Received 11/8/2024 4:36:52 PM Supreme Court Middle District

Filed 11/8/2024 4:36:00 PM Supreme Court Middle District
562 MAL 2024

IN THE SUPREME COURT OF PENNSYLVANIA

No. _____

COMMONWEALTH OF PENNSYLVANIA,
Respondent,

v.

IVORY KING,
Petitioner.

PETITION FOR ALLOWANCE OF APPEAL

On for Petition for Allowance of Appeal from the Judgment of the Superior Court of Pennsylvania at No. 406 EDA 2023 dated October 11, 2024, Affirming the Judgment of Sentence of the Court of Common Pleas of Bucks County, Trial Division, Criminal Section, Order Entered November 21, 2022, Imposed on Information CP-09-CR-0003727-1998

November 8, 2024

Brian T. Feeney (Pa. I.D. No. 078574)
GREENBERG TRAURIG, LLP
1717 Arch Street, Suite 400
Philadelphia, PA 19103
T: 215.988.7800
F: 215.988.7801
Brian.Feeney@gtlaw.com

-and-

Caroline J. Heller (*pro hac vice forthcoming*)
GREENBERG TRAURIG, LLP
One Vanderbilt Ave.
New York, New York 10017
T: 212.801.9200
F: 212.801.6400
Caroline.Heller@gtlaw.com

Attorneys for Petitioner Ivory King

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

State Statutes

Rules

Regulations

Constitutional Provisions

Other Authorities

I. OPINIONS DELIVERED IN THE COURTS BELOW

On October 11, 2024, a three-judge panel of the Superior Court of Pennsylvania issued an opinion denying Petitioner Ivory King's appeal from his judgment of sentence entered on November 21, 2022 by the Honorable Rea B. Boylan in the Court of Common Pleas of Bucks County following a juvenile resentencing hearing. The opinion is attached hereto as Appendix A.

The trial court held that Mr. King is capable of change and rehabilitation yet imposed four 20 years to life sentences for four first-degree murders, to be served consecutively, requiring Mr. King to serve a total of 80 years before being eligible for parole. Mr. King committed the crime when he was 17 years old and, thus, will not be eligible for parole until he is 97 years old. The trial court's judgment of sentence was made final by an order denying Mr. King's Motion for Reconsideration entered on January 19, 2023. Mr. King filed a statement of errors complained of on appeal, dated March 14, 2023, attached hereto as Appendix C. Judge Boylan issued a Rule 1925 Opinion in Support of Order dated June 7, 2023, attached hereto as Appendix B.

II. ORDER IN QUESTION

On October 11, 2024, the Superior Court of Pennsylvania issued an opinion affirming the trial court's imposition of four sentences of 20 years to life to be served

consecutively, requiring Mr. King to serve a total of 80 years prior to being eligible for parole. *See* Appendix A.

III. QUESTIONS PRESENTED FOR REVIEW

First Question Presented: Does a *de facto* life sentence for a juvenile defendant violate Article I, Section 13 of the Pennsylvania State Constitution's prohibition on cruel punishments where a trial court held that the juvenile defendant has demonstrated a capacity for change and rehabilitation?

The Court should answer: Yes.

Second Question Presented: Should the Court aggregate consecutive sentences when determining whether a juvenile's consecutive sentences constitute a *de facto* life sentence prohibited by Article I, Section 13 of the Pennsylvania Constitution?

The Court should answer: Yes.

Third Question Presented: As applied to Mr. King, where a sentencing court finds that a juvenile defendant has demonstrated a capacity for change and rehabilitation, does it violate the Eighth Amendment of the United States Constitution's prohibition on cruel and unusual punishment to sentence a juvenile to a *de facto* life sentence?

The Court should answer: Yes.

IV. STATEMENT OF RAISING OR PRESERVATION OF ISSUES

Mr. King properly preserved his first and second questions presented. Mr. King first preserved these arguments in the trial court by first raising them in Mr. King's: Sentencing Memorandum dated October 21, 2022, Appendix F, R. 452a, (docket entry); Supplemental Briefing Concerning the Application of *Miller v. Alabama* dated November 20, 2022, *Id.*, R. 455a, (docket entry); closing argument at the resentencing hearing, *Id.*, R. 393a-395a, 404a; Post Sentence Motion to Vacate the Sentences and Reconsider Sentencing dated November 30, 2022, *Id.*, R. 455a, (docket entry), and; Statement of Errors, Appendix C, at ¶¶ 1, 2, 7, 8, 10. In its opinion, the trial court held:

> The question of whether "any or all components of *Batts II* remain in place with respect to the Pennsylvania Constitution's prohibition of [']cruel punishments[']" under Article I, Section 13 of the Pennsylvania Constitution (or "further developments in the law as to the legality of juvenile life without parole Sentences") "remains an open question" in Pennsylvania. *See Commonwealth v. Felder*, 269 A.3d 1232, 1247-1250 [(Pa. 2022), reargument denied (Apr. 12, 2022)] (Donahue, J. Concurring Opinion joined by Justice Todd).
>
> And so, if or until the Pennsylvania appellate courts address additional legality of the sentence claims raised by juvenile murder defendants in relation to the language and protections of Article l, Section 13 of the Pennsylvania Constitution versus the language and protections of the 8th Amendment of the U.S. Constitution (or other due process or equal protection claims), *Felder* is the controlling case law in Pennsylvania when resentencing juvenile murder defendants.

Appendix B, at pp. 28-29 (footnotes omitted).

Mr. King preserved his third question presented in the trial court. Mr. King raised this issue Supplemental Briefing Concerning the Application of *Miller v. Alabama* dated November 20, 2022, Appendix F, R. 455a, (docket entry), and in his Post Sentence Motion to Vacate the Sentences and Reconsider Sentencing dated November 30, 2022, *Id.*, R. 455a, (docket entry). He also raised it in his Statement of Errors, where Mr. King stated that the trial court committed error because his sentence violates the constitutional mandate that life sentences for juveniles be rare and only for crimes that reflect irreparable corruption. Appendix C, at ¶¶ 4, 7-12. In Mr. King's case, he is not one of those rare juveniles. He provided details about why the facts of his case demonstrate that his *de facto* life sentence was disproportionate under the Eighth Amendment. *Id.*

The trial court held that Mr. King's constitutional claim failed because the Commonwealth was not required to prove, and the court was not required to find, Mr. King "permanently incorrigible" before imposing a *de facto* life sentence. Appendix B, at p. 29.

