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No. 258 EDA 2025

IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

QU'EED BATTS,

Appellant.

BRIEF FOR APPELLANT

Appeal from December 1, 2023 Final Order of Resentence in the Northampton County Court of Common Pleas, Case No. CP-48-CR-0001215-2006

The Honorable Michael J. Koury, Jr., Judge Presiding.

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STATEMENT OF JURISDICTION

Pursuant to 42 Pa.C.S.A. Section 742, this Court has exclusive appellate jurisdiction of this appeal, as it is an appeal from the December 1, 2023 final order of the Northampton County Court of Common Pleas resentencing Appellant Qu'eed Batts, Docket No. CP-48-CR-0001215-2006.

ORDER IN QUESTION

Mr. Batts appeals from the December 1, 2023 Order issued by the Northampton County Court of Common Pleas ("Resentencing Court") imposing a total aggregate sentence of 50 years to life for crimes committed when Mr. Batts was 14 years old.[1] The Order states:

> *AND NOW, this 1st day of December, 2023, it is hereby ORDERED that this Order and the attached Northampton County Court of Common Pleas Sentencing Sheet are to be considered the Sentencing Order by the Pennsylvania Department of Corrections. The sentencing sheet accurately reflects the sentence of this Court at the above-referenced case number.*

1 A copy of the December 1, 2023 Order is attached hereto as Appendix A. The Resentencing Court's 1925(a) Opinion is attached hereto as Appendix C. Pursuant to Pa.R.A.P. 2111(d), Appellant's Statement of Errors Complained of on Appeal is attached hereto as Appendix D.

> *[Per Appendix B, the court sentenced Mr. Batts to 40 years to life with the possibility of parole for first degree murder and 10 to 20 years for attempted murder, to run consecutively. At the sentencing hearing, the court imposed a separate sentence of 2 to 10 years for aggravated assault after indicating that the aggravated assault merged with attempted murder.]*
>
> *The Defendant's sentence is consecutive to all other sentences. The Defendant is to be given credit for time served, with no periods of duplicate credit.*

SCOPE AND STANDARD OF REVIEW

The issues presented here concern the constitutionality of the aggregate 50 years to life (or *de facto* life) sentence imposed on Mr. Batts under the Pennsylvania Constitution and the U.S. Constitution. Issues concerning the constitutionality of a criminal sentence are questions of law, and this Court's review is plenary.

Factual findings by the resentencing court that are supported by the record are given deference on appeal; however, this Court is not bound by factual findings that are not supported by the record. *See, e.g.*, *Commonwealth v. Johnson*, 966 A.2d 523, 532 (Pa. 2009); *see also Commonwealth v. Benton*, 655 A.2d 1030,

1032 (Pa. Super. Ct. 1995) ("Only factual findings which are supported by the record are binding upon this court.").

The resentencing court's legal conclusions implicate the legality of Mr. Batts's sentence. Issues concerning the legality of a sentence are reviewed *de novo*. *See, e.g.*, *Commonwealth v. Pope*, 216 A.3d 299, 303 (Pa. Super. Ct. 2019) (citation omitted); *Commonwealth v. Garzone*, 993 A.2d 306, 316 (Pa. Super. Ct. 2010).

STATEMENT OF THE QUESTIONS INVOLVED

1. Is the imposition of an aggregate 50 years to life (or *de facto* life) sentence unconstitutional under the Pennsylvania and/or federal constitutions where the evidence plainly established that Appellant was redeemable?

   Suggested answer: Yes.

2. Did the resentencing court err and/or abuse its discretion when it denied Defendant's motion to enforce a plea agreement?

   Suggested answer: Yes.

3. Did the court err in imposing a separate sentence of 2 to 10 years for aggravated assault when the court found the aggravated assault conviction merged with the attempted murder conviction?

   Suggested answer: Yes.

STATEMENT OF THE CASE

Qu'eed Batts was convicted by a jury of first-degree murder, attempted murder, and aggravated assault on July 31, 2007 at Docket No. CP-48-CR-0001215-2006 in the Northampton County Court of Common Pleas. He was only 14 years old at the time of the offenses. On October 22, 2007, Judge William Moran sentenced Mr. Batts to the then-mandatory term of life in prison without parole for first-degree murder and 6 to 20 years for attempted murder, to run concurrently. For sentencing purposes, the conviction of aggravated assault merged with the conviction of attempted murder.

On direct appeal, the Pennsylvania Superior Court denied relief and the Pennsylvania Supreme Court subsequently granted allowance of appeal, limited to the questions of whether the U.S. Supreme Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005), rendered imposition of a life without parole sentence on a juvenile unconstitutional, and whether Mr. Batts's Eighth and Fourteenth Amendment rights were violated by the mandatory nature of his sentence. *See Commonwealth v. Batts*, 981 A.2d

1283 (2009) (per curium). The Court further reserved consideration pending disposition of *Graham v. Florida*, 556 U.S. 1220 (2009), and *Sullivan v. Florida*, 556 U.S. 1221 (2009).

Following the U.S. Supreme Court's decision in *Graham*, Mr. Batts added, in addition to his federal constitutional claims, a separate argument challenging the constitutionality of his sentence under Article 1, Section 13 of the Pennsylvania Constitution, which prohibits "cruel punishments." Pa. Const. art. I, § 13.

After again reserving consideration, this time pending disposition of *Miller v. Alabama*, 567 U.S. 460 (2012), on March 26, 2013, the Pennsylvania Supreme Court vacated Mr. Batts's sentence and remanded for resentencing according to the factors outlined in *Miller* and *Commonwealth v. Knox*, 50 A.3d 732 (Pa. Super. Ct. 2012). *Commonwealth v. Batts*, 66 A.3d 286, 295 (Pa. 2013) (hereinafter *Batts I*).

On May 2, 2014, the Honorable Judge Michael J. Koury, Jr. of the Northampton County Court of Common Pleas reimposed a juvenile life without parole sentence on Mr. Batts for the murder conviction and 10 to 20 years for the attempted murder conviction,

to run concurrently. The court imposed that sentence after explicitly noting that Mr. Batts's "crimes appeared to be out of character for [him]," Sentencing Transcript ("S.T.") 5/2/2014, and that he "might benefit from psychotherapy or other forms of rehabilitation," S.T. 5/2/2014. The court also recognized "the opinions of several of the experts that you are amendable to treatment – amendable to treatment and might be rehabilitated with years of psychotherapy." Further, the court acknowledged that Mr. Batts "has held jobs in prison and pursued some prevocational training, and [is] taking courses on leadership and violence prevention." S.T. 5/2/2014.

After his post-sentence motions were denied, Mr. Batts appealed to the Superior Court, which denied relief. *See Commonwealth v. Batts*, 125 A.3d 33 (Pa. Super. Ct. 2015). Once again, the Pennsylvania Supreme Court granted allowance of appeal.

After the U.S. Supreme Court issued its decision in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Pennsylvania Supreme Court reversed *Batts I*, again vacated Mr. Batts's life

without parole sentence, and remanded for resentencing. *Commonwealth v. Batts*, 163 A.3d 410, 484 (Pa. 2017) (hereinafter *Batts II*). In doing so, the Pennsylvania Supreme Court established procedural safeguards that ensured that life-without-parole sentences were only imposed on "the rarest of juvenile offenders" whose crimes reflect "permanent incorrigibility," "irreparable corruption," and "irretrievable depravity. *Batts II*, 163 A.3d at 483-84. It also recognized a presumption against the imposition of a life without parole sentence on a juvenile offender, and further held that to rebut that presumption, the Commonwealth bore the burden of proving, beyond a reasonable doubt, that the juvenile offender is incapable of rehabilitation. *Id.*

In June 2017, the parties reached a plea agreement, proposing 30 years to life for the murder charge and 10 to 20 years for the attempted murder charge, with the aggravated assault merging with the attempted murder charge. *See* Transcript of Proceedings. *Commonwealth v. Batts*, C-48-CR-1215-2006 (C.P. Northampton Co. June 7, 2017). The parties disagreed as to whether the sentences should run concurrently or consecutively.

In December 2017, Judge Koury approved of the agreement and agreed to schedule a further resentencing hearing to address the issues regarding concurrent versus consecutive sentences.

Judge Koury conducted a resentencing hearing on January 23, 2018, but agreed to schedule a subsequent date to impose the sentence.

During the sentencing hearings, Mr. Batts raised the issue as to whether the imposition of a consecutive sentence, totaling 40 years, would constitute a *de facto* sentence of life without parole. Several Superior Court cases had addressed this issue, but there did not appear to be a clear and articulable standard to be applied in determining whether a sentence is a *de facto* life without parole sentence. *See, e.g.*, *Commonwealth v. Foust*, 180 A.3d 416 (Pa. Super. Ct. 2018); *Commonwealth v. Felder*, 2017 WL 6505643; *Commonwealth v. Bebout*, 186 A.3d 462 (Pa. Super Ct. 2018). On May 18, 2018, counsel for Mr. Batts advised the court that Petitions for Allowance of Appeal had been filed in the Pennsylvania Supreme Court in *Foust*, *supra*, and *Felder*, *supra*. Counsel requested a continuance until a determination could be made as to whether the

Pennsylvania Supreme Court would grant allocatur and, if so, whether the Court would articulate a standard for determining what constitutes a *de facto* life sentence. The Commonwealth did not object and agreed that it would be productive for the Court to grant such a continuance or stay. The Court granted the stay. Subsequently, Mr. Batts's case was held in abeyance pending disposition in *Commonwealth v. Felder*, 269 A.3d 1232 (Pa. 2022).

