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28 MAP 2025

IN THE SUPREME COURT OF PENNSYLVANIA

No. 28 MAP 2025

COMMONWEALTH OF PENNSYLVANIA,
Appellee,
v.
IVORY KING,
Appellant.

Appeal From The Judgment of Sentence Of The Superior Court at No. 406 EDA 2023 dated October 11, 2024 Affirming the Judgment 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

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Dated: July 31, 2025

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I. STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction pursuant to 42 Pa.C.S.A. § 724(a) regarding allowance of appeals or final orders of the Superior and Commonwealth Courts.

II. ORDER IN QUESTION

This is a timely appeal from the judgment of sentence upon appellant Ivory King entered on November 21, 2022 by the Honorable Rea B. Boylan in the Court of Common Pleas of Bucks County following a resentencing hearing in the matter docketed under CP-09-CR-0003727-1998. R. 8a. Following the resentencing hearing, the trial court imposed four sentences of 20 years to life for four first degree murders, to be served consecutively. R. 432a-442a. Mr. King committed the crime when he was 17 years old, thus he will not be eligible for parole until he is 97 years old. R. 436a; 23a. The judgment of sentence was made final by the order denying Mr. King's Motion for Reconsideration entered on January 19, 2023 (the "Order"). R. 1a-4a. Mr. King filed a Statement of Errors complained of on appeal, dated March 14, 2023. Appendix C. The trial court issued a Rule 1925 Opinion in Support of Order dated June 7, 2023 (the "Opinion"). R. 5a-59a; Appendix B.

The Superior Court affirmed the judgment of sentence in a decision dated October 11, 2024. Appendix A.

III. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

This Court's standard of review for challenges to the legality of a sentence is *de novo*, and its scope of review is plenary. *See Commonwealth v. Davidson*, 938 A.2d 198, 203 (Pa. 2007); *Commonwealth v. Batts*, 66 A.3d 286, 293 (Pa. 2013).

IV. STATEMENT OF THE QUESTIONS INVOLVED

This Court granted Mr. King's Petition for Allowance of Appeal with respect to the following questions:

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 below did not answer this question.

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 below answered this question in the negative.

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 below answered this question in the negative.

V. STATEMENT OF THE CASE

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 sentences such as Mr. King's original sentence of four terms of life without parole to be served consecutively for a crime he committed as a youth.

On May 23, 1998, Mr. King shot and killed four adults and wounded a fifth at a party. R. 5a. He was 17 years old. R. 66a. 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. R. 9a. At the conclusion of that hearing, the court found Mr. King guilty of four counts of first-degree murder. *Id.* On October 28, 1998, the court held a penalty phase hearing, after which the court imposed four unconstitutional mandatory life sentences without parole, to be served consecutively. R. 134a.

Mr. King filed a Post Conviction Relief Act petition ("PCRA") on September 17, 1999, which he withdrew on November 23, 1999. *Commonwealth v King*, No. 3323 EDA 2014, 2016 WL 1136304, at *2 (Pa. Super. Mar. 23, 2016). Mr. King

filed a second PCRA petition in 2005, which was denied by the PCRA Court "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 petition, which the Court of Common Pleas denied in an order dated November 7, 2014. *Id*. On appeal, the Superior Court held that *Miller* was retroactive, vacated Mr. King's life without parole sentences and remanded for further proceedings. *Id.* at *1.

Following remand, the trial court (Honorable Rea B. Boylan) held a resentencing hearing on November 18 and 21, 2022. R. 12a. The Commonwealth discussed the crime, introduced exhibits regarding Mr. King's prison record, photos of the victims, and victim impact statements presented at the original sentencing. R. 1a, 12a-15a. In addition, family members testified about the impact of the crime. R. 12a-15a.

Mr. King introduced into evidence: (1) a mitigation report that compiled information concerning Mr. King's childhood and prison accomplishments, R. 132a-159a; (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, R. 60a-90a, and; (3) an

expert report from an expert in prison adjustment, readiness for release from incarceration, and reentry planning, attesting that Mr. King had taken every step possible in prison to mitigate his risk of reoffending, R. 91a-107a. One current and one former employee of the Pennsylvania Department of Corrections testified that Mr. King was respectful, took his prison programming seriously, and was a mentor and a role model to other inmates. R. 208a-220a, 230a-238a. Mr. King also introduced into evidence prison records concerning his work performance and housing reports, R. 108a-131a, and report cards from elementary school.

In closing arguments, the Commonwealth stated: "[The Court] can accept and give [Mr. King] credit for everything positive that he has presented as true under the *Miller* factors and otherwise; in fact, ***I urge you to do so, and he is entitled to that***," R. 410a-411a (emphasis added); "I do believe ***[Mr. King] should he given credit for all of the positive things that he's done in prison and for his remorse***," R. 418a (emphasis added); "Please ***give him credit for all of his good conduct***, for expressing his remorse, although slightly misguided, while in prison," R. 423a (emphasis added), and; "[G]ive Mr. King all the credit for all the good work, for all the remorse, for all the rehabilitation efforts that he has put in. ***All the Miller factors, give him credit for all of that stuff***." R. 429a (emphasis added).

On November 21, 2022, before resentencing Mr. King, the trial court expressly found that: ***"[Mr. King] has demonstrated a capacity for change***." R.