Mr. King preserved his three questions presented in his appeal to the Superior Court in his Appellant's Brief. *See* Appendix A, at pp. 11-13. The Superior Court held that it could not aggregate the four 20-year to life sentences for the purpose of evaluating whether 80 years to life constituted a *de facto* life sentence, based upon a decision of the Superior Court in *Commonwealth v. Foust*, 180 A.3d 416, 431 (Pa.

Super. 2018), abrogated in part by *Commonwealth v. Felder*, 269 A.3d 1232 (Pa. 2022). *See* Appendix A, at pp. 16, 17. It held, among other things, that each one of Mr. King's 20-year to life sentences, standing alone, were not *de facto* life sentences. *Id*, at p. 16. The Superior Court further held that even if Mr. King's sentence was a *de facto* life sentence, that sentence was a product of a discretionary sentencing system and, whether viewed in the aggregate or not, did not violate the Eighth Amendment. *Id.*, at p. 17. The Superior Court declined to "consider whether the Pennsylvania Constitution provides for additional protections for a *de facto* LWOP sentence than the Eighth Amendment." *Id.*, at p. 17, n. 4.

Because the Superior Court addressed these issues, there is no question that Mr. King properly preserved them in the trial court. If there is any doubt, Mr. King's questions presented pertain to the legality of his sentence, which this Court may always address. *See Commonwealth v. Hill*, 238 A.3d 399, 407 (Pa. 2020) ("an appellate court can address an appellant's challenge to the legality of his sentence even if that issue was not preserved in the trial court; indeed, an appellate court may raise and address such an issue *sua sponte*"); *Commonwealth v. Batts*, 163 A.3d 410, 435 (Pa. 2017), abrogated on other grounds by *Jones v. Mississippi*, 593 U.S. 98 (2021) ("There is no dispute, however, that a claim challenging a sentencing court's legal authority to impose a particular sentence presents a question of sentencing legality").

V. STATEMENT OF THE CASE

A. Original Sentencing Hearing

This is an appeal from a trial court's judgment of sentence against Mr. King following a resentencing hearing in accordance with *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), which declared unconstitutional Mr. King's original sentence of four terms of life without parole to be served consecutively for a crime he committed as a juvenile.

On May 23, 1998, Mr. King shot and killed four adults and wounded a fifth at a party. He was 17 years old. On October 26, 1998, in the Court of Common Pleas of Bucks County, Mr. King pleaded guilty to murder generally, and the court proceeded with a degree of guilt hearing that took place on October 26 and 27, 1998. At the conclusion of that hearing, the court held Mr. King guilty of four counts of first-degree murder. On October 28, 1998, the court held a penalty phase hearing. At the conclusion, the court imposed four unconstitutional mandatory life sentences without parole, to be served consecutively.

Mr. King filed a petition for collateral review pursuant to the Post Conviction Relief Act ("PCRA") on September 17, 1999, which he withdrew on November 23, 1999. *Commonwealth v. King*, Nos. 3323 EDA 2014, 2016 WL 1136304, at *2 (Pa. Super. 2016). Mr. King filed a second PCRA petition in 2005, which was denied by the PCRA court. *Id.* The Superior Court dismissed Mr. King's appeal from that

decision on January 12, 2006, "when he failed to file a brief." *Id.* Mr. King filed his third PCRA petition on September 11, 2007, which was denied by the PCRA court on March 3, 2008. *Id.* He filed his fourth PCRA petition on June 4, 2010, which was denied by the PCRA court on August 18, 2010. *Id.*

On July 5, 2012, Mr. King filed a PCRA, which the Court of Common Pleas denied in an order dated November 7, 2014. *Id.* at *1. On appeal, the Superior Court held that *Miller* was retroactive, vacated Mr. King's life without parole sentences and remanded for further proceedings. *Id.*

B. The Trial Court Finds Mr. King Capable of Change and Rehabilitation, But Imposes Sentences Totaling 80 Years to Life

A resentencing hearing took place on November 18 and 21, 2022. The Commonwealth presented a recitation of facts concerning the crime, introduced exhibits regarding Mr. King's prison record (including prison misconducts), photos of the victims, and victim impact statements presented at the original sentencing. In addition, family members testified about the impact of the crime.

Mr. King introduced three reports into evidence: (1) a mitigation report prepared by a mitigation specialist, that compiled information concerning Mr. King's childhood and prison accomplishments; (2) an expert report prepared by an expert in Forensic Psychology and Developmental Psychology, attesting to how Mr. King met the *Miller* factors, had no mental health issues and was amenable to rehabilitation, and; (3) an expert report by an expert in prison adjustment, readiness

for release from incarceration, and reentry planning (and former 17-year employee of the Pennsylvania Department of Corrections), attesting to the fact that Mr. King had taken every step possible in prison to mitigate his risk of reoffending. Appendix F, R. 91a-107a. Mr. King also introduced into evidence prison records concerning his work performance and housing reports, and report cards from elementary school. *Id.*, R. 108a-131a. At the conclusion of the resentencing hearing, Mr. King made a statement to the families apologizing and taking responsibility for the pain he had caused. *Id.*, R. 367a-370a. The Commonwealth failed to present any experts. The Commonwealth failed to present testimony from any Department of Corrections employees who had personal experience with Mr. King.

Before resentencing Mr. King, the trial court expressly held that: "[Mr. King] has demonstrated a capacity for change." Appendix F, R. 438a. The trial court resentenced Mr. King to four terms of 20 years to life to be served consecutively. Mr. King filed a Post Sentence Motion to Vacate the Sentences and Reconsider Sentencing dated November 30, 2022. *Id.*, R. 455a, (docket entry). The Sentencing Court issued the Order denying it, dated January 18, 2023, and entered on January 19, 2023. Mr. King filed a statement of errors complained of on appeal on March 14, 2023. *See* Appendix C. The Sentencing Court issued a Rule 1925 Opinion in Support of Order dated June 7, 2023. *See* Appendix B. In the Opinion, the

Sentencing Court emphasized that "[it] did find that [Mr. King] was capable of rehabilitation…." Appendix B, at p. 50 (emphasis in original).