On February 23, 2022, the Court decided *Felder*, affirming the Superior Court's affirmance of the 50-year to life sentence imposed by the sentencing court on Michael Felder. In that appeal, Mr. Felder challenged his sentence as a *de facto* life sentence in violation of the Eighth Amendment. Based upon its reading of *Jones v. Mississippi*, 593 U.S. 98 (2021), the Court found the *de facto* life sentence question irrelevant and further concluded that *Jones* compelled overruling *Batts II*. Thereafter, the Court denied Mr. Felder's request for reargument.

At a conference on May 4, 2022, Judge Koury concluded that *Batts II* had been completely overruled, which would mean that the standards in *Batts I* would apply to a resentencing. The Court of

Common Pleas had used those standards in the original resentencing of Mr. Batts.

On May 20, 2022, Mr. Batts filed a motion to enforce the plea agreement, which was denied on July 14, 2022.

On November 2, 2023, another resentencing hearing was held, and on December 1, 2023, Judge Koury sentenced Mr. Batts to 40 years to life for first degree murder, 10 to 20 years for attempted murder, and 2 to 10 years for aggravated assault, with the latter two sentences running concurrently and consecutive to the first-degree murder sentence. S.T. 12/1/2023, 88:10-25; 89:1-9. In resentencing Batts to a 50-year –minimum sentence the court implicitly recognized he was not among the rare juvenile offenders who *Miller* acknowledged might still warrant life without parole:

> "[I]t is my position that I can simply reimpose a sentence of life without parole that I imposed in 2014, and it will be held up on appeal because I did exactly what the Pennsylvania Supreme Court is saying that I need to do under Felder, and my last sentence was, indeed, upheld by the Pennsylvania Superior Court."

S.T. 12/1/2023, 82:17-22.

At the hearing, the court acknowledged that Mr. Batts "might benefit from psychotherapy and other forms of rehabilitation," S.T. 12/1/2023, 76:10-11, and noted that "your young age weighs in your favor in assessing your amenability to treatment and rehabilitation and your capacity to change," S.T. 12/1/2023, 78:3-5.

On December 11, 2023, counsel for Mr. Batts filed a post-sentence motion challenging the imposition of an aggregate sentence of 50 years to life as unconstitutional and an abuse of discretion. (Post-Sentence Mot. 12/11/23). On April 11, 2024, the sentencing court denied the motion. (Order 4/11/24).

On April 24, 2024, Mr. Batts filed a timely notice of appeal. Subsequently, Mr. Batts submitted *pro se* letters to the resentencing court raising claims related to after-discovered evidence. On June 2, 2024, Mr. Batts filed in the Pennsylvania Superior Court a Motion for New Trial on Ground of After-Discovered Evidence and Motion for Remand to Trial Court. On June 10, 2024, the Superior Court remanded the case to conduct an after-discovered-evidence hearing regarding the claims raised in

Mr. Batts's *pro se* letters. (Order 6/10/24). On January 15, 2025, the resentencing court denied Mr. Batts's motion for a new trial without prejudice, noting that Mr. Batts could reassert his claim in a PCRA. (Order 1/15/25).

On January 22, 2025, Mr. Batts filed a timely Notice of Appeal from the resentencing order imposed on December 1, 2023.

SUMMARY OF THE ARGUMENT

Mr. Batts was only 14 years old when he committed the crime for which he was twice sentenced to life without parole. Both of those sentences were subsequently overturned by the Pennsylvania Supreme Court for violating the Eighth Amendment's ban on "cruel and unusual punishment." The Commonwealth Court has now resentenced Mr. Batts to 40 years to life for murder and 10-20 years for attempted murder, with the sentences running consecutively to equal a total combined sentence of 50 years to life. Fifty years, however, is still a *de facto* life without parole sentence. Article 1, Section 13 of the Pennsylvania Constitution, which bans "cruel" punishment and has historically viewed any sentence that does not advance rehabilitation and redemption as

cruel, is broader than the Eighth Amendment. Under the Eighth Amendment a child whose crime is the result of transient immaturity cannot be sentenced to *de facto* life without parole. In the almost 20 years since his original sentence, the sentencing court has now twice found on the record that Mr. Batts demonstrated characteristics of maturity and growth and therefore cannot be among the rare juvenile offenders who are irreparably corrupt. Accordingly, a 50-year sentence for a 14-year-old who has demonstrated the capacity for maturity and rehabilitation is disproportionate and cruel and violates Article 1, Section 13 under the Pennsylvania Constitution. Similarly, as a *de facto* life without parole sentence, Mr. Batts's sentence also violates the Eighth Amendment.

The court's refusal to sentence Mr. Batts in accordance with the parties' plea agreement of 30 years to life on the murder charge was an abuse of discretion that was not in the interests of justice.

Finally, the court mistakenly sentenced Mr. Batts for both attempted murder and aggravated assault, two charges that merge as a matter of law.

STATEMENT OF REASONS TO ALLOW AN APPEAL TO CHALLENGE THE DISCRETIONARY ASPECTS OF A SENTENCE

Under Pennsylvania Rule of Appellate Procedure 311(a)(7), appeals that challenge the legality of a sentence must be allowed as a matter of right, as opposed to being discretionary. Mr. Batts' current appeal concerns the legality of his current sentence of 50 years to life under Article 1, Section 13 of the Pennsylvania Constitution and the Eighth Amendment of the U.S. Constitution.

In addition, Mr. Batts has challenged the sentencing court's discretionary decision to reject the parties' plea agreement and impose a longer term of years sentence. In order to challenge the discretionary aspects of a sentence, an appellant must establish that there is a substantial question that the sentence imposed is inappropriate under the Sentencing Code. 42 Pa.C.S.A. § 9781(b); Pa. R. App. P. 2119(f); *Commonwealth v. Kenner*, 784 A.2d 808, 810-11 (Pa. Super. Ct. 2001). Mr. Batts raises a "plausible argument" that his 40-years-to-life sentence for murder, while the plea agreement was for 30 years, was "contrary to the fundamental norms underlying the sentencing process." *Commonwealth v.*

Mouzon, 812 A.2d 617, 622, 625 (Pa. 2002) (citing *Commonwealth v. Goggins*, 748 A.2d 721, 727 (Pa. Super. Ct. 2000)). Mr. Batts argues that rejecting the parties' plea agreement without good cause violates long-established support for and recognition of plea bargains. Accordingly, Mr. Batts's challenge of this discretionary aspect of his sentence should be permitted to proceed.

ARGUMENT

I. MR. BATTS'S 50-YEAR MANDATORY MINIMUM SENTENCE IS UNCONSTITUTIONALLY CRUEL UNDER ARTICLE I, SECTION 13 OF THE PENNSYLVANIA CONSTITUTION

In *Commonwealth v. Felder*, the Pennsylvania Supreme Court abrogated *Batts II*, eliminating the procedural protections it had previously established for children convicted of first-degree murder pursuant to the Eighth Amendment of the U.S. Constitution. However, *Felder* did not address the constitutionality of a *de facto* life sentence imposed on a juvenile under Article I, Section 13 of the Pennsylvania Constitution. Under Article I, Section 13, Mr. Batts's 50-year minimum sentence is unconstitutionally cruel and should be reversed.

A. Article I, Section 13 Is Not Coextensive with the Eighth Amendment and Provides Greater Protections Than the Federal Constitution

Pennsylvania is not bound by the U.S. Supreme Court's interpretation of the Eighth Amendment's prohibition on "cruel and unusual punishments." *See Commonwealth v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991). "Decisions concerning the scope of rights under the Federal Constitution should not be dispositive of the scope of rights under state constitutions." William W. Berry III, *Unlocking State Punishment Clauses*, 76 Rutgers L. Rev. __ (forthcoming 2025) (symposium) (manuscript at 3-4) (on file with author); *see also* Robert F. Williams, *The Law of American State Constitutions* 135-137 (2009). Indeed, the Supreme Court explicitly reaffirmed this key principle of state constitutional analysis just last year in *Allegheny Reprod. Health v. Pa. Dep't of Human Servs.*, when it reversed decades of prior precedent linking state anti-discrimination protections to the federal equal protection analysis and instead ascribed distinctive meaning to the Commonwealth's Equal Rights Amendment and general anti-discrimination clauses. 309 A.3d 808, 869 (Pa. 2024) (finding "no

federal counterpart" to the Pennsylvania Constitution's Equal Rights Amendment). As the Supreme Court wrote, "[a] conclusion that our Constitution's equal protection provisions are to be read in lockstep with the federal Equal Protection Clause runs the risk of rendering our own constitutional text, history, traditions, and jurisprudence 'a mere row of shadows.'" *Id.* at 933-34 (citing Robert F. Williams, *A "Row of Shadows": Pennsylvania's Misguided Lockstep Approach to its State Constitutional Equality Doctrine*, 3 Widener J. Pub. L. 343 (1993)).

Similarly, in *Edmunds*, the Pennsylvania Supreme Court "emphasized 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." 586 A.2d at 894 (collecting cases); *see also Commonwealth v. Sell*, 470 A.2d 457, 467 (Pa. 1983) ("This Court has not hesitated to interpret the Pennsylvania Constitution as affording greater protection to defendants than the federal Constitution."). The Court recognized that:

> [h]ere in Pennsylvania, we have stated with increasing frequency that it ***is both important and necessary***

> ***that we undertake an independent analysis of the Pennsylvania Constitution***, each time a provision of that fundamental document is implicated…. [This Court] is free to reject the conclusions of the United States Supreme Court so long as we remain faithful to the minimum guarantees established by the United States Constitution.