438a (emphasis added). Despite its finding of corrigibility, the trial court resentenced Mr. King to four terms of 20 years to life to be served consecutively, i.e., a term of 80 years until Mr. King is eligible for parole. R. 432a-442a. The judgment of sentence was made final by the Order denying Mr. King's Motion for Reconsideration entered on January 18, 2023. R. 1a. Mr. King filed a Statement of Errors complained of on appeal, dated March 14, 2023. Appendix A. The trial court issued a Rule 1925 Opinion in Support of Order dated June 7, 2023. R. 5a-59a; Appendix B. In the Opinion, the trial court emphasized that ***"[it] did find that [Mr. King] was capable of rehabilitation***…." R. 54a; Appendix B at 50 (emphasis added).

The aggregated consecutive sentences constitute the functional equivalent of a life without parole sentence in that Mr. King will not be eligible for parole until he is 97 years and 4 months old.

Mr. King timely appealed and on October 11, 2024, the Superior Court denied Mr. King's appeal, holding that it could not aggregate the four 20 years to life sentences for the purpose of evaluating whether 80 years to life constituted a *de facto* life without parole sentence (hereinafter, "*de facto* life"), 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). Appendix A, at pp. 16, 17. It held, among other things, that each one of Mr. King's 20 years

to life sentences, standing alone, was not a *de facto* life sentences. *Id.* 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 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 17, n. 4.

Mr. King filed a timely Petition for Allowance of Appeal with this Court on November 8, 2024, presenting three questions for review. On May 13, 2025, this Court granted Mr. King's Petition.

VI. SUMMARY OF THE ARGUMENT

Mr. King raises three questions which are issues of first impression for this Court: whether an aggregate sentence of 80 years imposed on a youth who has been found to be capable of rehabilitation violates Article 1, Section 13 of the Pennsylvania Constitution as an unconstitutional *de facto* life without parole sentence; whether Mr. King's four 20 years to life sentences must be aggregated for the purpose of evaluating the constitutionality of his sentence under Article 1, Section 13; and whether Mr. King's aggregated sentence of 80 years is an unconstitutional sentence as applied to him under the Eighth Amendment.

Mr. King's first question is 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. To hold in Mr. King's favor, this Court must also hold that juvenile life without parole sentences for such youth are unconstitutional.

Article I, Section 13 of the Pennsylvania State Constitution prohibits the imposition of "cruel punishments." This Court is not bound by the United States Supreme Court's ("Supreme Court") interpretation of the Eighth Amendment in addressing the scope of the "cruel punishments" prohibition in Pennsylvania's Constitution, as it has held on numerous occasions that decisions concerning the scope of rights under the Federal Constitution are not dispositive of the scope of rights under Pennsylvania's Constitution. Section 13's prohibition on cruel punishments, rather than cruel and unusual punishments, was drawn from Enlightenment principles and was specifically intended to proscribe punishments unnecessary in severity to reform the offender and deter crime, and its distinct origin and purposes are well documented in the historical record. Sentencing a child capable of change and rehabilitation to life in prison or a *de facto* life sentence is unnecessary to deter and reform and, thus, is a cruel punishment prohibited by the Pennsylvania Constitution. Many of the highest courts in other States whose

constitutions prohibit "cruel" or "cruel or unusual" punishments have similarly held that their distinctive state constitutional text bans life without parole sentences for youth, either categorically or specifically where the youth has been found to be capable of change and rehabilitation.

This Court should also hold that courts must aggregate consecutive sentences when evaluating whether the sentences constitute a *de facto* life sentence. While Mr. King's 20 years to life sentences individually may not constitute cruel punishment, served consecutively, Mr. King will not be eligible for parole until he is 97 years old, an age more than two decades beyond his average life expectancy. Sentences must be evaluated with respect to their actual effect on the individual, not their formalistic terms, and where Mr. King has been effectively sentenced to die in prison, his sentence, in the aggregate, constitutes an unconstitutional *de facto* life sentence. Evaluating the constitutionality of each individual sentence, when collectively they far exceed a youth's life expectancy, goes beyond what is necessary to reform and deter and thus violates Section 13's prohibition on cruel punishments, elevates retribution at the cost of rehabilitation, and ignores well established research that youth are less culpable than adults and capable of reform.

Finally, as applied to Mr. King, his *de facto* life sentence violates the federal Eighth Amendment's prohibition on cruel and unusual punishments. This Court has left open the possibility that a youth may make an as-applied challenge to the

constitutionality of his sentence under the Eighth Amendment, as has the Supreme Court. This Court should apply the same legal standard to a youth's as-applied challenge to his sentence under the Eighth Amendment as the Supreme Court has applied in categorical challenges. Where a youth's crime reflects transient immaturity and he has been explicitly found to be capable of rehabilitation, as applied to Mr. King, the aggregate sentence of 80 years to life is unconstitutionally disproportionate under the Eighth Amendment.

VII. ARGUMENT OF APPELLANT

A. SENTENCING A JUVENILE FOUND TO BE CAPABLE OF CHANGE AND REHABILITATION TO A *DE FACTO* LIFE SENTENCE IS A CRUEL PUNISHMENT PROHIBITED BY ARTICLE I, SECTION 13 OF THE PENNSYLVANIA CONSTITUTION

1. It is Both "Important and Necessary" that this Court Undertake an Independent Analysis of the Pennsylvania Constitution's Prohibition on Cruel Punishments

Both scholars and jurists have increasingly recognized that "lock-stepping state constitutional provisions with federal constitutional provisions constitutes a flawed and problematic interpretive approach. 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 authors); *see also* Robert F. Williams, *The Law of American State Constitutions* 135-137 (2009). Indeed, this Court explicitly reaffirmed this key

principle of state constitutional analysis just last year in *Allegheny Reproductive Health v. Pennsylvania Department of Human Services*, 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 this 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)).

