constitutionality of a sentence imposed on a juvenile convicted of homicide, which both the U.S. Supreme Court and Pennsylvania Supreme Court have acknowledged implicates unique considerations. *See, e.g., Miller v. Alabama*, 567 U.S. 460, 479-80 (2012); *Commonwealth v. Felder*, 269 A.3d 1232, 1241 (Pa. 2022). The *Elia* decision also lacks the historical analysis necessary to engage in a reevaluation of the co-extensiveness of the two constitutional provisions.

II. Mr. Bourgeois’s Sentence Does Not Meaningfully Consider His Age at the Time of the Offense and Therefore Violates the Eighth Amendment to the U.S. Constitution.

In sentencing Mr. Bourgeois, the lower court did not fully consider youth in the way contemplated by *Miller*. The Commonwealth relies heavily on the U.S. Supreme Court’s decision in *Jones v. Mississippi*, 593 U.S. 98 (2021) (holding that non-mandatory juvenile offender sentencing schemes allowing the sentencer

discretion to consider the mitigating qualities of youth are constitutional under *Miller*). Following *Miller*, Section 1102.1 of the Pennsylvania Codes was amended, reducing the mandatory minimum sentence for homicide from life to 35 years for individuals between 15 and 18 years old at the time of the homicide. *See* 42 PaC.S. 1102.1. Because Mr. Bourgeois was convicted of two counts of homicide, the minimum sentence available to him was 70 years, meaning he would have been 87 years old at the time of his release even if he had received the shortest sentence possible. When the minimum sentence will see Mr. Bourgeois in prison well past the average life expectancy, it is not possible for the sentencing court to fully consider youth in the way contemplated by *Miller*.

The Commonwealth relies heavily on the fact that this sentence was not strictly “mandatory” and emphasizes that the sentencing court did discuss Mr. Bourgeois’s youth. However, the Commonwealth’s interpretation of “mandatory” neglects the nuanced and practical reality that, under the current sentencing scheme, a youth convicted of multiple homicide offenses will end up dying in prison. Moreover, in sentencing Mr. Bourgeois, the court did not meaningfully consider the research on the ongoing cognitive developments unique to juvenile offenders. As *Miller* held, “we require [courts] to take into account how children are different.” 567 U.S. at 480.

The Commonwealth has repeatedly echoed the Sentencing Court’s comment that it “simply cannot accept the proposition that a juvenile offender who commits multiple murders must be afforded a volume discount[,], even if the sentence imposed approaches a lifetime in prison. Youth matters, but so did the lives of the victims.” (N.T. 11/3/17, at 158). Mr. Bourgeois is not asking for a “volume discount.” This notion ignores the importance of cognitive development in *Miller* and its progeny. Crucial to *Miller*’s discussion of the unique qualities of youth was the potential that juvenile offenders have for rehabilitation. Sentencing juvenile offenders requires a deviation from “traditional” considerations under both *Miller* and *Jones v. Mississippi*, 593 U.S. 98, 105 (2021) (“[T]his Court has stated that youth matters in sentencing”).

CONCLUSION

For the foregoing reasons, Appellant Michael Bourgeois requests that this Honorable Court vacate his *de facto* life without parole sentence as unconstitutional and remand for resentencing.

Respectfully submitted,

/s/ Marsha L. Levick
Marsha L. Levick (PA 22535)
JUVENILE LAW CENTER
1800 JFK Blvd., Ste. 1900B
Philadelphia, PA 19103
(215) 625-0551
mlevick@jlc.org

/s/ Dana E. Becker

Dana E. Becker (PA 209513)

Julia Jacovides (PA 328792)

Abigail V. Greene (PA 334754)

MORGAN, LEWIS & BOCKIUS LLP

2222 Market St.

Philadelphia, PA 19103

(215) 963-5000

dana.becker@morganlewis.com

julia.jacovides@morganlewis.com

abigail.greene@morganlewis.com

COUNSEL FOR APPELLANT

DATED: November 06, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify this 6th day of November, 2024, that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that requires filing confidential information and documents differently than non-confidential information and documents.

I hereby certify this 6th day of November, 2024, that the foregoing Reply Brief of Appellant complies with the word count limits as set forth in Pennsylvania Rule of Appellate Procedure 2135 and contains 1,019 words.

/s/ Marsha L. Levick
Marsha L. Levick