Edmunds, 586 A.2d at 894-95 (emphasis added); *see also Commonwealth v. Baker*, 78 A.3d 1044, 1054 (Pa. 2013) (Castille, C.J., concurring) (noting 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).

The Court in *Edmunds* developed factors for courts to consider in undertaking an analysis of provisions of the Pennsylvania Constitution: "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." 586 A.2d at 895.

Thereafter, the Pennsylvania Supreme Court has repeatedly interpreted the Pennsylvania Constitution, including Section 13, using the *Edmunds* factors, regardless of how the U.S. Supreme Court has interpreted similar provisions in the Federal Constitution. *See, e.g.*, *Commonwealth v. Means*, 773 A.2d 143, 151-57 (Pa. 2001) (engaging in an *Edmunds* analysis to determine whether a statute allowing victim impact testimony in the penalty phase of a death penalty case violated Section 13's prohibition on "cruel punishments").

In *Commonwealth v. Batts*, the Supreme Court previously addressed whether the "cruel punishments" clause of Section 13 categorically barred juvenile life sentences. 66 A.3d 286 (Pa. 2013) ("*Batts I*"). The Court indicated that it had previously held Section 13 to be coextensive with the Eighth Amendment but explained that those cases did not "involve[] juvenile offenders, who the Supreme Court has indicated are to be treated differently with respect to criminal punishment." *Id.* at 298 n.5.

Now, the question for consideration before this court is whether a *de facto* life sentence of at least 50 years prior to parole

eligibility imposed on a juvenile offender is unconstitutional under Article I, Section 13, or in the alternative whether a *de facto* life sentence of at least 50 years prior to parole eligibility imposed on a juvenile whose crimes have been found to reflect transient immaturity and who has been deemed capable of rehabilitation constitute cruel punishment under Article I, Section 13. A new *Edmunds* analysis confirms that Article I, Section 13 affords juvenile offenders greater protections than are currently recognized by the Supreme Court's Eighth Amendment jurisprudence or by any prior assessment of Article I, Section 13.

1. The Text of Article I, Section 13's Prohibition on Cruel Punishments Is Distinct From the Eighth Amendment's Prohibition on Cruel and Unusual Punishments

"The touchstone of interpretation of a constitutional provision is the actual language of the Constitution itself." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 802 (Pa. 2018). "'[T]he Constitution's language controls and must be interpreted in its popular sense, as understood by the people when they voted on its adoption.'" *Id.* (quoting *Ieropoli v. AC & S Corp*., 842 A.2d 919, 925 (Pa. 2004)).

Section 13, without qualification, prohibits the Commonwealth from inflicting "cruel punishments." Pa. Const. art. I, § 13. In contrast, the Eighth Amendment bars punishments that are both "cruel and unusual." U.S. Const. Amend. VIII. The textual difference is meaningful because the "set of punishments which are either 'cruel' or 'unusual' would seem necessarily broader than the set of punishments which are both 'cruel' and 'unusual.'" *People v. Bullock*, 485 N.W.2d 866, 872 n.11 (Mich. 1992).

Further, this textual difference was not accidental. Pennsylvania's first constitution was adopted in 1776, and it provided significant criminal procedure protections. Leonard Sosnov, *Criminal Procedure Rights Under the Pennsylvania Constitution: Examining the Present and Exploring the Future*, 3 Widener J. Pub. L. 217, 227 (1993). Dissatisfaction with some aspects of the 1776 Constitution led to the adoption of a second constitution in 1790. *Id.* at 217. "Significantly, conservatives and liberals were in agreement that the individual rights provided in the 1776 constitution should not be diminished" and "the 1790 constitution added additional protections not contained in the 1776

constitution, such as the double jeopardy and cruel punishment prohibitions." *Id.* (footnotes omitted). Pennsylvania's second constitution was ratified in 1790, a year before the ratification of the Bill of Rights, which included the Eighth Amendment and its prohibition on "cruel and unusual punishments." Kevin Bendesky, *The Key-Stone to the Arch: Unlocking Section 13's Original Meaning*, 26 U. Pa. J. Const. Law 201, 205 (2024). Since then, the Pennsylvania Constitution has been amended numerous times, most recently in 2021,[2] and in all that time Section 13's ban on cruel punishment remains unchanged.

While the textual differences are undeniable, it is necessary to examine the unique history of Pennsylvania's prohibition to draw meaning from the words.

2. When Pennsylvania Adopted Section 13, Cruel Punishments Were Punishments Unnecessary in Severity to Reform the Offender and to Deter Crime; Only the Least Severe Punishments for Reformation and Deterrence Were Permissible

Since this Court first addressed the cruel punishments prohibition in the context of juveniles in *Batts I*, the University of

[2] *See* Pa. Const. art. I, § 29.

Pennsylvania's Journal of Constitutional Law published a well-researched article titled *The Key-Stone to the Arch: Unlocking Section 13's Original Meaning*. *See* Bendesky, *supra*, at 205. The article provides a detailed historical account of both Section 13 and the Eighth Amendment and posits that "[h]istory reveals that Pennsylvanians had a distinct, original understanding of 'cruelty'" that differed from the meaning of "cruel and unusual punishments in the Eighth Amendment. *Id.* at 201. Some of that history is set forth and augmented here.

The Pennsylvania 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); *see also* Bendesky, *supra*, at 236 (describing William Penn's influence on penal law in Pennsylvania). As the Supreme Court observed, "[t]he sanguinary code of England, could be no favourite with William Penn and his

followers, who fled from persecution." *James v. Commonwealth*, 12 Serg. & Rawle 220, 232 (Pa. 1825). "Unlike the Bill of Rights of the United States Constitution which emerged as a later addendum in 1791, the Declaration of Rights in the Pennsylvania Constitution was an organic part of the state's original constitution of 1776, and appeared (not coincidentally) first in that document." *Edmunds*, 586 A.2d at 896.

Pennsylvania can trace Section 13 "to the colonial Declaration of Rights, which were heavily influenced by the penological philosophies of widely read Enlightenment thinkers." Ben Finholt & Kevin Bendesky, *The Neglected State Constitutional Protections Against Extreme Punishments*, State Court Report, July 21, 2023.[3] In Enlightenment theories, cruel punishments:

> covered more than methods of punishment. A punishment was 'cruel' if it was unnecessarily severe. And the founding generation measured necessity by the most valued purposes of criminal punishment: reforming those who commit serious crimes and deterring crime in the first place. Any severity beyond that was cruel — no matter how it was inflicted.

[3] Available at https://statecourtreport.org/our-work/analysis-opinion/neglected-state-constitutional-protections-against-extreme-punishments.

Id.

The history of the Pennsylvania Constitution supports the notion that the decision to bar "cruel punishments" was adopted with the intent to enshrine a more progressive position than that of the federal government in adopting the Eighth Amendment. Bendesky, *supra*, at 204. The origin and purposes of the two provisions were distinct and grounded in different legal philosophies and rules of law.

Some of the theories that guided the Pennsylvanians who helped craft the Commonwealth's constitution and criminal law came from the French philosopher Baron de Montesqieu and Italian criminologist Cesare Beccaria, who both shunned severity in penalties, advocated for proportionality, and believed that "[e]very punishment that is not derived from absolute necessity is tyrannous." Cesare Beccaria, *Of Crimes and Punishments* (1794*), reprinted in* Philip H. Nicklin, *An Essay on Crimes and Punishments*, (2d. ed. 1819)[4]; *see also* Bendesky, *supra*, at 217.

[4] Available at https://www.laits.utexas.edu/poltheory/beccaria/delitti/delitti.c02.html.

For example, in 1748, "Montesquieu outlined his theory of punishment in *The Spirit of the Laws*. He explained that deterrence depends more on the certainty of criminal sanction than its severity. . . . Where liberty resides, 'a good legislator will insist less on punishing crimes than on preventing them; he will apply himself more to giving more than [to] inflicting punishments.'" Bendesky, *supra*, at 215 (quoting Montesquieu, The Spirit of the Laws at 82 (Anne M. Cohler, Basia Carolyn Miller & Harold Samuel Stone trans. and eds., Cambridge Univ. Press 20th ed. 2015) (1748)).

Similarly, Beccaria, whose works were particularly revered by Pennsylvanians who "instituted their penal reforms in his name", believed that "[c]rimes are… harms to society, not to individuals, and the purpose of punishments was to deter these societally harmful usurpations." Bendesky, *supra*, at 217. In his 1764 treatise, *On Crimes and Punishments*, Beccaria argued that:

> ***Every punishment which does not a rise from absolute necessity, says the great Montesquieu, is tyrannical***. A proposition which may be made more general thus: every act of authority of one man over another, for which there is not an absolute necessity, is tyrannical. It is upon this then that the sovereign's right to punish crimes is founded; that is, upon the necessity of defending the public liberty, entrusted to his care,

> from the usurpation of individuals; and punishments are just in proportion, as the liberty, preserved by the sovereign, is sacred and valuable.
>
> * * * * * * * * * *
>
> Observe that by *justice* I understand nothing more than that bond which is necessary to keep the interest of individuals united, without which men would return to their original state of barbarity. All punishments which exceed the necessity of preserving this bond are in their nature unjust.

Beccaria, *Of Crimes and Punishments, supra*, (emphasis added).