Mr. King asks this Court to determine whether a *de facto* life sentence for a juvenile defendant violates Article I, Section 13's prohibition on cruel punishments ("Section 13") where a trial court held that the juvenile defendant has demonstrated a capacity for change and rehabilitation. This Court has long recognized it has the power to analyze the meaning and applicability of the Pennsylvania Constitution's prohibition on "cruel punishments" separately from the Supreme Court's interpretation of the Eighth Amendment's prohibition on "cruel and unusual

punishments." Despite this, the Commonwealth argued in the Superior Court that Section 13's prohibition is coextensive with the Eighth Amendment. This assertion is based upon an erroneous interpretation of *Commonwealth v. Zettlemoyer*, where this Court addressed whether the death penalty constituted a "cruel punishment" prohibited by Section 13. 454 A.2d 937, 967–69 (Pa. 1982), *cert. denied*, 461 U.S. 970 (1983), *abrogated on other grounds by Commonwealth v. Freeman*, 827 A.2d 385 (Pa. 2003). In *Zettlemoyer*, this Court concluded that, because the death penalty has been an accepted practice since the founding of Pennsylvania, it could not be prohibited by Section 13. *Id.* at 968 (examining the history of the death penalty in Pennsylvania). Thus, Section 13's prohibition against "cruel punishments" was coextensive with the Eighth Amendment. *Id.* at 967.

Nearly ten years later, in *Commonwealth v. Edmunds*, this Court addressed whether the good faith exception to the exclusionary rule was "properly part of the jurisprudence of this Commonwealth, by virtue of Article 1, Section 8 of the Pennsylvania Constitution," which prohibits unreasonable searches and seizures. 586 A.2d 887, 894 (Pa. 1991). Rather than relying on the Supreme Court's holding that the Fourth Amendment exclusionary rule does not apply to evidence obtained by police who acted in good faith, this Court averred it had "long emphasized that, in interpreting a provision of the Pennsylvania Constitution, we are not bound by the decisions of the Supreme Court which interpret similar (yet distinct) federal

constitutional provisions." *Id.* (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."). This 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) ("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)

Edmunds articulated factors for courts to consider in analyzing 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. Applying those factors in *Edmunds*, this Court held that there is no good faith exception to the exclusionary rule under the Pennsylvania Constitution. *Id.* at 906.

After *Edmunds*, this Court has repeatedly interpreted various provisions of the Pennsylvania Constitution, including Section 13, using the *Edmunds* factors. *See* Seth F. Kreimer, *Still Living After Fifty Years: A Census of Judicial Review Under the Pennsylvania Constitution of 1968*, 71 RUTGERS L. REV. 287, 291, 312 (2018) (since the adoption of the Pennsylvania Constitution of 1968 through 2018, this Court has "vindicated distinctive Pennsylvania constitutional rights" in 373 cases, with 147 "claims under provisions constraining the criminal process.") For example, in *Commonwealth v. Means*, this Court analyzed the *Edmunds* factors when determining whether a statute allowing victim impact testimony in the penalty phase of a death penalty case was a "cruel punishment" prohibited by Section 13. 773 A.2d 143, 151-57 (Pa. 2001). Similarly, in *Commonwealth v Batts*, this Court addressed whether the "cruel punishments" clause of Section 13 categorically barred juvenile life sentences. 66 A.3d 286 (Pa. 2013) (*"Batts I*"). *Batts I* acknowledged that it had previously held Section 13 to be coextensive with the Eighth Amendment, but because those cases did not "involve[] juvenile offenders, who the Supreme Court has indicated are to be treated differently with respect to criminal punishment", this Court analyzed the *Edmunds* factors to answer the issue in *Batts I*. *Id.* at 298 n.5. The rationale for undertaking an independent analysis of the

Pennsylvania Constitution's prohibition on cruel punishments is the same here.[1] Accordingly, this Court can and should analyze the *Edmunds* factors to answer Mr. King's first question presented.

2. The *Edmunds* Factors

(a) The Text of Section 13 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 prohibits "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, whereas the Eighth Amendment has its foundations in English criminal law, Section 13 is rooted in Enlightenment philosophy. Kevin Bendesky, *"The Key-Stone to the Arch": Unlocking Section 13's*

[1] In Section A(2)(b)(ii), *infra*, Mr King addresses why *Batts I* does not control the outcome of this case.

Original Meaning, 26 Univ. Pa. J. Const. L. 201, 208-218 (2023). The drafters of the Eighth Amendment sought to prohibit punishment that caused extreme "terror, pain, or disgrace," not merely disproportionate punishment. *Bucklew v. Prcythe*, 587 U.S. 119, 133 (2019); *Harmelin v. Michigan*, 501 U.S. 957, 973 (1991). In contrast, the framers of the Pennsylvania Constitution were motivated by a belief that the purpose of punishment is to deter and reform; that the punishment must be proportional to the crime; and that no punishment was permissible unless it was "necessary" for those purposes. Bendesky at 219-235.

(b) 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

(i) The History of Section 13 is Distinct From the Supreme Court's Historical Account of the Eighth Amendment

Since this Court first addressed the cruel punishments prohibition in the context of youth in *Batts I*, recent scholarship has provided a detailed historical account of the origins of Section 13's prohibition on cruel punishments as compared to the Eighth Amendment. In *The Key-Stone to the Arch: Unlocking Section 13's Original Meaning*, Bendesky asserts 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. *See* Bendesky, at 201.

The Pennsylvania Constitution "was drafted in the midst of the American Revolution [and was] 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, at 236. "The 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). Thus, "[u]nlike 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.