Following oral argument, a three-judge panel of the Superior Court affirmed the trial court's judgment of sentence. *See* Appendix A.

VI. THE COURT SHOULD GRANT MR. KING'S PETITION FOR ALLOWANCE OF APPEAL

The Supreme Court of Pennsylvania's review of an order of the Superior Court is discretionary. *See* 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. *See Id.* at 1114(b). The Questions Presented in Mr. King's Petition for Allowance of Appeal ("Petition") address two of those reasons, and each of these reasons provides a compelling basis to grant Mr. King's petition.

A. First Question Presented: Whether a *De Facto* Life Sentence for a Juvenile Defendant Violates Article I, Section 13 of the Pennsylvania State Constitution's Prohibition on Cruel Punishments Where a Trial Court Held that the Juvenile Defendant has Demonstrated a Capacity for Change and Rehabilitation.

This first question presented is one of first impression. Pa.R.A.P. 1114(b)(3). Further, it is a question of substantial public importance for other juveniles with *de facto* life sentences. *Id*. at 1114(b)(4).

Section 13 of the Pennsylvania Constitution provides in full that: "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted." Pa. Const. art. 1, § 13 (hereinafter, "Section 13"), Appendix E. The only Pennsylvania Supreme Court case to address what constitutes "cruel punishments" in the context of life prison terms for juveniles is *Commonwealth v. Batts*, 66 A.3d 286, 297 (Pa. 2013) ("*Batts I*"). In *Batts I*, this Court rejected only the specific claim that Section 13's prohibition on cruel punishments requires a categorical ban on the imposition of life-without-parole sentences on juvenile offenders. *Id.* at 298. This case raises a different question than does *Batts I*. Mr. King's Petition asks this Court to address, for the first time, whether a *de facto* life sentence for a juvenile, who was adjudicated capable of change and rehabilitation, constitutes cruel punishment in violation of Section 13.

1. This Court Has the Authority to Undertake an Independent Analysis of Article I, Section 13's Prohibition of Cruel Punishments

This Court has the authority to undertake an independent analysis of Article I, Section 13 of the Pennsylvania Constitution's prohibition on "cruel punishments" and is not bound to the United States Supreme Court's interpretation of the Eighth Amendment's prohibition on "cruel and unusual punishments". This Court previously held that the rights secured by the Pennsylvania Constitution's prohibition against "cruel punishments" are coextensive with those secured by the Eighth Amendment. *See Commonwealth v. Zettlemoyer*, 454 A.2d 937, 967–69 (Pa. 1982), cert. denied, 461 U.S. 970 (1983), abrogated on other grounds by C*ommonwealth v. Freeman*, 827 A.2d 385 (Pa. 2003). However, 10 years later in *Commonwealth v. Edmunds*, this Court clarified "that in interpreting a provision of the Pennsylvania Constitution, we are not bound by the decisions of the United States Supreme Court which interpret similar (yet distinct) federal constitutional provisions" and concluded "it is essential that courts in Pennsylvania undertake an independent analysis under the Pennsylvania Constitution." 586 A.2d 887, 894, 895 (Pa. 1991). *Edmunds* set forth four factors that courts should consider when analyzing the Pennsylvania Constitution. *Id*. at 895. The "*Edmunds* Factors" are: "1) 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*.

A decade after *Edmunds*, this Court again recognized that *Zettlemoyer's* holding was within the context in which that case was decided. *Commonwealth v. Means*, 773 A.2d 143, 151 (Pa. 2001) (addressing challenge to statute allowing victim impact testimony in penalty phase; recognizing that *Zettlemoyer* holding on coextensive standard was distinguishable because different Article I, Section 13 challenge was involved). *See also Commonwealth v. Baker*, 78 A.3d 1044, 1054 (Pa. 2013) (Castille, C.J., concurring) ("Properly understood, *Zettlemoyer* recognized that even an equivalency in governing constitutional standards does not mean that the Court is absolved of the duty to independently review a properly presented state constitutional claim"); *Commonwealth v. Cunningham*, 81 A.3d 1, 17 (Pa. 2013) (Castille, C.J., concurring) (same).

Thereafter, in *Batts I*, this Court evaluated the *Edmunds* factors in determining whether the "cruel punishments" clause of Section 13 barred juvenile life sentences, noting that the previous cases that held Section 13 to be coextensive with the Eighth Amendment did not "involve[] juvenile offenders, who the Supreme Court has indicated are to be treated differently with respect to criminal punishment." 66 A.3d at 298, n.5. Because the issue in this case is whether a *de facto* life sentence for a juvenile capable of change and rehabilitation constitutes cruel punishment

prohibited by Section 13, this Court is not bound by the United States Supreme Court's interpretation of the Eighth Amendment and should analyze the *Edmunds* Factors.

2. Analysis of the *Edmunds* Factors Demonstrates a *De Facto* Life Sentence for a Juvenile Capable of Change and Rehabilitation Is Cruel Punishment

a. First and Second *Edmunds* Factors: The Text and History of Section 13 Show "Cruel Punishments" are Punishments Unnecessary to Prevent Crime and Only Punishments Required for Deterrence are Permissible

Section 13, without qualification, prohibits the Commonwealth from inflicting "cruel punishments." Pa. Const. art. I, § 13, Appendix E. In contrast, the Eighth Amendment bars punishments that are both "cruel and unusual." U.S. Const. Amend. VIII, Appendix E; *see Baker*, 78 A.3d at 1052 (Castille, C.J., concurring) ("Notably, the wording of Article I, Section 13, prohibiting 'cruel punishments,' is not identical to that of the Eighth Amendment which prohibits 'cruel and unusual punishments'"). This textual difference is rooted in the separate histories of Section 13 and the Eighth Amendment:

> The U.S. Supreme Court's interpretation of the Eighth Amendment's original meaning is incompatible with the original meaning of Pennsylvania's provision. The two are antagonistic. The U.S. Supreme Court has said that the original meaning of the Eighth Amendment derives from England's seventeenth century Declaration of Rights. Section 13, conversely, embraces eighteenth century Enlightenment theories. The Supreme Court has said that the Eighth Amendment's English heritage means that the Amendment originally prohibited only methods of punishment adding terror and disgrace beyond death. But

> Section 13 dispensed with English tradition by prohibiting any punishment adding severity beyond necessity.