"Because cruelty is anything beyond necessity, and the purpose of punishment was deterrence, legitimate punishment was limited to the most lenient means that deterred." Bendesky at 218 (footnote omitted) (citing Beccaria, On Crimes and Punishments (1764), *reprinted in* On Crimes and Punishments and Other Writings 44 (Richard Bellamy ed., Richard Davies, Virginia Cox & Richard Bellamy trans., Cambridge Univ. Press, 1995).

These theories on the purpose of punishment are reflected in the earliest version of Pennsylvania's Constitution and its penal code. Pennsylvania's first Constitution was adopted in 1776, providing significant criminal procedure protections. Sosnov,

supra, at 227. Two sections 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 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.[5]

> As a result, the Pennsylvania Legislature began to change its penal code:
>
> In 1786, the Legislature passed a law that limited capital punishment to four crimes; but it also instituted public punishments. That method of punishment failed to live up to the ideals that inspired it. Realizing this, the Legislature passed another law, superseding that earlier attempt. The second bill, from 1790, replaced the public punishments that the first bill implemented with the nation's first penitentiary. That law's preamble explained that it was "for the purpose of carrying the provisions of the constitution [of 1776] into effect," noting that the previous measures had "failed of success" and "hop[ing]" that, "as far as it can be effected," the bill "w[ould] contribute ***as much to reform as to deter***."

[5] *See* http://www.phmc.state.pa.us/p7ortal/communities/documents/1776-1865/pennsylvania-constitution-1776.html.

Bendesky, *supra*, at 214 (quoting Act of 5th Apr. 1790, reprinted in John W. Purdon, Digest of the Laws of Pennsylvania 9 (M'Carty & Davis, 1831)) (emphasis added) (footnotes omitted).

In 1790, Pennsylvanians changed their constitution, and added additional protections not contained in the 1776 constitution, such as the double jeopardy and Section 13's cruel punishment prohibitions. Sosnov, *supra*, at 217. Writings contemporaneous to the adoption of Section 13, as well as the changes to the penal code, demonstrate that Pennsylvanians considered "cruel punishments" to be punishments unnecessary to preventing crime, and that only punishments required for deterrence were permissible. For example, in 1792, Governor Thomas Mifflin asked Justice William Bradford for his views on the necessity of capital punishment in Pennsylvania. William Bradford, *An Enquiry: How Far the Punishment of Death is Necessary in Pennsylvania* (1793), published in 12 Am. J. Legal Hist. 122, at "Advertisement" (1968).[6] Justice Bradford had been appointed as

[6] Available at https://archive.org/details/enquiryhowfarpun00brad/page/n3/mode/2up.

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).[7] He also attended Pennsylvania's constitutional convention. *Id.* In *An Enquiry: How Far the Punishment of Death Is Necessary in Pennsylvania*, Justice Bradford, relying upon Montesquieu and Beccaria, emphasized the importance of prevention of crime in considering punishment:

> [t]he general principles upon which penal laws ought to be founded appear to be fully settled. Montesquieu and Beccaria led the way in this discussion . . . . Among these principles some have obtained the force of axioms, and are no longer considered as the subjects of either doubt or demonstration. "That the prevention if crimes is the sole end of punishments." Is one of these: and it is another, "That every punishment which is not absolutely necessary for that purpose is a cruel and tyrannical act." To these may be added a third) which is, "That every penalty should be proportioned to the offence."

Bradford, *supra*, at 3.

In addition, Bradford observed that state constitutions that prohibited "cruel punishments" "*implicitly prohibit every penalty*

[7] Available at https://journals.psu.edu/phj/article/view/24953/24722.

which is not evidently necessary[]" and stated that "every punishment which is not absolutely necessary for that purpose is a cruel and tyrannical act." Bradford, *supra*, at 3-5. Bradford also "believed human knowledge evolved—and therefore so too must the law." Bendesky, *supra*, at 222.

Many other figures who shaped Pennsylvania's penal laws and Pennsylvania's Constitution similarly subscribed to the views of Montesquieu and Beccaria, providing evidence as to the meaning of cruel punishments. For example, James Wilson, one of the original United States Supreme Court Justices, who attended the Pennsylvania Constitutional Convention of 1790 in that capacity, agreed that theories of criminal law drew from Montesquieu and Beccaria. Bendesky, *supra*, at 223. Wilson agreed that "criminal laws were the bedrock of liberty when they were lenient and proportionate to crimes" and that "the purpose of punishment was prevention." *Id.* Like Bradford, Wilson observed that severity in punishments was counterproductive and, in fact was:

> calculated to eradicate all the manly sentiments of the soul, and to substitute, in their place, dispositions of the most depraved and degrading kind. It is the parent of pusillanimity. A nation broke to cruel punishments

> becomes dastardly and contemptible. For, in nations, as well as individuals, cruelty is always attended by cowardice. It is the parent of slavery.

Collected Works of James Wilson, Vol. 2 (Kermit L. Hall & Mark David Hall es., 2007).[8]

Similarly, Jared Ingersoll, the Commonwealth's Attorney General from 1790 through 1799, and, among other things, solicitor of Philadelphia from 1798 until 1801, drafted a report to the Legislature in 1813 that is conclusive evidence of Pennsylvania's criminal law at the time. Bendesky, *supra*, at 228. The report:

> illuminates the original meaning of Pennsylvania's anti-cruelty provision. Ingersoll explained that "[a] wiser policy" of criminal law "determined to preserve" and "to reform," "rather than to destroy." [T]he principle upon which all criminal law rests," he elaborated, "is necessity." Even "momentary deprivation of liberty by force, under any circumstances, would be unjustifiable, if it were not an expedient necessarily adopted for the general good. If then a less severe and awful penalty can effect the same purposes, or, in other words, if it be not necessary to punish murder with death, a milder medium of correction should be chosen."… When punishments are unnecessarily severe, he added, "the laws themselves" will "appear to be exercised in cruelty."

[8] Available at https://oll.libertyfund.org/titles/garrison-collected-works-of-james-wilson-vol-2.

> And his theory of punishment, underpinned by the principle of necessity.

Id. at 229.

Thus, when Pennsylvania adopted Section 13 in 1790, one year before the Eighth Amendment was ratified, it is evident that Pennsylvanians believed that only deterrence and reformation justified a punishment, only the least severe punishment for those purposes was permissible, and anything unnecessary for those aims was cruel.

This was in stark contrast to the history of the Eighth Amendment's cruel and unusual punishments clause, which was predicated upon the English Declaration of Rights of 1689, which prohibited "cruell and unusuall Punishments." *See Harmelin v. Michigan*, 501 U.S. 957, 995-96 (1991). The "cruel and unusual punishments" clause "disable[d] the Legislature from authorizing particular forms or 'modes' of punishment — specifically, cruel methods of punishment that are not regularly or customarily employed." *Id.* at 976 (internation citations omitted); *see also Bucklew v. Precythe*, 587 U.S. 119, 130–31 (2019) (methods of execution "fallen out of use" were "unusual") (citing John F.

Stinneford, *The Original Meaning of "Unusual": The Eighth Amendment as a Bar to Cruel Innovation*, 102 Nw. U. L. Rev. 1739, 1770–1771, 1814 (2008) (observing that Americans in the late 18th and early 19th centuries described as "unusual" governmental actions that had "fall[en] completely out of usage for a long period of time"). Thus, for a punishment to violate the Eighth Amendment, it had to be not only a cruel method but also unusual, i.e., out of use.

The Framers of the United States Constitution drafted the text of the Eight Amendment at a time when they knew five State Constitutions prohibited "cruel ***or*** unusual punishments" and two, including Pennsylvania, prohibited "cruel punishments." *Harmelin*, 501 U.S. at 966. Only Virginia prohibited "cruel and unusual punishments." *Id.* Further, several State Constitutions, including Pennsylvania's first Constitution of 1776, included proportionality provisions. *Id.* at 977. Thus, "the Framers knew of guarantees that either (1) did not require a punishment to be 'unusual,' or that (2) explicitly guaranteed proportional punishments. But they instead chose a 'cruel and unusual' proscription. And in so doing, Scalia

said [in *Harmelin*], they rejected the alternative options." Bendesky, *supra*, at 210.

Thus, "[t]he U.S. Supreme Court's historical account of the Eighth Amendment is irreconcilable with the full genealogy of Section 13" including that "[t]he Eighth Amendment, by requiring a punishment to be unusual, originally proscribed only *methods* of punishment inflicting the *superaddition of pain* beyond death. But Revolutionary Pennsylvanians—eschewing a textual requirement that a punishment be unusual—believed that anything *unnecessary* for achieving the limited purposes of punishment *was* the *superaddition* of cruelty." *Id.* at 212 (emphasis in original).

The only Pennsylvania Supreme Court case that has addressed the meaning of "cruel punishments" in relation to punishing juveniles is Mr. Batts's case. In *Batts I*, the Court addressed and rejected "only the specific claim 'that a categorical ban on the imposition of life-without-parole sentences on juvenile offenders is required by Article I, Section 13 of the Pennsylvania Constitution, which prohibits "cruel punishments."' *Commonwealth*

v. Felder, 269 A.3d 1232, 1248 (Pa. 2022), reargument denied (Apr. 12, 2022) (Donohue, J., concurring).