The historical record reflects that the decision to prohibit "cruel punishments" was meant to sweep more broadly than the federal government's intent in adopting the Eighth Amendment, because the drafters in each instance were motivated by different, distinct philosophies and rules of law. Bendesky, at 202-05. 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.[2] 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.

Id.

Among the theorists who guided the Pennsylvanians were the French philosopher Baron de Montesquieu and Italian criminologist Cesare Beccaria, both of whom rejected 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 by* U. OF TEX. CLASSICAL UTILITARIANISM WEBSITE [3]; *see also* Bendesky, at 217.

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, at 215 (quoting MONTESQUIEU, THE SPIRIT OF THE LAWS, at 82 (Anne M. Cohler, Basia Carolyn

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

[3] https://www.laits.utexas.edu/poltheory/beccaria/delitti/delitti.c02.html.

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, 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.

Beccaria, *supra* note 4 (emphasis in original).

"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 CESARE BECCARIA, ON CRIMES AND PUNISHMENTS (1764), *reprinted in* ON CRIMES AND PUNISHMENTS AND OTHER WRITINGS at 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. Two sections of

Pennsylvania's first Constitution provided for proportionate punishments and limited sanguinary punishments. PA. CONST. of 1776. [4]

In 1790, Pennsylvanians changed their Constitution, and added additional protections, such as the protection against double jeopardy and Section 13's prohibition of cruel punishments. Sosnov, at 227. In addition to the penological philosophies of Enlightenment thinkers, other historical materials show 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), *reprinted by* INTERNET ARCHIVE, at a2.[5] Justice Bradford had been appointed as attorney general of Pennsylvania in 1780 and then to the Supreme Court of Pennsylvania from 1791 to 1794. Bendesky at 222. In *An Enquiry: How Far the Punishment of Death Is Necessary in Pennsylvania*, Justice Bradford relied upon the teachings of Montesquieu and Beccaria in underscoring the importance of prevention of crime in considering punishment:

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

[5] https://archive.org/details/enquiryhowfarpun00brad/page/n3/mode/2up.

> [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 of 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, at A.

In addition, Bradford observed that state constitutions that prohibited "cruel punishments" "***implicitly prohibit every penalty 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, at 3-5 (emphasis added).

Many other individuals who shaped Pennsylvania's penal laws and Pennsylvania's Constitution similarly subscribed to the views of Montesquieu and Beccaria. For example, James Wilson, one of the original United States Supreme Court Justices and who attended the Pennsylvania Constitutional Convention of 1790 in that capacity, agreed that theories of criminal law drew from Montesquieu and Beccaria. Bendesky, at 223. Wilson believed 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. *Id.* at 224.

Similarly, Jared Ingersoll, the Commonwealth's Attorney General from 1790 through 1799, and, later, solicitor of the city 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. 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."

Bendesky, at 228-29 (footnotes omitted); *see id.* at 226-35 (describing the beliefs of additional influential Pennsylvanians).

This was all in stark contrast to the history of the Eighth Amendment's cruel and unusual punishments clause. Unlike the Pennsylvania Constitution, the Eighth Amendment was predicated upon the English Declaration of Rights of 1689, which prohibited "cruell [*sic*] and unusuall [*sic*] Punishments." *See Harmelin*, 501 U.S. at 995-96. 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*, 587 U.S. at 130–31 (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 an unusual method, i.e. out of use.

The Framers of the United States Constitution chose their words 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, [Justice] Scalia said [in *Harmelin*], they rejected the alternative options." Bendesky, at 210-11.

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).

(ii) Pennsylvania Case Law Analyzing Section 13 in the Context of Youth

There is only one Pennsylvania Supreme Court case that has addressed the meaning of "cruel punishments" in relation to punishing youth. In *Batts I*, this Court addressed "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."'" *Felder*, 269 A.3d at 1248 (Donohue, J., concurring) (quoting *Batts I*, 66 A.3d at 297). The appellant's "argument [wa]s that this Court should expand upon the United States Supreme Court's proportionality approach, not that it should derive new theoretical distinctions based on differences between the conceptions of 'cruel' and 'unusual.'" *Batts I*, 66 A.3d at 298; *Felder*, 269 A.3d at 1248 (Donohue, J., concurring) (quoting same).

Batts I demonstrates that this Court may, and should, analyze the *Edmunds* factors to address the issue presented by Mr. King. Moreover, this Court should not follow the holding in *Batts I* for the same reason that this Court reversed its previous

analysis of certain state clauses in *Allegheny Reproductive Services*, the "failure of the parties to properly develop an argument" that the relevant article in the Pennsylvania Constitution affords broader protection than its federal counterpart. *Allegheny*, 309 A.3d at 934. In *Batts I*, the appellant did not present a fully developed analysis of the *Edmunds* factors, resulting in this Court relying on an *Edmunds* argument provided by amici. 66 A.3d at 297-98. However, this Court was neither presented with a historical account of the meaning of "cruel punishments" nor had the benefit of the recent scholarship from Bendesky. In their argument, the amici relied only on the textual differences between Section 13 and the Eighth Amendment, as well as Pennsylvania's history of treating youth differently. *Id.*

Here, Mr. King has fully briefed the *Edmunds* factors, and has provided a detailed historical account of the meaning of "cruel punishments" based, in part, on new scholarship that sets forth a detailed history revealing what Pennsylvanians intended at the time the Pennsylvania Constitution's prohibition on "cruel punishments" was drafted. Further, Mr. King does not argue that this Court should expand upon the Supreme Court's proportionality approach, as the appellant argued in *Batts I*. Instead, Mr. King argues that Section 13's unique text and history distinguishes it from the Eighth Amendment and protects a right not enshrined in its Federal counterpart, the right against cruel punishments as that term was understood by Pennsylvanians. With the benefit of a historical account of Section 13, this Court

may depart from *Batts I* in addressing whether both life without parole and *de facto* life sentences for youth violates Section 13 of the Pennsylvania State Constitution's prohibition on cruel punishments where a trial court has held that the juvenile defendant has demonstrated a capacity for change and rehabilitation.