Kevin Bendesky, *The Key-Stone to the Arch: Unlocking Section 13's Original Meaning*, 26 U. Pa. J. CONST. L. 201, 202 (2024) (Appendix D).

The Eighth Amendment and Section 13 originated from distinct philosophies and rules of law. The Eighth Amendment was predicated upon the English Declaration of Rights of 1689 and English criminal law. *See Harmelin v. Michigan*, 501 U.S. 957, 995-96 (1991). In contrast, "Pennsylvania's Constitution was drafted in the midst of the American Revolution, as the first overt expression of independence from the British Crown… The Pennsylvania Constitution was therefore meant to reduce to writing a deep history of unwritten legal and moral codes which had guided the colonists from the beginning of William Penn's charter in 1681." *Edmunds*, 586 A.2d at 896 (internal citations omitted). Pennsylvania's first criminal code was based upon Enlightenment theories of punishment and Quaker ideals. The Pennsylvanians who helped craft the criminal law were influenced by the French philosopher Baron de Montesqieu and Italian criminologist Cesare Beccaria, who both shunned severity in criminal penalties, advocated for

proportionality, and believed that "[e]very punishment that is not derived from absolute necessity is tyrannous."[1]

For example, in 1792, Governor Thomas Mifflin asked Justice William Bradford, formerly of this Court, for his views on the necessity of capital punishment in Pennsylvania.[2] In *An Enquiry: How Far the Punishment of Death Is Necessary in Pennsylvania*, Justice Bradford, who attended Pennsylvania's constitutional convention, relying upon Montesqieu and Beccaria, emphasized the importance of prevention of crime in considering punishment, and stated that "every punishment which is not absolutely necessary for that purpose is a cruel and tyrannical act."[3]

Indeed, Pennsylvania's constitution advocated for proportionate punishments and limited sanguinary punishments:

> SECT. 38. The penal laws as heretofore used shall be reformed by the legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes.
>
> SECT. 39. To deter more effectually from the commission of crimes by continued visible punishments of long duration, and to make

---

[1] CESARE BECCARIA, *Of Crimes and Punishments* (1794*), reprinted in* PHILIP H. NICKLIN, *An Essay on Crimes and Punishments*, (2d. ed. 1819), https://www.laits.utexas.edu/poltheory/beccaria/delitti/delitti.c02.html.

[2] *See also* WILLIAM BRADFORD, *An Enquiry: How Far the Punishment of Death is Necessary in Pennsylvania* (1793), published in 12 Am. J. Legal Hist. 122 (1968), https://archive.org/details/enquiryhowfarpun00brad/page/n3/mode/2up. Justice Bradford was appointed as attorney general of Pennsylvania in 1780 and then to the Supreme Court of Pennsylvania from 1791 to 1794. *See* JOSEPH S. FOSTER, *The Politics of Ideology: The Pennsylvania Constitutional Convention of 1789-90*, 59 Pa. Hist. 122, 129-31 (1992), https://journals.psu.edu/phj/article/view/24953/24722.

[3] *See Id.* at 3–6.

> sanguinary punishments less necessary; houses ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital…

Pa. Const. of 1776.[4]

In 1789 and 1790, the Pennsylvania Legislature revised the penal laws by limiting capital and other sanguinary punishments, abolishing the public labor system, and creating a centralized state penitentiary, which sought to reform offenders through labor and solitary confinement.[5] Thus, when Pennsylvania adopted Section 13 in 1790[6]—one year before the Eighth Amendment was ratified—it is evident that Pennsylvania considered "cruel punishments" to be punishments unnecessary to preventing crime, and only punishments required for deterrence were permissible. *See* Justice Bradford, *Enquiry* ("[t]he prevention of crimes is the sole end of punishment.")[7]

b. Third *Edmunds* Factor: Other States Have Held that it Constitutes Cruel Punishment to Sentence a Child Capable of Change to Life in Prison

Courts in other states, whose constitutions bar either "cruel" or "cruel or unusual" punishments, have held that sentencing a child who is capable of change

---

[4] *See* PA. CONST. OF 1776, http://www.phmc.state.pa.us/portal/communities/documents/1776-1865/pennsylvania-constitution-1776.html (last visited Nov. 7, 2024), Appendix E.
[5] *See* JAMES T. MITCHELL, *The Statutes at Large of Pennsylvania from 1682 to 1801*, 13 HARRISBURG PUBL'G CO., 243, 245–46 (1789), https://babel.hathitrust.org/cgi/pt?id=hvd.hl3ck7&seq=256.
[6] Pa. Const. of 1790, https://www.paconstitution.org/texts-of-the-constitution/1790-2/ (last visited (last visited Nov. 7, 2024), Appendix E.
[7] *See* BRADFORD, *supra* note 4, at 3–6, https://archive.org/details/enquiryhowfarpun00brad/page/n3/mode/2up.

and rehabilitation to a *de facto* life sentence is cruel. In *State v. Kelliher*, the North Carolina Supreme Court addressed whether two consecutive 25 years to life terms with the possibility of parole, making the defendant eligible for parole at the age of 67, was a *de facto* life sentence that violated the Eighth Amendment and article I section 27 of the North Carolina Constitution, which prohibits "cruel or unusual punishment," where the trial court held that he was neither irredeemable nor incorrigible. 873 S.E.2d 366, 370 (N.C. 2022). The North Carolina Supreme Court held that to sentence a juvenile homicide offender who has been determined to be "neither incorrigible nor irredeemable" to life without parole violated both the Eighth Amendment and the North Caroline Constitution: "sentencing a juvenile who can be rehabilitated to life without parole is cruel because it allows retribution to completely override the rehabilitative function of criminal punishment." *Id*.