Further, Justice Donohue observed in her concurrence in *Felder*, which held that *Jones* abrogated *Batts II*, 163 A.3d 410 (2017), that:

> [i]t remains an open question whether any or all components of *Batts II* remain in place with respect to the Pennsylvania Constitution's prohibition of "cruel punishments." In the predecessor decision to *Batts II*, we rejected a claim that Article I, Section 13 provides greater protection than the Eighth Amendment. However, the *Batts I* Court analyzed only the specific claim "that a categorical ban on the imposition of life-without-parole sentences on juvenile offenders is required by Article I, Section 13 of the Pennsylvania Constitution, which prohibits 'cruel punishments.'" *Commonwealth v. Batts*, 620 Pa. 115, 66 A.3d 286, 297 (2013). . . .
>
> Although we rejected the proffered argument, in my view, *Batts I* does not foreclose a departure from *Jones* with respect to the separate question of how a trial court determines whether a particular juvenile is the rare individual who should be incarcerated for life with no possibility of parole….

269 A.3d at 1248 (Donohue, J., concurring) (footnote omitted).

3. Courts in other States Have Found that it Constitutes Cruel Punishment to Sentence a Child Capable of Change to Life in Prison

The third *Edmunds* factor is an examination of related case law from other states. The highest courts in multiple states have

found that sentencing a child capable of change and rehabilitation to a life or a *de facto* life sentence constitutes a cruel punishment. *See, e.g.*, *State v. Haag*, 495 P.3d 241, 250 (Wash. 2021); *Diatchenko v. District Attorney for the Suffolk District*, 1 N.E.3d 270, 275 n. 3, 282 (Mass. 2013); *Naovarath v. State*, 779 P.2d 944 (Nev. 1989); *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013); *State v. Kelliher*, 873 S.E.2d 366, 390 (N.C. 2022); *see also Fletcher v. State*, 532 P.3d 286, 316-21 (Alaska Ct. App. 2023). "[T]he logic of . . . those opinions bears upon our analysis under the Pennsylvania Constitution, particularly given the unique history" of Section 13. *Edmunds*, 586 A.2d at 900.

Of those states, only Washington State's Constitution, like Pennsylvania's, prohibits "cruel punishments." In *State v. Bassett*, the Washington Supreme Court held that "sentencing juvenile offenders to life without parole or early release constitutes cruel punishment" under article I, section 14 of Washington's Constitution that prohibits "cruel punishments." 428 P.3d 343, 346 (Wash. 2018). *Bassett* reached this conclusion by engaging in an analysis like the one in *Edmunds*, first addressing the historical

evidence concerning that clause and holding that the use of the word "cruel" and the refusal to require that the punishment also be "unusual" weighed "in favor of interpreting article I, section 14 as affording broader rights than the Eighth Amendment." *Id.* at 349. In categorically barring life without parole sentences for youth, the court addressed factors that render such a sentence a "cruel punishment." The court observed that "[t]here is a clear trend of states rapidly abandoning or curtailing juvenile life without parole sentences. While this step is not dispositive, it weighs in favor of finding that sentencing juvenile offenders to life without parole is cruel punishment" under the Washington State Constitution. *Id.* at 352.[9]

Next, referring to *Miller, Roper*, and *Graham,* the court observed that "it is extremely difficult to make that determination [of when a youth is capable of rehabilitation] . . . . 'It is difficult even for expert psychologists to differentiate between the juvenile

[9] As of today, more than half of states—27 states and the District of Columbia—have banned juvenile life without parole by statute or court decision. *See* Joshua Rovner, *Juvenile Life Without Parole: An Overview*, Sentencing Project (2023), https://www.sentencingproject.org/app/uploads/2023/04/Juvenile-Life-Without-Parole.pdf.

offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" *Id*. at 353 (quoting *Roper*, 543 U.S. at 573). Because "children are less criminally culpable than adults, and the characteristics of youth do not support the penological goals of a life without parole sentence" the court held "that sentencing juvenile offenders to life without parole or early release is cruel punishment" under the Washington Constitution. *Id.* at 354

Three years later in *State v. Haag*, the Washington Supreme Court, en banc, held that the defendant's 46-year minimum term amounted to a *de facto* life sentence, and violated both the Eighth Amendment and section 14 because the resentencing court "expressly found *Haag* was 'not irretrievably depraved nor irreparably corrupt'" and "placed far more emphasis on retributive factors than on mitigation factors when determining" the new sentence. 495 P.3d at 251 (citation omitted).

In 2022, the Washington Supreme Court again revisited the issue in *State v. Anderson*, affirming that *Hagg* announced a categorical rule that a juvenile cannot be sentenced to a *de facto*

life sentence if their crime reflects youthful immaturity, impetuosity, or a failure to appreciate risks and consequences. 516 P.3d 1213 (Wa. 2022).

At least four other states whose constitutions prohibit "cruel or unusual punishments" have weighed in on this issue. As early as 1989, before the courts had the benefit of scientific and sociological studies about adolescent brain development, but "[g]uided by . . . 'humanitarian instincts'", the Supreme Court of Nevada held that life in prison without parole for a 13-year-old violated both the Federal Constitution and its State Constitution's prohibition on "cruel or unusual punishments." *Naovarath v. State*, 779 P.2d 944 (Nev. 1989). While the court did not engage in a historical analysis of the meaning of its own constitution, and only cursorily addressed the Eighth Amendment, it observed what every parent knows—that children are different than adults and those differences undermine the penological justifications for a life without parole sentence. As the Nevada Supreme Court wrote:

> For all other purposes the defendant in this case, a child, a seventh grader at the time of the incident, is almost entirely legally incapacitated. A child may not vote; a child may not serve on a jury. A child may not drink or

gamble; a child of Naovarath's age may not even drive an automobile. We may possibly have in the child before us the beginning of an irremediably dangerous adult human being, but we certainly cannot know that fact with any degree of certainty now. If putting this child away until his death is not cruel, it is certainly unusual. To adjudicate a thirteen-year-old to be forever irredeemable and to subject a child of this age to hopeless, lifelong punishment and segregation is not a usual or acceptable response to childhood criminality, even when the criminality amounts to murder.

As said, hopelessness or near hopelessness is the hallmark of Naovarath's punishment. It is questionable as to whether a thirteen-year-old can even imagine or comprehend what it means to be imprisoned for sixty years or more. It is questionable whether a sentence of virtually hopeless lifetime incarceration for this seventh grader "measurably contributes" to the social purposes that are intended to be served by this next-to-maximum penalty.

* * * * * * * * *

One cannot help but wonder, however, if any thirteen-year-old children will be deterred from homicidal conduct by an appreciation of the difference between sentences of life with and life without the possibility of parole. Although general deterrence—sending out the word to a young but still sometimes dangerous population that homicides committed even by the very young are subject to very severe punishment—is certainly a legitimate purpose, it is highly doubtful that any twelve or thirteen-year-olds would be more deterred by the penalty imposed on this boy than by a life sentence which is reviewable by the parole board.

Naovarath, 779 P.2d at 947-48.

Naovarath was cited favorably by the United States Supreme Court in *Graham v. Florida,* in describing how "life without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration . . ." regardless of what the juvenile does to rehabilitate himself. 560 U.S. 48, 69-70 (2010). The cruelty is the deprivation of hope for a juvenile.

In *Diatchenko v. District Attorney for the Suffolk District*, the Supreme Judicial Court of Massachusetts addressed whether the discretionary imposition of a life sentence without parole comported with article 26 of the Massachusetts Declaration of Rights, which prohibits the infliction of "cruel or unusual punishments." 1 N.E.3d 270, 275 n.3, 282 (Mass. 2013), superseded by statute on other grounds, Mass. Gen. Laws ch. 279, § 24 (2016), as recognized in *Commonwealth v. Perez*, 480 Mass. 562, 106 N.E.3d 620, 627–28 (2018)). Applying the concept of

proportionality articulated in *Graham*, and applying its prior recognition that it is possible that imprisonment for a long term of years might be so disproportionate to the offense as to constitute cruel or unusual punishment, the court in *Diatchenko* concluded that the "discretionary imposition of a sentence of life in prison without the possibility of parole on juveniles who are under the age of eighteen when they commit murder in the first degree violates" article 26's prohibition against cruel or unusual punishments. *Id.* at 284–85. The court explained that "the imposition of a sentence of life in prison without the possibility of parole for the commission of murder in the first degree by a juvenile under the age of eighteen is disproportionate ***not*** with respect to the offense itself, ***but with regard to the particular offender***." *Id.* (emphasis added).

Even some states whose constitutions prohibit "cruel *and* unusual punishments" like the Eighth Amendment have held lengthy minimum prison terms before parole violative of state constitutional provisions. In *State v. Null*, the Iowa Supreme Court held that imposing a 75-year aggregate sentence, with at least

52.5 years before parole eligibility, violated Article I, Section 17 of the Iowa Constitution. 836 N.W.2d 41, 71 (2013). The imposition of such a sentence, which allows for parole eligibility after more than five decades, "does not remove the case from the ambit of *Miller*'s principles." *Id.* at 73.

4. Holding *De Facto* Life Sentences for Youth under 18 Constitutes Cruel Punishment Prohibited by Section I, Article 13 is Consistent with Pennsylvania Policy

"[T]here is an abiding concern, in Pennsylvania, that juvenile offenders be treated commensurate with their stage of emotional and intellectual development and personal characteristics." *Batts I*, 66 A.3d at 299. Pennsylvania has a long history of providing special sentencing protections to juvenile offenders. In 1839, this Court approved the detention of juvenile offenders in reform schools rather than prisons with the goal of "reformation, and not punishment." *Ex parte Crouse*, 4 Whart. 9, 11 (Pa. 1839). In 1901, Pennsylvania passed the first version of the Juvenile Act, which today recognizes the special status of minors in its aim "to provide… 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). *See also Mansfield's Case*, 22 Pa. Super. Ct. 224, 235 (1903) (commending the motivations behind the Juvenile Act, shielding youth from the more serious punishments of the criminal justice system).