(c) Courts in other States with Prohibitions on "Cruel," or "Cruel or Unusual," Punishments Have Found that it Constitutes Cruel Punishment to Sentence a Child Capable of Rehabilitation to Life in Prison

The third *Edmunds* factor is an examination of related case law from other states. This case law is in accord with the interpretation Mr. King urges here, including states whose constitutions prohibit "cruel punishments" or "cruel or unusual punishments." *See State v. Haag*, 495 P.3d 241, 248 (Wash. 2021); *State v. Bassett*, 428 P.3d 343, 353-54 (2018); *Diatchenko v. District Attorney for the Suffolk District*, 1 N.E.3d 270, 276 (Mass. 2013); *Naovarath v. State*, 779 P.2d 944 (Nev. 1989); *cf. People v. Stovall*, 987 N.W.2d 85, 90 (Mich. 2022) (holding juvenile life without parole sentence for second-degree murder violated state constitution's prohibition on cruel or unusual punishment). "[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.

In *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 at 346. *Bassett* undertook an analysis like *Edmunds*, holding that historical evidence regarding the use of the word "cruel" only in describing banned punishments weighed "in favor of interpreting article I, section 14 as affording broader rights than the Eighth Amendment." *Id.* at 349. The court also 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.[6]

Referring to *Miller, Roper*, and *Graham,* the court further 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 offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" *Id*. at 353 (quoting *Roper v. Simmons*, 543 U.S. 551,573 (2005)). 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

[6] Indeed, since *Miller*, 28 states and Washington, D.C., have eliminated juvenile life without parole through statute or court ruling. https://www.ncsl.org/civil-and-criminal-justice/juvenile-life-without-parole#toggleContent-17872.

Three years later in *Haag*, the same Court held that the defendant's 46-year minimum sentence 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 241 at 251 (citation omitted).[7]

State constitutions which prohibit "cruel or unusual punishments" have been construed similarly. In 1989, before the emergence of recent scientific research 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*, 779 P.2d at 949. The court relied primarily on what every parent knows: children are different than adults and those differences undermine the penological justifications for life without parole sentences. *Id.* at 947-49. The Nevada Supreme Court wrote:

> 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

[7] One year later, in *State v. Anderson*, the Washington Supreme Court clarified that "*Haag's* state constitutional holding recognized a categorical bar prohibiting *de facto* LWOP sentences for juvenile offenders who have shown that their crimes reflect youthful immaturity, impetuosity, or failure to appreciate risks and consequences." 516 P.3d 1213, 1220 (Wash. 2022) (holding the state constitution does not bar a *de facto* sentence of life without parole for a juvenile offender whose crimes do not reflect the mitigating qualities of youth).

> 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.

Id. at 947.

The court likewise questioned the deterrence rationale for these sentences:

> 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… 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.

Id. at 947-948.

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 violated article 26 of the Massachusetts Declaration of Rights, which prohibits the infliction of "cruel or unusual punishments." 1 N.E.3d 270282 (Mass. 2013), *superseded by statute on other grounds*, Mass. Gen. Laws ch. 279, § 24 (2016), *as recognized in Commonwealth v. Perez*, 106 N.E.3d 620, 627–28 (Mass. 2018)). The court 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, reasoning 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.* at 283, 284-85 (emphasis added).

(d) Prohibiting *De Facto* Life Sentences for Corrigible Juveniles under Article 1, Section 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. 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.

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 Pa. Code § 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

cannot get married in Pennsylvania without parental consent or, if under 16, judicial authorization).

3. Based Upon the Edmunds Analysis, A Life Without Parole Sentence or A *De Facto* Life Sentence for A Juvenile Held to Be Capable of Change and Rehabilitation is An Unconstitutional Cruel Punishment

The history behind Article 1, Section 13 conclusively establishes that cruel punishments are those unnecessarily harsh to deter and reform individuals. As set forth herein, sentencing a youth to either a life without parole or a *de facto* life sentence is a cruel punishment because, based upon what we now know about the psychological and neurological development of children and adolescents, the threat of a lifetime in prison does not deter youth and a lifetime in prison is not necessary to reform them.

It is now well established in case law that "'[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*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). Indeed, there are three key developmental differences between youth and adults: lack of maturity and an underdeveloped sense of responsibility, which leads to recklessness, impulsivity, and heedless risk-taking; a greater susceptibility to negative peer influences, and; children's characters are not fixed and they are uniquely capable of rehabilitation.

Miller, 576 U.S. at 471. For these reasons, "because 'the same characteristics that render juveniles less culpable than adults'… make them less likely to consider potential punishment," *de facto* life sentences are not necessary to deter youth. *Miller*, 567 U.S. at 472 (quoting *Graham*, 560 U.S. at 72); *Naovarath*, 779 P.2d at 948 (noting youth unlikely to be deterred by a life without parole sentence).