Similarly, in *State v. Bassett*, the Supreme Court of Washington held that its state constitution's prohibition on "cruel punishment" is more protective than the Eighth Amendment of the United States Constitution, and that the state constitution bars *de facto* life sentences for those juvenile offenders whose crimes reflect qualities of youth. 428 P.3d 343, 348-55 (Wash. 2018).

c. Fourth *Edmunds* Factor: Holding *De Facto* Life Sentences for Corrigible Juveniles Constitutes a Cruel Punishment, Prohibited by Section 13, Is Consistent with Pennsylvania Policy

Pennsylvania law has long recognized that children are different from adults, requiring additional attention and care. The Juvenile Act, for example, demonstrates a commitment towards fairness and sensitivity to juvenile offenders. *See* 42 Pa. Cons. Stat. § 6301(b)(2) (2012). Further, Pennsylvania statutory law has long recognized that children lack the same judgment, maturity and responsibility as adults. *See, e.g.*, 23 Pa. Cons. Stat. § 5101 (2024) (the ability to sue and be sued or form binding contracts attaches at age 18); 18 Pa. Cons. Stat. §§ 6308, 6305 (2019) (a person cannot legally purchase alcohol until age 21 and cannot legally purchase tobacco products until age 18); 10 Pa. Code § 305(c)(1) (2018) (no person under the age of 18 in Pennsylvania may play bingo unless accompanied by an adult); 18 Pa. Cons. Stat. § 6311 (2004) (a person under age 18 cannot get a tattoo or body piercing without parental consent); 72 Pa. Cons. Stat. § 3761-309(a) (2024) (a person under age 18 cannot buy a lottery ticket); 23 Pa. Cons. Stat. § 1304(a) (2020) (youth under the age of 18 cannot get married in Pennsylvania without parental consent or, if under 16, judicial authorization). These laws demonstrate that Pennsylvania is committed to treating juveniles differently than adults, which this Court recognized in *Batts I*:

> there is an abiding concern, in Pennsylvania, that juvenile offenders be treated commensurate with their stage of emotional and intellectual

> development and personal characteristics. As a matter of legislative judgment, this is reflected in the salient transfer provisions of the Juvenile Act, which, historically, has been considered to be the most appropriate manner in which to make individualized determinations concerning age-related characteristics and situational factors in connection with a particular offender's suitability for treatment within the juvenile system.

66 A.3d at 299.

More recently in *Felder*, in her concurrence, Justice Donahue addressed Pennsylvania's recognition that children are different from adults based upon the legislature's non-action after *Jones* regarding the sentencing statute for juveniles convicted of first- and second-degree murder after June 24, 2012 adopted shortly before *Miller*: "[A]fter *Jones*, the statute could simply have been eliminated. Thus, its continued existence reflects an acknowledgement by the General Assembly that juveniles should be treated differently. That policy judgment may well be relevant to analyses of both the legality and discretionary aspects of those sentences." *Felder*, 269 A.3d at 1249-50 (Donohue, J., concurring).

3. The *Edmunds* Analysis Demonstrates that it Is a Cruel Punishment to Sentence a Child Capable of Change and Rehabilitation to a *De Facto* Life Sentence

Considering the *Edmunds* factors, it is evident that sentencing a juvenile found to be capable of change and rehabilitation to *de facto* life sentence constitutes cruel punishment under Section 13. Historically, "cruel punishments" were punishments unnecessary to preventing crime, and only punishments required for deterrence were

permissible. *De facto* life sentences do not deter or prevent crime because the characteristics that render juveniles less culpable than adults, "their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Miller*, 567 U.S. at 472; *see also Graham v. Florida*, 560 U.S. 48, 72 (2010); *Roper v. Simmons*, 543 U.S. 551, 571 (2005). This interpretation of Section 13 is consistent with how other courts have interpreted the same of similar state constitutional provisions. It is also consistent with how Pennsylvania has treated juveniles differently than adults in criminal proceedings.

The trial court held Mr. King is capable of change and rehabilitation, precisely the type of juvenile offender who should have the opportunity to see the parole board. To relegate Mr. King to a life of incarceration, given the trial court's holding, is cruel: "'it means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.'" *Graham*, 560 U.S. at 70 (quoting *Naovarath v. State*, 779 P.2d 944, 944 (Nev. 1989)). Accordingly, this Court should grant Mr. King's Petition and address his first question presented.

B. Second Question Presented: Whether the Court Should Aggregate Consecutive Sentences When Determining Whether a Juvenile's Consecutive Sentences Constitute a *De Facto* Life Sentence Prohibited by Article I, Section 13 of the Pennsylvania Constitution.

Mr. King's second question presented is one of first impression. Pa.R.A.P. 1114(b)(3). Mr. King's Petition asks this Court to address, for the first time, whether the Court should aggregate consecutive sentences when determining whether a juvenile's consecutive sentences constitute a *de facto* life sentence prohibited by Section 13. This question presented is also of substantial public importance for other juveniles with consecutive sentences amounting to *de facto* life. *Id*. at 1114(b)(4).

The United States Supreme Court offers no guidance, as it has not yet addressed the constitutionality of consecutive first-degree murder sentences that, in the aggregate, amount to a *de facto* life sentence for a juvenile. A panel of the Superior Court addressed this issue in *Foust*, where the defendant contended that his two consecutive 30-year to life sentences, constituted a 60-year *de facto* life sentence that was disproportionate under the Eighth Amendment. 180 A.3d at 416. In that case, the Superior Court held that it "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."[8] *Id*., at 438. This Court should not follow *Foust* for a couple of reasons.

[8] Foust petitioned this Court for Allowance of Appeal, (case No. 126 WAL 2018), but did not present a question about whether his sentence should be viewed in the aggregate when determining whether it violated Section 13. This Court held a decision on the petition pending *Felder*, and

First, *Foust* relied, in significant part, upon the reasoning of *McCullough v. State*, 168 A.3d 1045 (Md. Ct. Spec. App. 2017), which held that a juvenile serving an aggregate sentence of 100 years on four counts of first-degree murder, for which a juvenile would have to serve 50 years before becoming eligible for parole, was not an illegal sentence under *Graham. Id.* Six months after the Superior Court issued the *Foust* decision, the Court of Appeals of Maryland (now the Maryland Supreme Court) reversed *McCullough*. *See Carter v. State*, 192 A.3d 695 (Md. 2018), superseded by statue as stated in *Farmer v. State*, 281 A.3d 834, 841 (Md. 2022). *Carter* held that the aggregate sentence of 100 years on four counts of first-degree assault, for which a juvenile would have to serve 50 years before becoming eligible for parole, was a *de facto* life sentence, in violation of the Eighth Amendment. 192 A.3d at 727.