Pennsylvania Courts have also accorded children special treatment in other aspects of the justice system. In *Commonwealth v. Williams*, this Court held that a court assessing the voluntariness of a youth's confession must consider the youth's age, experience, comprehension, and the presence or absence of an interested adult. 475 A.2d 1283, 1288 (Pa. 1984). In *In re J.B.*, this Court held that Pennsylvania's 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). This 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.

The Pennsylvania legislature has also accorded youth special treatment. In 2012, in response to the U.S. Supreme Court's decision in *Miller*, the Pennsylvania legislature enacted a new parole statute specifically applicable to juveniles convicted of murder. *See* 18 Pa.C.S.A. § 1102.1; *see also Batts I*, 66 A.3d at 293. For youth convicted of first-degree murder, the statute provides that those age 15 or older at the time of the offense shall receive either a sentence of life without parole or at least 35 years to life. 18 Pa.C.S.A. § 1102.1(a)(1). Youth under age 15 at the time of the offense, like Mr. Batts, can receive either life without parole or 25 years to life. 18 Pa.C.S.A. § 1102.1(a)(2). In enacting Section 1102.1, the Pennsylvania General Assembly explicitly recognized that youth are different for the purposes of sentencing and that those that have fully demonstrated rehabilitation and maturity like Mr. Batts, a 25-year minimum is appropriate.

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.

Further, Pennsylvania statutory law has long recognized that children lack the same judgment, maturity and responsibility as adults. *See, e.g.*, 23 Pa.C.S.A. § 5101 (the ability to sue and be sued or form binding contracts attaches at age 18); 18 Pa.C.S.A. §§ 6308, 6305 (a person cannot legally purchase alcohol until age 21 and cannot legally purchase tobacco products until age 18); 10 P.S. § 305(c)(1) (no person under the age of 18 in Pennsylvania may play bingo unless accompanied by an adult); 18 Pa.C.S.A. § 6311 (a person under age 18 cannot get a tattoo or body piercing without parental consent); 72 Pa.C.S.A. § 3761-309(a) (a person

under age 18 cannot buy a lottery ticket); 23 Pa.C.S.A. § 1304(a) (youth under the age of 18 32 cannot get married in Pennsylvania without parental consent or, if under 16, judicial authorization).

B. Article I, Section 13 Prohibits Punishments That Are Not Designed to Rehabilitate or Deter

An analysis of the *Edmunds* factors demonstrates that sentencing a youth to a *de facto* life sentence is an unconstitutionally cruel punishment, particularly where the youth has been found to be capable of change and rehabilitation after almost two decades in prison. As set forth in section I.A.2, *supra*, cruel punishments are punishments unnecessary in severity to reform the offender and to deter crime and only the least severe punishment for reformation and deterrence are permissible. Further, what constitutes "cruel punishments" is not a static concept, but instead "'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'" *Commonwealth v. Zettlemoyer*, 454 A.2d 937, 968 (Pa. 1982) (*quotin*g *Gregg v. Georgia,* 428 U.S. 153, 173 (1976)). Based upon what society now knows about the brain development of youth, *de facto* life sentences for youth do not deter criminal

activity and foreswear reformation of the juvenile defendant, and thus constitute a cruel punishment.

It is now well established in case law, and as "any parent knows and as the scientific and sociological studies . . . tend to confirm, '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.'" *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). Indeed, there are three significant gaps between youth and adults: lack of maturity and an underdeveloped sense of responsibility, which leads to recklessness, impulsivity, and heedless risk-taking; children are more vulnerable to negative influences and outside pressures, with an inability to remove themselves from these damaging settings; and children's characters are not fixed and their actions are not likely to be evidence of incorrigibility. *Miller v. Alabama*, 576 U.S. 460, 471 (2012).

This is why *de facto* life sentences are not necessary to deter youth, "because 'the same characteristics that render juveniles less culpable than adults'—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Id.* at 472 (quoting *Graham*, 560 U.S. at 72). Notably, a study of former juvenile lifers in Philadelphia concluded that they have a recidivism rate of just over 1%, far lower than an estimated 30% of individuals nationally convicted of homicide offenses, demonstrating that juvenile life sentences are not necessary to prevent recidivism and that juvenile offenders are uniquely capable of change and rehabilitation.[10] Tarika Daftary-Kapur & Tina Zottoli, "*Resentencing of Juvenile Lifers: The Philadelphia Experience*," Department of Justice Studies Faculty Scholarship and Creative Works (2020). This demonstrates that these men and women were capable of change and rehabilitation.

Further, *de facto* life sentences are not necessary to reform and, in fact, such a sentence "'forswears altogether the

[10] Available at https://digitalcommons.montclair.edu/justice-studies-facpubs/84.

rehabilitative ideal.'" *Miller, 56 U.S.* at 473 (quoting *Graham*, 560 U.S. at 74). "Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope." *Graham*, 560 U.S. at 79. Indeed, as articulated in other state cases, given youths' greater capacity for change and rehabilitation, sentencing a youth who can be rehabilitated to life without parole is cruel because it allows retribution to completely override the rehabilitative function of criminal punishment, and is not necessary to deter or reform. *See Haag*, 495 P.3d at 248; *Bassett*, 428 P.3d at 346; *Diatchenko*, 1 N.E.3d at 275 n. 3, 282; *Naovarath*, 779 P.2d 944.

Moreover, the case for retribution is weak for children because "'[t]he heart of the retribution rationale' relates to an offender's blameworthiness" and children have diminished culpability. *Miller*, 567 U.S. at 472 (alteration in original) (internal quotation marks omitted) (quoting *Graham*, 560 U.S. at 71-74). Because juveniles "have diminished culpability and greater prospects for reform . . . 'they are less deserving of the most severe punishments.'" *Id.* at 471 (quoting *Graham*, 560 U.S. at 68). Accordingly, a *de facto* life

sentence for a child who is found to be capable of change and rehabilitation is an unconstitutional cruel punishment.

C. Mr. Batts's *De Facto* Life Sentence Violates Article I, Section 13

1. Mr. Batts's demonstrated capacity for change renders his 50-year to life sentence a cruel punishment

Mr. Batts's 50-year minimum sentence is a cruel punishment. Given the evidence that the offense reflected Mr. Batts's transient immaturity and that Mr. Batts is capable of change and rehabilitation, it was cruel punishment for the court to sentence him to twice the 25-year minimum. Under his current sentence, the parole board will not be able to evaluate whether Mr. Batts has changed, is rehabilitated, and should have the chance to be released until he is 65 years old.

In 2014 and again at Mr. Batts's most recent resentencing in 2023, Judge Koury acknowledged that Mr. Batts has the capacity to change and is amenable to treatment. The court recognized the opinions of several experts that Mr. Batts is capable of rehabilitation, and that he "might benefit from psychotherapy and other forms of rehabilitation." S.T. 5/2/2014; S.T. 12/1/2023,

76:10-11. Although Mr. Batts has received disciplinary citations in the nearly 20 years he has been incarcerated, he has demonstrated both capacity and interest in bettering himself and not engaging in the kinds of reckless, impulsive behavior that shaped his adolescence and young adulthood. As the court noted, Mr. Batts "has held jobs in prison and pursued some prevocational training, and [is] taking courses on leadership and violence prevention. S.T. 5/2/2014.

In addition to explicitly noting Mr. Batts's capacity for change, the resentencing court also implicitly recognized his capacity for change and rehabilitation when it (wrongly) stated that it could impose a life without parole sentence – though it ultimately did not do so. S.T. 12/1/2023, 82:17-22. Having been found to not be one of the rare incorrigible juveniles, Mr. Batts's current sentence of 50 years to life is a cruel punishment.

2. Mr. Batts's minimum 50-year term of incarceration violates the Pennsylvania General Assembly's policy determination that children be treated differently than adults for purposes of sentencing

In resentencing Mr. Batts to a minimum term of 50 years before parole eligibility, the court cited to *Batts I* and *Batts II* in recognizing that it "cannot ignore the policy determinations made by the general assembly as to the minimum sentence of a youth convicted of first-degree murder," regardless of whether the youth was convicted pre- or post-*Miller*. S.T. 12/1/2023, 19:18-23. Although the relevant parole statute, 18 Pa.C.S.A. § 1102.1(a)(1), on its face applies only to youth convicted after *Miller*, the court acknowledged that "the Pennsylvania Supreme Court in *Batts II* and *Felder* said that I must be guided by the statute. Because the Court recognizes that the statute is an expression of legislative will, for defendants such as Mr. Batts who are under the age of 15, the statute provides for a minimum of 25 years to life." S.T. 12/1/2023, 79: 23-25; 80: 1-6.

At the December 2023 resentencing hearing, the court made a point of emphasizing that Mr. Batts was two months shy of his 15th birthday at the time of the offense. S.T. 12/1/2023, 72:9-10. Had he committed the offense post-*Miller*, the court would have been bound by Section 1102.1. Under the statute, Mr. Batts's

minimum term of incarceration prior to parole eligibility would be 25 years. Not bound by Section 1102.1, the court went significantly above that minimum, sentencing Mr. Batts to a 40-year minimum for first degree murder and an additional 10 years for attempted murder to be served consecutively, for a total of 50 years.