Further, *de facto* life sentences are not necessary to reform and, in fact, such a sentence "forswears altogether the rehabilitative ideal." *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, youth's capacity for rehabilitation has been borne out among the formerly incarcerated youth released since *Miller*. A study of resentenced paroled individuals in Philadelphia who had previously been sentenced to mandatory life without parole as youth, found that they have a recidivism rate of just over 1%, far lower than an estimated 30% of individuals nationally convicted of homicide offenses, undermining any claim that a sentence of life in prison was necessary to achieve rehabilitation. TARIKA DAFTARY-KAPUR & TINA ZOTTOLI, RESENTENCING OF JUVENILE LIFERS: THE PHILADELPHIA EXPERIENCE 10, DEPARTMENT OF JUSTICE STUDIES FACULTY SCHOLARSHIP AND CREATIVE WORKS 84 (2020). [8]

[8] https://digitalcommons.montclair.edu/justice-studies-facpubs/84.

As articulated in other state cases, sentencing a youth who can be rehabilitated to a *de facto* life sentence is cruel because it elevates and prioritizes retribution over the rehabilitative objective and is not necessary to deter or reform. *See Haag*, 495 P.3d at 248 ("retribution cannot take precedence in juvenile sentencing"); *Bassett*, 428 P.3d at 353 ("the case for retribution is weakened for children because '[t]he heart of the retribution rationale' relates to an offender's blameworthiness" and children have diminished culpability'" (quoting *Miller*, 567 U.S. at 472); *Diatchenko*, 1 N.E.3d at 275 ("distinctive attributes of juvenile offenders render" retribution as justification suspect; concluding discretionary imposition of JLWOP violates the prohibition against cruel or unusual punishment); *Naovarath*, 779 P.2d at 948 (the "degree of retribution" of "life without possibility of parole is excessive punishment for this thirteen-year-old boy").

Importantly, the case for retribution is weak for children. "'The 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). Because youth "have diminished culpability and greater prospects for reform… 'they are less deserving of the most severe punishments.'" *Miller*, 576 U.S. at 471 (quoting *Graham*, 560 U.S. at 68).

A *de facto* life sentence for a child who is found to be capable of change and rehabilitation is an unconstitutional cruel punishment. Mr. King's case provides a clear example of this. Mr. King presented unrebutted expert testimony that he is capable of change and rehabilitation and the Commonwealth encouraged the trial court to give Mr. King credit for demonstrated change. R. 410a-411a, 418a, 423a, 429a. The trial court, while not required to making a finding on the matter pursuant to *Felder*, expressly held that Mr. King is capable of change and rehabilitation. R. 54a, 438a. Yet the trial court effectively sentenced Mr. King to die in prison, denying him the opportunity to ever show his eligibility for parole. This sentence is unquestionably 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*, 779 P.2d at 944).

Accordingly, this Court should hold that a *de facto* life sentence for a youth found to be capable of change and rehabilitation is a cruel punishment prohibited by Article I, Section 13 of the Pennsylvania Constitution.

B. COURTS SHOULD AGGREGATE CONSECUTIVE SENTENCES WHEN DETERMINING WHETHER A YOUTH'S CONSECUTIVE SENTENCES CONSTITUTE A DE FACTO LIFE SENTENCE PROHIBITED BY ARTICLE I, SECTION 13 OF THE PENNSYLVANIA CONSTITUTION.

This Court has never addressed whether consecutive sentences imposed on youth should be aggregated in determining whether the consecutive sentences constitute a *de facto* life sentence prohibited by Section 13. As set forth below, the Court should now answer that question in the affirmative. While each 20 years to life sentence standing alone in Mr. King's case might not violate the Pennsylvania Constitution's prohibition on cruel punishments, if this Court holds that a *de facto* life sentence for a child capable of change and rehabilitation is a cruel punishment, the 80 years Mr. King must serve before being parole eligible condemns Mr. King to die in prison, rendering meaningless his right against "cruel punishments" guaranteed in Pennsylvania's Constitution. As the Supreme Court itself has recognized, the constitutionality of a sentence depends on its impact on the individual, not the label of the sentence. *See, e.g., Graham*, 560 U.S. at 70-74; *Miller*, 567 U.S. at 579.

The Superior Court held that it could not aggregate Mr. King's four consecutive 20 years to life sentences in determining whether 80 years to life constituted an unconstitutional *de facto* life sentence because it was bound by the court's prior decision in *Commonwealth v. Foust*, 180 A.3d 416, 431 (Pa. Super.

2018), *petition for allowance of appeal denied*, 279 A.3d 39 (Pa., 2022), 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 of Mr. King's 20 years to life sentences, standing alone, was not a *de facto* life sentence and declined to "consider whether the Pennsylvania Constitution provides for additional protections for a *de facto* LWOP sentence than the Eighth Amendment." *Id.*, at pp. 16, 17, n. 4.

In *Foust*, the juvenile defendant was found guilty of two murders and sentenced to two 30 years to life sentences, to run consecutively, making him eligible for parole after 60 years. 180 A.3d at 434. On appeal, Foust contended that his two consecutive 30 years to life sentences constituted a 60-year *de facto* life sentence that was disproportionate under the Eighth Amendment. *Id.* at 416, 421-22. He did not challenge his sentences under Article I, Section 13 of the Pennsylvania Constitution. 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" and upheld the two 30 years to life sentences because individually the sentences were not *de facto* life sentences. *Id*. at 438.

Foust relied upon Pennsylvania case law that holds that "defendants convicted of multiple offenses are not entitled to a 'volume discount' on their aggregate sentence." *Id.* at 434. "Volume discounts" refers to a situation where a defendant

is charged with multiple criminal offenses, and the punishment they receive for those offenses, if run concurrently, is less severe than if each charge were punished separately. All the cases relied upon by *Foust* involved adults, not youth under 18. *Id*.