In explaining when a court should consider consecutive sentences in the aggregate in determining if those sentences are constitutionally disproportionate, *Carter* provided the following detailed analysis:

> 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.... We measure proportionality not by comparing the sentence with the label of the crime (that the sentence be within legal limits is a legal problem, not a constitutional problem) but by comparing the sentence with the behavior of the criminal and the

after this Court decided *Felder*, it denied Foust's petition. *Commonwealth v. Foust*, 279 A.3d 39 (Pa. 2022).

consequences of his act." *Thomas v. State*, 333 Md. 84, 97, 634 A.2d 1 (1993) (quoting *Walker v. State*,… 452 A.2d 1234 (1982)).

* * * * * * * * * * *

There may be any number of circumstances under which an inmate – adult or juvenile –comes to be serving consecutive sentences that add up to a lengthy term of incarceration. At one end of the spectrum, an individual may embark on a serious crime spree, involving, for example, a series of armed robberies or sexual assaults over weeks or months or even years. Whether the crimes are prosecuted together or separately, the courts may sentence the individual to significant periods of incarceration for each incident. These circumstances are least likely to warrant the aggregate sentence being treated as a *de facto* life sentence. The number of crimes, their seriousness, and the opportunity for the juvenile to reflect before each bad decision also makes it less likely that the aggregate sentence is constitutionally disproportionate even after taking youth and attendant characteristics into account.

At the other end of the spectrum is a situation where an individual is involved in one event or makes one bad decision that, for various reasons, may involve several separate crimes that do not merge into one another for sentencing purposes and for which consecutive sentences may be imposed. Here, the argument to treat a lengthy stacked sentence as if it were a *de facto* life sentence is strongest. There is little, if any, opportunity to reflect upon or abandon the underlying conduct between individual offenses. The initial decision should usually be treated the same as one to commit a single criminal offense carrying a sentence of life without parole.

Id. at 730-31.

The court concluded that:

We thus disagree with the holding of the Court of Special Appeals… consideration must be given to where the stacked sentence falls on the spectrum as well as to the differences between adult and juvenile offenders.

Id. at 733-34 (footnote omitted).

Carter's analysis is persuasive and commonsense, "[o]therwise, the Eighth Amendment proscription against cruel and unusual punishment in the context of a juvenile offender could be circumvented simply by stating the sentence in numerical terms that exceed any reasonable life expectancy rather than labeling it a 'life' sentence." *Id*. at 737 (Barbera, C.J., concurring in relevant part). Indeed, to hold otherwise would allow judges to design a sentence structure solely to evade constitutional scrutiny.

Further, since *Foust* was decided, the highest courts in North Carolina, Oregon, and New Mexico have held that the aggregate number of years of multiple sentences determines the presence of a *de facto* life sentence for juveniles, adding to other states that have held similarly.[9] *See State v. Conner*, 873 S.E.2d 339, 346 (N.C. 2022) (under the Eighth Amendment and North Carolina Constitutions, a redeemable juvenile homicide offender who receives consecutive sentence must have the opportunity to seek parole after serving 40 years in prison); *Kelliher*, 873 at 366 (same); *White v. Premo*, 443 P.3d 597, 599 (Or. 2019) (juvenile lengthy term-of-years consecutive sentence was functional equivalent to life without parole under *Miller*); *Ira v. Janecka*, 419 P.3d 161, 166 (N.M. 2018) ("We are persuaded by the

[9] Numerous other cases pre-dated *Foust. See also State v. Ramos*, 387 P.3d 650, 659 (Wash. 2017); *State v. Zuber*, 152 A.3d 197, 205 (N.J 2017); *People v. Reyes*, 63 N.E.3d 884, 888 (Ill. 2016); *Cloud v. State*, 334 P.3d 132, 142-143 (Wyo. 2014); *State v. Null*, 836 N.W.2d 41, 72 (Iowa 2013); *People v. Caballero*, 282 P.3d 291, 294-95 (Cal. 2012).

Supreme Court's rationale in *Roper*, *Graham*, and *Miller* that the cumulative impact of consecutive sentences on a juvenile is required by the Eighth Amendment.").

The second reason this Court should not follow *Foust* is that the Superior Court relied upon a string of Superior Court cases that involved adults, not juveniles. 180 A.3d at 434. As set forth in section VI.A.2., *supra*, Pennsylvania views juvenile offenders differently than adults. Whether a child commits one murder or four murders in one moment of shooting a gun, he is still a child, and "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Miller*, 567 U.S. at 471.

Here, the aggregate of Mr. King's sentences is 80 years to life, which is a *de facto* life sentence for any juvenile because such sentence requires the vast majority to reach their nineties before becoming eligible for parole. Indeed, Mr. King will have to live until he is 97 years and four months before becoming eligible for parole. This is far beyond the life expectancy of men in the United States. The United States Social Security Administration's Actuarial Life Table states that the life expectancy for men in the United States is 74.12 years.[10] The United States Sentencing

[10] *See* U.S. SOC. SEC. ADMIN., *2020 Actuarial Life Table*, https://www.ssa.gov/oact/STATS/table4c6.html# (last visited Nov. 7, 2024); *See also Casiano v. Comm'r of Corr.*, 115 A.3d 1031, 1046 (Conn. 2015) (citing government statistics to determine an average life sentence for a man in the United States).

Commission defines a life sentence as 470 months (or 39 years and two months), based upon the average life expectancy of those serving in prison.[11] Table 7 of Primary Offenses and Offender Characteristics in the 2021 Annual Report and Sourcebook sets forth that the mean age for federal offenders (of all genders) is 37 years. Thus, the United States Sentencing Commission considers the average life expectancy to be 76 years and two months.

Those statistics do not, however, account for the fact that time in prison reduces a person's life expectancy. *See, e.g.*, Deborah LaBelle, Michigan Life Expectancy Data for Youth Serving Natural Life Sentences, at 1, available at http://www.lb7.uscourts.gov/documents/17-12441.pdf [https://perma.cc/AJB3-TMPT] (last visited Nov. 7, 2024) (concluding that Michigan juveniles sentenced to natural life sentences have average life expectancy of 50.6 years).[12] If Mr. King is not eligible for parole until the age of 97 years and four months, it is reasonable to presume that he will not live to see a parole board.