The court's significant divergence from Section 1102.1 is precisely what Justice Baer cautioned against in his concurring opinion in *Batts I*: "If trial courts fail to take guidance from the recent legislative enactments, the minimum sentence imposed on any given juvenile before becoming eligible for parole could vary widely." 66 A.3d at 300 (Baer, J., concurring).

The minimums set for youth in Section 1102.1 follow those of other states with specific parole guidelines for youth. *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-751 (2019) (requiring juveniles convicted of first degree murder and sentenced to life with parole serve at least 25-35 years, depending on the age of the victim); Ark. Code Ann. § 5-10-102(c)(2) (setting minimum term before parole eligibility for juveniles at 25 years); Cal. Penal Code Ann. § 3051 (allowing people who were under 25 at the time of the offense

to apply for parole after 15-25 years); 13 R.I. Gen. Laws Ann. § 13-8-13 (permitting individuals who committed offenses prior to their 22nd birthday to seek parole after serving 20 years); Wash. Rev. Code Ann. § 9.94A.730 (requiring juveniles convicted of aggravated murder to serve at least 25 years).[11]

Accordingly, Mr. Batts's sentence should be amended to a total of 25 years before parole eligibility as intended by the General Assembly.

3. In assessing the constitutionality of Mr. Batts's sentence, this court should view the sentence in the aggregate and not as separate terms of year sentences

As set forth in section I.A.2, *supra*, Section 13 prohibits cruel punishments, punishments whose severity is unnecessary to deter and reform. For a juvenile serving consecutive sentences, the punishment that the juvenile experiences is the actual number of years he is forced to serve before becoming eligible for parole.

[11] Of note, the United States Sentencing Commission defines a life sentence as 470 months (or 39 years and two months), based upon the average life expectancy of federal criminal offenders. 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.

Evaluating the constitutionality of each individual sentence, when they are to be served consecutively, is inappropriate and unjust when used to justify lengthy aggregate sentences for a youth found capable of change and rehabilitation, because it undermines the fundamental principles of youth culpability, goes beyond what is necessary to reform and deter, and effectively circumvents Section 13's prohibition on cruel punishments. It is a formalistic justification that leads to the functional equivalent of life without parole. In other words, bundling multiple sentences should be an unconstitutional *Miller*-work-around. To hold otherwise would allow judges to design a sentence structure solely to evade constitutional scrutiny, exalting form over substance and effectively abdicating the responsibility of courts to enforce the Pennsylvania Constitution.

Further, the constitutionality of consecutive sentences should be evaluated in the aggregate because to do otherwise elevates retribution at the cost of rehabilitation, resulting in a "punishment that is not derived from absolute necessity" and is therefore "tyrannous." Beccaria, *Of Crimes and Punishments, supra*. This is

because there is no standard in Pennsylvania statutes that guide a court's decision as to when to run multiple sentences concurrently or consecutively. Retribution is the implicit penological justification for the different decisions; the youth who received consecutive sentences deserves to spend a lifetime in prison, while the one serving concurrent sentences does not deserve such a punishment. But, as explained in section II.B, *infra*, the case for retribution is weak for children because "'[t]he heart of the retribution rationale' relates to an offender's blameworthiness" and children have diminished culpability. *Miller*, 567 U.S. at 472 (alteration in original) (internal quotation marks omitted) (quoting *Graham*, 560 U.S. at 71-74).

Here, the aggregate of Mr. Batts's sentences is 50 years to life, which is a de facto life sentence because it requires Mr. Batts to spend the majority of his life (and according to the U.S. Sentencing Commission, very likely the entirety of his life) behind bars before even being eligible for parole.

Accordingly, this court should hold that Mr. Batts's aggregate consecutive sentences totaling 50 years to life is a *de facto* life

sentence in violation of Article I, Section 13's prohibition on cruel punishment.

II. MR. BATTS'S 50-YEAR MANDATORY MINIMUM SENTENCE ALSO VIOLATES THE EIGHTH AMENDMENT OF THE U.S. CONSTITUTION

In *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the U.S. Supreme Court held that a lifetime in prison is a disproportionate punishment that violates the Eighth Amendment when imposed on a child under 18 whose crime or crimes reflect transient immaturity rather than irreparable corruption. Here, the sentencing court found that despite being convicted of first-degree murder, Mr. Batts demonstrated change and rehabilitation over 20 years in prison. Accordingly, he is not irreparably corrupt and cannot be sentenced to serve a 50-year term that amounts to *de facto* life without parole in violation of the Eighth Amendment.

A. Under the Eighth Amendment, Punishment Must Be Proportionate to Both the Offender and the Offense

In its juvenile sentencing jurisprudence, the U.S. Supreme Court has identified "[t]he concept of proportionality" as "central to the Eighth Amendment." *Graham*, 560 U.S. at 59; *see also*

Miller, 567 U.S. at 469 ("[t]he Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'") (quoting *Roper v. Simmons,* 543 U.S. 551, 560 (2005)); *Montgomery*, 577 U.S. at 206 ("[p]rotection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment."). The Eighth Amendment's proportionality principle is not unique to juvenile sentencing. The Supreme Court has applied this proportionality principle to strike down extreme sentences that it found were disproportionate to both specific categories of offenses as well as specific categories of offenders. S*ee, e.g., Coker v. Georgia*, 433 U.S. 584, 592 (1977) (holding that a death sentence "is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment."); *Enmund v. Florida*, 458 U.S. 782, 788 (1982) (recognizing that the Eighth Amendment is directed "against all punishments which by their excessive length or severity are greatly disproportioned to the offenses charged" and holding that a death sentence is accordingly disproportionate

when imposed for felony murder against a defendant who neither took life, attempted to take life, nor intended to take life); *Solem v. Helm,* 463 U.S. 277 (1983) (holding that a life without parole sentence was "grossly disproportionate" for seven nonviolent felonies); *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (holding the death penalty to be excessive and therefore unconstitutional when imposed on an intellectually disabled offender).

The Court has also required that punishment have a legitimate penological justification to be constitutionally proportionate under the Eighth Amendment. *See Graham*, 560 U.S. at 71 ("[a] sentence lacking any legitimate penological justification is by its nature disproportionate to the offense."). This is because a punishment that "serves no penal purpose more effectively than a less severe punishment" is by its nature unnecessary and therefore excessive. *Furman v. Georgia*, 408 U.S. 238, 279-80 (1972) (Brennan, J., concurring). Importantly, "[e]ven if the punishment has some connection to a valid penological goal, it must be shown that the punishment is not grossly disproportionate in light of the justification offered." *Graham*, 560 U.S. at 72.

B. Serving a Lifetime in Prison is a Disproportionate Punishment for a Youth Whose Crime Reflects Transient Immaturity

Applying its proportionality principle in its youth sentencing cases, the Supreme Court has held that children are developmentally different from and less culpable than adults, and therefore less deserving as a class of the most extreme punishments. *See Roper*, 543 U.S. at 569-70 (striking down the juvenile death penalty); *Graham*, 560 U.S. at 75, 82 (striking down life without parole sentences for juveniles convicted of nonhomicide offenses); *Miller*, 567 U.S. at 465 (striking down mandatory life without parole sentences for juveniles convicted of homicide); *see also Montgomery*, 577 U.S. at 205-09 (holding *Miller* retroactive on collateral review); *Jones v. Mississippi*, 593 U.S. 98, 106 n.2 (2021) (upholding the requirement of individualized sentencing determinations that consider youth as a mitigating factor).

In these cases, the Supreme Court repeatedly emphasized three characteristics that distinguish children from adult offenders: 1) they lack "maturity" and have an underdeveloped sense of

responsibility which results in "impetuous and ill-considered actions and decisions," *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)); 2) they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure" and have limited control over their environment; and 3) their character is "not as well formed as that of an adult" making their personality traits "more transitory," "less fixed," and, most importantly, uniquely capable of change, *id.* at 569-71. These characteristics mean that, compared with adults, children "have diminished culpability and greater prospects for reform" that make them categorically "less deserving of the most severe punishments" and "render suspect any conclusion that a juvenile falls among the worst offenders." *Miller*, 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68); *Roper*, 543 U.S. at 571.

These defining characteristics of youth weaken the penological justifications for imposing severe sentences. First, due to a child's lesser culpability, "the case for retribution is not as strong with a minor as with an adult." *Montgomery*, 577 U.S. at 207 (quoting *Graham*, 560 U.S. at 71) (internal quotation marks

omitted). Second, the key attributes of youth lessen deterrence as a penological justification: "The deterrence rationale likewise does not suffice, since 'the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment.'" *Id.* (quoting *Miller*, 567 U.S. at 472) (internal quotation marks omitted); *Roper*, 543 U.S. at 571 ("[T]he same characteristics that render juveniles less culpable than adults suggest . . . that juveniles will be less susceptible to deterrence."). Third, the need for incapacitation is diminished because younger and older adolescents are more likely to desist from criminal behavior as they mature into adulthood, thereby lessening the likelihood that they "forever will be a danger to society." *Montgomery*, 577 U.S. at 207 (quoting *Miller*, 567 U.S. at 472). Finally, imposing a harsh adult sentence on a child, particularly one where the child could spend most, if not all, of their life in prison, runs counter to the "rehabilitative ideal" and "reflects 'an irrevocable judgment about [an offender's] value and place in

society,' at odds with a child's capacity for change." *Miller*, 567 U.S. at 473 (quoting *Graham*, 560 U.S. at 74).