This Court is not bound by *Foust* and should decline to follow it for several reasons. *Foust* was decided under the Eighth Amendment; relied upon cases involving adults, and; relied substantially upon a Maryland case which was later overturned on the precise issue of whether to aggregate youth sentences.

Foust's reliance upon Pennsylvania case law that holds that "defendants convicted of multiple offenses are not entitled to a 'volume discount' on their aggregate sentence" was misplaced. First, and most importantly, the policy barring "volume discounts" is derived from case law; it is mandated neither by legislation nor the Constitution. It is well established that whatever sentencing authority or discretion a court holds must give way in the face of countervailing constitutional mandates. *See Alleyne v. United States*, 570 U.S. 99, 103, (2013); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

Second, all the cases relied upon by *Foust* involved adults, not youth under 18. *Foust,* 180 A.3d at 434. Given the pronounced developmental differences between youth and adults that now guide youth sentencing jurisprudence, a common

law "policy" disfavoring "volume discounts" for adults is irrelevant in evaluating the constitutionality of specific sentencing practices involving children.

Foust also relied upon the reasoning of *McCullough v. State*, 168 A.3d 1045 (Md. Ct. Spec. App. 2017), which held that a youth serving an aggregate sentence of 100 years on four counts of first-degree murder, for which a youth would have to serve 50 years before becoming eligible for parole, was not an illegal sentence under *Graham.* 168 A.3d at 747. But six months after the Superior Court issued *Foust*, the Court of Appeals of Maryland (now the Maryland Supreme Court) reversed *McCullough*, holding that the aggregate sentence of 100 years on four counts of first-degree assault, for which a youth would have to serve 50 years before becoming eligible for parole, was a *de facto* life sentence, in violation of the Eighth Amendment. *See Carter v. State*, 192 A.3d 695, 727 (Md. 2018).

Notably, *Carter* distinguished between sentences run consecutively in cases where the individual was involved in a crime spree involving multiple crimes at different times and the individual who is involved in one event leading to multiple crimes at once. The Court wrote:

> 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).

While *Carter* involved a challenge under the Eighth Amendment, the reasoning is persuasive here, and even more compelling under Section 13. With its broad proscription on sentences that serve neither deterrence nor rehabilitation, Section 13's prohibition on cruel punishments 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).

Moreover, youth with consecutive sentences should be no worse off than youth with concurrent or individual sentences. For example, under *Foust*, a 17 year old with two concurrent 80 years to life sentence is better off than Mr. King because that youth can challenge the constitutionality of his two *de facto* life sentences, whereas Mr. King, who must also wait 80 years before parole eligibility, cannot. *Foust's* holding allows judges to design a sentence structure solely to evade

constitutional scrutiny, exalting form over substance and effectively undermining the mandate of the Pennsylvania Constitution.

Further, allowing the constitutionality of consecutive sentences to be evaluated individually elevates retribution at the cost of rehabilitation. There is no standard in Pennsylvania statutes that guide a court's decision as to when to run multiple sentences concurrently or consecutively. Under Pennsylvania's current sentencing statutes,[9] a youth convicted today of two counts of first degree murder may serve two concurrent 35 years to life sentences, making him parole eligible when he is 52 years old, while a different youth might be sentenced to two consecutive 35 years to life sentences and deemed ineligible for parole until age 87. Retribution is the implicit penological justification for the different sentence structures; the youth that receives consecutive sentences deserves to spend a lifetime in prison, while the one who receives concurrent sentences does not.

Importantly, a decision in favor of Mr. King would not prevent courts from imposing consecutive sentences on youth in the future. Trial courts would continue to have the authority and discretion to impose consecutive sentences. But when the totality of those consecutive sentences constitute a *de facto* life sentence, it must yield to the Pennsylvania Constitution's guarantees. *See State v. Zuber*, 152 A.3d

[9] In Pennsylvania, the minimum a youth between 15 and 17 years old must serve for first degree murder is 35 years. *See* 18 Pa.C.S.A.§ 1102.1(a)(1).

197, 211 (N.J. 2017), *cert. denied*, 583 U.S. 826 (2017) ("It does not matter to the juvenile whether he faces formal [LWOP] or multiple term-of-years sentences that, in all likelihood, will keep him in jail for the rest of his life. We believe it does not matter for purposes of [*Graham* or *Miller*.]"; *Ira v. Janecka*, 419 P.3d 161, 166 (N.M. 2018) ("We are persuaded by… *Roper*, *Graham*, and *Miller* that the cumulative impact of consecutive sentences on a juvenile is required by the Eighth Amendment.").

Additionally, in multiple other states, the highest courts agree that under either the Eighth Amendment or their state constitutions, the aggregate sentences for youth must be considered in determining if a *de facto* life sentence is unconstitutional both pre-*Foust*, *id.*,[10] and post-*Foust.*[11] These courts refer to how the differences between