---

[11] U.S. SENT'G COMM'N, *2021 Annual Report and Sourcebook of Fed. Sent'g Stat.*, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2021/2021_Annual_Report_and_Sourcebook.pdf (last visited Nov. 7, 2024).

[12] *See also* N. STRALEY, *Miller's Promise: Re–Evaluating Extreme Criminal Sentences for Children*, 89 WASH. L.REV. 963, 986 n. 142 (2014) (data from New York suggests that "[a] person suffers a two-year decline in life expectancy for every year locked away in prison"); see also *U.S. v. Taveras*, 436 F.Supp.2d 493, 500 (E.D.N.Y.2006) (acknowledging that life expectancy within federal prison is "considerably shortened"), vacated in part on other grounds sub nom. *U.S. v. Pepin*, 514 F.3d 193 (2d Cir. 2008); *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013) (acknowledging that "long-term incarceration [may present] health and safety risks that tend to decrease life expectancy as compared to the general population").

Moreover, *Graham* and *Miller* suggested that what constitutes a life term should be viewed more broadly than the outer limits of survival. Pursuant to *Graham*, the key factor in considering what constitutes a constitutional sentence appears to be whether the juvenile has "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 560 U.S. at 75. Implied in this holding is that the juvenile offender must be likely to survive the term of years of the sentence with a substantial likelihood that a more than insignificant amount of time of freedom if paroled is possible. *See also Kelliher*, 873 S.E.2d at 370 ("any sentence or combination of sentences which, considered together, requires a juvenile offender to serve more than forty years in prison before becoming eligible for parole is a *de facto* sentence of life without parole within the meaning of article I, section 27 of the North Carolina Constitution 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."); *Bear Cloud v. State*, 334 P.3d 132, 142 (Wyo. 2014) ("[t]he prospect of [only] geriatric release" is functional equivalent of life without parole); *People v. Perez*, 154 Cal.Rptr.3d 114, 119 (Cal. Ct. App. 2013), as modified on denial of reh'g (Mar. 4, 2013) (juvenile sentencing cases are concerned with whether "there is some meaningful life expectancy left " when the offender becomes eligible for release); *Null*, 836 N.W.2d at 71 (concluding that fifty-two years is effective life sentence even though evidence "does not clearly establish that

[the defendant's] prison term is beyond his life expectancy" but rather that it may "closely come within two years of his life expectancy") (internal quotation marks omitted).

Graham also emphasized that life imprisonment without parole "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the juvenile], he will remain in prison for the rest of his days." 560 U.S. at 69–70 (citation omitted) (internal quotation marks omitted). An 80 years to life sentence provides a juvenile offender with "no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope." *Id*. at 79. That denial of hope is cruel, and it is that concrete, total number, that the Court should consider when evaluating if a punishment is a *de facto* life sentence barred by the Pennsylvania Constitution. If the Court does not consider the real-world consequences of the aggregate sentences, then the prohibition on cruel punishments for juveniles is meaningless. This Court should grant Mr. King's Petition on his second question presented to address this important issue.

C. Third Question Presented: As Applied to Mr. King, Where the Trial Court Finds that a Juvenile Defendant Has Demonstrated a Capacity for Change and Rehabilitation, Does it Violate the Eighth Amendment of the Unites States Constitution's Prohibition on Cruel and Unusual Punishments to Sentence a Juvenile to a *De Facto* Life Sentence

Mr. King's third question presented is one of first impression. Pa.R.A.P. 1114(b)(3). This Court has not yet addressed as-applied challenges to the proportionality of a *de facto* juvenile life sentence. In *Felder,* this Court granted review on one question presented:

> Does not a sentence of 50 years to life imposed upon a juvenile constitute a *de facto life* sentence requiring the sentencing court, as mandated by this Court in *Commonwealth v. Batts*, 640 Pa. 401, 163 A.3d 410 (2017) ("*Batts II*"), [to] first find permanent incorrigibility, irreparable corruption or irretrievable depravity beyond a reasonable doubt.

269 A.3d at 1241.

This Court held, based upon its interpretation of *Jones*, that if "the [juvenile's] sentence was the product of a discretionary sentencing system that included consideration of the juvenile's youth, the Eighth Amendment is satisfied." *Id*. at 1246. However, *Felder* did not address whether the defendant could have made an as-applied challenge to the proportionality of his sentence, as Mr. King made before the Superior Court and makes here. Indeed, *Jones* left open the possibility that a juvenile defendant could make an as-applied Eighth Amendment claim of disproportionality regarding his sentence. *See Jones*, 593 U.S. at 120. The Superior

Court did not address Mr. King's as-applied challenge to his aggregated 80 years to life sentence. *See* Appendix A.

An "as-applied challenge" is a claim that a statute is unconstitutional on the facts of a particular case or in its application to a particular party. *See Martin v. Donegal Twp*., No. 24 WAP 2023, 2024 WL 4557856, at *4 (Pa. Oct. 24, 2024). Neither this Court nor the United States Supreme Court has ever articulated the approach for an individual's as-applied challenge to a juvenile life without parole or *de facto* life case. However, in dicta in *Jones*, the United States Supreme Court suggested that the defendant *could* have made an individual as-applied challenge to his sentence under the Eighth Amendment: "[T]his case does not properly present—and thus we do not consider—any as-applied Eighth Amendment claim of disproportionality regarding Jones's sentence." 593 U.S. at 118 (citing *Harmelin*, 501 U.S. at 996–1009) (Kennedy, J., concurring in part and concurring in judgment). *Jones* cited to Justice Kennedy's concurrence in *Harmelin*, which addressed as-applied Eighth Amendment proportionality challenges using the "narrow proportionality" standard—which forbids only "grossly disproportionate" sentences. *See Harmelin*, 501 U.S. at 996–1009. Notably, *Jones* did not endorse the narrow proportionality as controlling the evaluation of as-applied proportionality challenges to juvenile life without parole sentences.

In fact, the United States Supreme Court has never used a "narrow proportionality" standard for juvenile life without parole cases. In *Miller* and *Graham*, it interpreted the Eighth Amendment as placing limits on categories of punishment for juveniles, and the basis for these decisions was the evolving standards of decency doctrine and the recognition that children are "different." *See Miller*, 567 U.S. at 471; *Graham*, 560 U.S. at 71. It was for those reasons that *Miller* rejected an argument by Alabama and Arkansas that *Harmelin* precluded its holding. 567 U.S. at 481.