Accordingly, in *Miller*, when the Supreme Court abolished mandatory life without parole sentences for youth, it found that such sentences "posed too great a risk of disproportionate punishment" because of "the great difficulty" in distinguishing between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Miller*, 567 U.S. at 479-80 (emphasis added) (quoting *Roper*, 543 U.S. at 573). Recognizing that "children are different," the *Miller* Court found that under the Eighth Amendment "those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480.

In *Montgomery,* the Supreme Court held that *Miller*'s prohibition on mandatory life without parole should be applied retroactively because it established a new substantive constitutional rule. *Montgomery*, 577 U.S. at 212-13. The Supreme Court explained that because *Miller* "determined that sentencing a child to life without parole is excessive for all but 'the rare juvenile

offender whose crimes reflect irreparable corruption,'" life without parole was "an unconstitutional penalty for 'a class of defendants because of their status'—[that is], juvenile offenders whose crimes reflect the transient immaturity of youth." *Id.* at 208 (first quoting *Miller*, 567 U.S. at 479-80, then quoting *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989)). The Court recognized "that children who commit even heinous crimes are capable of change" and therefore "must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored." *Id.* at 212-13. The Court therefore required that any *Miller* fix "ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence." *Id.* at 212.

C. A Lifetime in Prison is Still a Disproportionate Punishment After *Jones* Where the Defendant's Crime Reflects Transient Immaturity

Following *Montgomery*, the Pennsylvania Supreme Court found Mr. Batts's sentence of life imprisonment without the possibility of parole unconstitutional and held that "for a life-

without-parole sentence to be constitutionally valid, the sentencing court must find that the juvenile offender is permanently incorrigible and that rehabilitation would be impossible." *Commonwealth v. Batts*, 163 A.3d 410, 460 (Pa. 2017) (*Batts II*).

In *Jones*, however, the U.S. Supreme Court expressly found that "a separate factual finding of permanent incorrigibility is not required," and that "a State's discretionary sentencing system is both constitutionally necessary and constitutionally sufficient." *Jones*, 593 U.S. at 104-5. Rather than mandating specific procedural requirements, the Court reserved to the states the ability to set their own sentencing procedures and processes:

> . . . our holding today does not preclude the States from imposing additional sentencing limits in cases involving defendants under 18 convicted of murder. States may categorically prohibit life without parole for all offenders under 18. Or States may require sentencers to make extra factual findings before sentencing an offender under 18 to life without parole. Or States may direct sentencers to formally explain on the record why a life-without-parole sentence is appropriate notwithstanding the defendant's youth. States may also establish rigorous proportionality or other substantive appellate review of life-without-parole sentences. All of those options, and others, remain available to the States.

Jones, 593 U.S. at 120–21 (internal citations omitted)

Despite the express reservation to the states, the Supreme Court in *Felder* found it had "no choice but to dissolve those procedural requirements in *Batts II* that are not constitutionally required," and concluded that "[s]o long as the sentence imposed is discretionary and takes into account the offender's youth, even if it amounts to a *de facto* life sentence, *Miller* is not violated." *Felder*, 269 A.3d at 1246.

Despite the court below finding that Mr. Batts had been amendable to treatment and rehabilitation and had demonstrated the capacity for change, the court wrongly believed *Felder* nonetheless permitted it to sentence Mr. Batts to life without parole. *See* S.T. 12/1/2023, 82:17-22. Despite recognizing Mr. Batts was not irreparably corrupt and deserved a meaningful opportunity for release, the Court nevertheless sentenced him to a *de facto* life sentence of 50 years before parole eligibility.

The Court's understanding of *Felder*, however, was wrong. While the Supreme Court in *Felder* walked back the procedural requirements set forth in *Batts II* based on the U.S. Supreme Court's holding in *Jones* that the Eighth Amendment does not

require the sentencing court to make a specific finding of irreparable corruption, or follow any other specific procedures beyond ensuring a discretionary process that accounts for the unique attributes of youth before imposing a life without parole sentence, the U.S. Supreme Court did not walk back the core substantive rule of *Miller* and *Montgomery*. The *Jones* Court still recognized that *Miller* "does not leave [the sentencing court] free to sentence a child whose crime reflects transient immaturity to life without parole. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Jones*, 593 U.S. at 106, fn. 2 (quoting from **"the key paragraph"** in *Montgomery*, 577 U.S. at 211.).[12]

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[12] The following is the full paragraph from *Montgomery* quoted in *Jones*:

> "Louisiana suggests that *Miller* cannot have made a constitutional distinction between children whose crimes reflect transient immaturity and those whose crimes reflect irreparable corruption because *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility. That this finding is not required, however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee. When a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural

Where, as here, the sentencing court found that Mr. Batts is not irreparably corrupt and that instead his crime or crimes reflect transient immaturity, Mr. Batts's *de facto* life sentence of 50 years is unconstitutionally disproportionate under the Eighth Amendment.

III. THE RESENTENCING COURT ERRED WHEN IT DENIED MR. BATTS'S MOTION TO ENFORCE A PLEA AGREEMENT

It has long been recognized that plea agreements are a valuable implement in our criminal justice system. *See Blackledge v. Allison*, 431 U.S. 63, 97 (1977); *Commonwealth v. Alvarado*, 276 A.2d 526 (Pa. 1971). Indeed, "[t]he disposition of criminal charges by agreement between the prosecutor and the accused, ...

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requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems. *See Ford v. Wainwright*, 477 U.S. 399, 416–417, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) ("[W]e leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences"). Fidelity to this important principle of federalism, however, should not be construed to demean the substantive character of the federal right at issue. 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. To the contrary, *Miller* established that this punishment is disproportionate under the Eighth Amendment." *Montgomery*, 577 U.S. at 211.

is an essential component of the administration of justice. Properly administered, it is to be encouraged." *Santobello v. New York*, 404 U.S. 257, 260 (1971). Courts in this Commonwealth generally regard plea agreements "favorably" and view them as "advantageous to all concerned." *Commonwealth v. Schmoyer*, 421 A.2d 786, 789–90 (Pa. Super. Ct. 1980).

Accordingly, while the trial court is not bound as a matter of law to accept the terms of a plea agreement, it can only reject the parties' agreed upon terms where it finds such terms are not in the interests of justice*. See Commonwealth v. White*, 787 A.2d 1088, 1091 (Pa. Super. Ct. 2001) ("[W]hile the Commonwealth and a criminal defendant are free to enter into an arrangement that the parties deem fitting, the terms of a plea agreement are not binding upon the court. Rather the court may reject those terms if the court believes the terms do not serve justice."). Thus, where, as here the terms of a plea agreement are consistent with the interests of justice, it is an abuse of discretion for the trial court to reject them.

Here, the parties agreed to a term of 30 years to life for first degree murder and 10 to 20 years for attempted murder. The 30-year minimum agreed to by the parties reflects the average mandatory minimum term of years before parole eligibility established by the Pennsylvania General Assembly for juvenile offenders who commit first degree murder in the wake of *Miller v. Alabama*. *See* Section 1102.1 (25-year minimum for youth under 15, 35-year minimum for youth between 15-18). Recognizing, as the Supreme Court did in *Miller*, that the vast majority of juvenile homicide offenders are not irreparably corrupt and are capable of rehabilitation, the legislature shortened the mandatory minimum to 25-35 years for those juvenile homicide offenders whose crimes, as here, reflect transient immaturity. A 30-year minimum is also consistent with the minimum terms established for juvenile homicide offenders in numerous states across the country. *See* p. 56, *supra*. The sentencing court below recognized that Mr. Batts' crimes reflected transient immaturity and that in the last 20 years he has matured and demonstrated his capacity for rehabilitation. There is no interest of justice served by rejecting a sentence that

follows the sentencing guidelines. Imposing a longer 40-year minimum was therefore an abuse of the trial court's discretionary authority.

IV. THE RESENTENCING COURT ERRED IN IMPOSING A SEPARATE SENTENCE FOR AGGRAVATED ASSAULT AFTER FINDING THAT THE AGGRAVATED ASSAULT CONVICTION MERGED WITH THE ATTEMPTED MURDER CONVICTION

The Pennsylvania Supreme Court has held that because "aggravated assault is necessarily included within the offense of attempted murder" when both offenses arise from a single act, they must merge for sentencing purposes. *Commonwealth v. Anderson*, 650 A.2d 20, 24 (Pa. 1994) (vacating sentence for aggravated assault because it merged with attempted murder for sentencing purposes). Pennsylvania law is also clear that "[w]here crimes merge for sentencing purposes, the court may sentence the defendant *only on the higher graded offense*." 42 Pa.C.S.A. § 9765 (emphasis added).

Here, after properly finding that Mr. Batts's conviction for aggravated assault merged for sentencing purposes with his conviction for attempted murder, the court illegally imposed a

separate sentence of 2 to 10 years for aggravated assault. *See* S.T. 12/1/2023, 30:11-13; 88:19-22. Accordingly, Mr. Batts's sentence for aggravated assault must be vacated.

CONCLUSION

For the foregoing reasons, this Honorable Court should vacate Mr. Batts's *de facto* life without parole sentence as unconstitutional and remand the instant matter for resentencing with instructions that his total sentence not exceed 25 years in prison prior to parole eligibility.

Respectfully submitted,

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DATED: August 12, 2025

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief of Appellant complies with the word count limit as set forth in Pennsylvania Rule of Appellate Procedure 2135 and contains 13,484 words.

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 requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Marsha L. Levick
Marsha L. Levick

DATED: August 12, 2025