The standard of review for categorical challenges for juvenile defendants applied by *Miller* and *Graham* should also apply to as-applied challenges under the Eighth Amendment for juvenile defendants. As the Supreme Court recently explained in addressing a different Eighth Amendment as-applied challenge:

> [C]lassifying a lawsuit as facial or as-applied affects the extent to which the invalidity of the challenged law must be demonstrated and the corresponding "breadth of the remedy," but it does not speak at all to the substantive rule of law necessary to establish a constitutional violation… we have seen "no basis whatever" for applying a different legal standard to "deprivations inflicted upon all prisoners" and those "inflicted upon particular prisoners."

Bucklew v. Precythe, 587 U.S. 119, 136 (2019) (quoting *Wilson v. Seiter*, 501 U.S. 294, 299, n.1 (1991)).

Notably, Chief Justice Roberts's concurrence in *Graham*, finding that the defendant's sentence was unconstitutional as applied, referred to the "narrow

proportionality" standard, but he based his conclusion upon the defendant's status as a juvenile, suggesting that it was his opinion that juveniles are entitled to a heightened degree of scrutiny in as-applied cases. 560 U.S. at 91-92. Further, Justice Sotomayor's dissent in *Jones*, joined by Justices Breyer and Kagan, argued that the "Court leaves open the possibility of an 'as-applied Eighth Amendment claim of disproportionality.'…. In the context of a juvenile offender, such a claim should be controlled by this Court's holding that sentencing "a child whose crime reflects transient immaturity to life without parole ... is disproportionate under the Eighth Amendment." *Jones*, 593 U.S. at 145 (Sotomayor, J., dissenting) (citing *Montgomery*, 577 U.S. at 211, and *Miller*, 567 U.S. at 481 ("*Harmelin* had nothing to do with children and did not purport to apply its holding to the sentencing of juvenile offenders").

Accordingly, this Court should apply the same legal standard to as-applied challenges to the Eighth Amendment by juvenile defendants as the United States Supreme Court applied in categorical challenges. In doing so, it is evident that, as applied to Mr. King, the aggregate sentence of 80 years to life is disproportionate under the Eighth Amendment.

In *Jones*, the United States Supreme Court reiterated its holdings in *Miller* and *Montgomery* that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption: "'*Miller*

established that this punishment is disproportionate under the Eighth Amendment.'" *Jones*, 593 U.S. at 106, n.2 (quoting *Montgomery*, 577 U.S. at 211). *Jones*'s very limited holding is merely that "[t]he Court's precedents do not require an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility" prior to sentencing a juvenile to life in prison. *Id.* at 118-19. *Jones* did not disturb *Miller's* substantive holding, reiterated in *Montgomery*, that:

> *Miller*, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." *Id*., at ——, 132 S.Ct., at 2465. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.'" *Id*., at ——, 132 S.Ct., at 2469 (quoting *Roper* [*v Simmons*, 543 U.S. 551, 573, 125 S.Ct. 1183 (2005)]). ***Because Miller determined that sentencing a child to life without parole is excessive for all but " 'the rare juvenile offender whose crime reflects irreparable corruption***,'" 567 U.S., at ——, 132 S.Ct., at 2469 (quoting *Roper*, supra, at 573, 125 S.Ct. 1183), ***it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient immaturity of youth***. *Penry* [*v. Lynaugh*, 492 U.S. 302, 330, 109 S.Ct. 2934 (1989).

577 U.S. at 208–09 (emphasis added).

Miller, *Montgomery*, and *Jones* make clear that sentencing a child, who is capable of change, to life or *de facto* life without parole is disproportionate under the Eighth Amendment. Thus, while Mr. King's trial court was not procedurally required to make an on-the-record finding of incorrigibility prior to issuing its *de*

facto life sentence, it nevertheless chose to make an express substantive finding that Mr. King is capable of change and rehabilitation. Even the Commonwealth conceded Mr. King demonstrated that the *Miller* factors apply to him, urging the Sentencing Court to give him credit for that. Appendix F, R. 410a, 411a, 418a, 423a, 429a.

Because the trial court held that Mr. King is capable of change and rehabilitation, as applied to Mr. King, an 80-year to life *de facto* life sentence is disproportionate under the Eighth Amendment. Mr. King's sentences should provide him an opportunity to face a parole board in his lifetime that could evaluate whether he is rehabilitated. This Court should grant Mr. King's Petition on the Fourth question presented.

VII. CONCLUSION

For the foregoing reasons, this Court should grant the instant Petition for Allowance of Appeal, reverse the order of the Superior Court, vacate the sentences imposed and remand the matter to the trial court for the issuance of new sentences.

Dated: November 8, 2024

GREENBERG TRAURIG, LLP

/s/ Brian T. Feeney

Brian T. Feeney (Pa. I.D. No. 078574)
GREENBERG TRAURIG, LLP
1717 Arch Street, Suite 400
Philadelphia, PA 19103
T: 215.988.7800
F: 215.988.7801
Brian.Feeney@gtlaw.com

-and-

Caroline J. Heller (*pro hac vice forthcoming*)
One Vanderbilt Ave.
New York, New York 10017
T: 212.801.9200
F: 212.801.6400
Caroline.Heller@gtlaw.com

Counsel for Petitioner Ivory King

CERTIFICATIONS

This 8th day of November, I certify:

Word count. This brief contains fewer than 9,000 words as prescribed by Pa. R. App. P. 1115(f).

Electronic filing. The electronic version of this brief filed through the Court's PACFile system is an accurate and complete representation of the paper version filed by Petitioners.

Confidential information. 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.

Service. I served a true and correct copy of this brief through the Court's PACFile system, electronic mail and U.S. mail upon the following, which service satisfies the requirements of Rule of Appellate Procedure 121:

John Thomas Fegley, Esquire
Deputy District Attorney - Chief of Appeals
Bucks County District Attorney's Office
100 N Main St, 2nd Floor
Doylestown, PA 18901
jtfegley@buckscounty.org
Attorneys for Respondent Commonwealth of Pennsylvania

s/ Brian T. Feeney
Brian T. Feeney, Esq.