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[10] *See Zuber*, 152 A.3d at 212; *State v. Ramos*, 387 P.3d 650, 660 (Wash. 2017), *cert. denied*, 583 U.S. 995 (2017) ("the distinction between concurrent and consecutive life terms 'is academic; the sentence is ultimately limited by [the juvenile's] life span'"); *State v. Moore*, 76 N.E.3d 1127, 1141–1143 (Ohio 2016) (rejecting the argument "that *Graham* does not extend to juveniles sentenced to lengthy prison terms consisting of multiple, consecutive fixed-term sentences); *People v. Reyes*, 63 N.E.3d 884, 888 (Ill. 2016) ("the *Miller* rationale [that a *de facto* life sentence is unconstitutional] applies … for a single offense or for offenses committed in a single course of conduct"); *State v. Boston*, 131 Nev. 981, 987 (Nev. 2016) ("the *Graham* rule applies to aggregate sentences that are the functional equivalent of a sentence of life without the possibility of parole"); *Henry v. State*, 175 So. 3d 675, 679–680 (Fla. 2015) (finding a sentence which totals ninety years to be an unconstitutional *de facto* life sentence); *State v. Null*, 836 N.W.2d 41, 73–74 (Iowa 2013) ("we agree with appellate courts that have concluded the imposition of an aggregate sentence does not remove the case from the ambit of *Miller*'s principles"); *Bear Cloud v. State*, 334 P.3d 132, 143 (Wyo. 2014) ("we will 'focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.'"); *People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012) (rejecting defendant's sentence, and describing it as a "term-of-years sentence that amounts to the functional equivalent of a life without parole sentence").

[11] *See White v. Premo*, 443 P.3d 597, 599 (Or. 2019) (juvenile lengthy term-of-years consecutive sentence was functional equivalent to life without parole); *Ira*, 419 P.3d at 166 (N.M. 2018);

youth and adults that counsel against sentencing youth to life in prison, "appl[y] with equal strength to a sentence that is the practical equivalent of life without parole. Defendants who serve lengthy term-of-years sentences that amount to life without parole should be no worse off than defendants whose sentences carry that formal designation. The label alone cannot control…." *Zuber*, 152 A.3d at 211–12.

Here, the aggregate of Mr. King's sentences is a *de facto* life sentence for any youth because it will require them to reach their nineties before becoming eligible for parole. Mr. King will have to live until he is 97 years and four months old before becoming eligible for parole. Ninety-seven years 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.[12] 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 those serving in prison and considers the average life expectancy to be 76 years and two months.[13] These statistics do not account for the fact that time in prison reduces a person's life expectancy. *See, e.g.*, Deborah LaBelle, Michigan Life

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Carter, 192 A.3d at 727 (aggregate sentence of 100 years, for which a juvenile would have to serve 50 years before becoming eligible for parole, was a *de facto* life sentence).

[12] *See* U.S. SOC. SEC. ADMIN., *2020 Actuarial Life Table*, https://www.ssa.gov/oact/STATS/table4c6.html# (last visited July 30, 2025); *See also Casiano v. Comm'r of Corr.*, 115 A.3d 1031, 1046 (Conn. 2015).

[13] 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 July 30, 2025)

Expectancy Data for Youth Serving Natural Life Sentences, at 1.[14] 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.

Notably, in *Commonwealth v. Felder*, while this Court granted review on whether a 50 years to life sentence imposed upon a juvenile constitutes a *de facto* life sentence, in violation of the Eighth Amendment, it did not rule on that question, holding. 269 A.3d 1232, 1245 (Pa. 2022). It held, pursuant to *Jones v. Mississippi*, 593 U.S. 98, 120 (2021), "even if a 50-years-to-life sentence amounts to a *de facto* life sentence, 'there is no *Miller* problem here.'" *Id.* (quoting *United States v. Grant*, 9 F.4th 186, 197 (3rd Cir. 2021) (*en banc*)). However, other courts have held term of years sentences far less than Mr. King's constitute *de facto* life sentences.[15]

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[14] https://perma.cc/AJB3-TMPT (last visited July 31, 2025); *see also* N. STRALEY, *Miller's Promise: Re–Evaluating Extreme Criminal Sentences for Children*, 89 WASH. L.REV. 963, 986 n. 142 (2014) ("[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) (life expectancy in prison is "considerably shortened"), vacated in part on other grounds sub nom. *U.S. v. Pepin*, 514 F.3d 193 (2d Cir. 2008); *Null*, 836 N.W.2d at 71 (same).

[15] *See Walker v. Cromwell*, 140 F.4th 878, 886 (7th Cir. June 16, 2025) (in dicta, sentence with parole eligibility coming first at age 95 is a *de facto* life sentence); *Hauschild v. Harrington*, 732 F. Supp. 3d 839, 861 (N.D. Ill. 2024) (sentence of 67 years in prison, without opportunity for parole until 85% of such sentence was served was a *de facto* life sentence); *State v. Kelliher*, 381 N.C. 558, 560 (N.C. 2022) (holding any sentence or aggregate combination of sentences more than forty years before eligible for parole is a *de facto* life sentence); *People v. Buffer*, 137 N.E.3d 763, 774 (Ill. 2019) ("In determining when a juvenile defendant's prison term is long enough to be considered *de facto* life without parole, we choose to draw a line at 40 years."); *Casiano v. Comm'r of Corr.*, 115 A.3d 1031, 1047 (Conn. 2015) (finding a sentence of fifty years to be *de facto* life); *White v. Premo*, 443 P.3d 597, 605 (Or. 2019) (finding *de facto* life sentence where, at best, defendant would serve at least 54 years, was *de facto* life: "We know of no state high court that has held that a sentence in excess of 50 years for a single homicide provides a juvenile with a meaningful opportunity for release."); *Zuber*, 152 A.3d at 211 (55-year minimum sentence for juvenile is the "practical equivalent of life without parole"); *Bear Cloud*, 334 P.3d at 142 (Wyo.

Additionally, in the many states that have enacted new legislation post-*Miller* to provide alternative sentencing schemes to the prohibited mandatory life without parole for youth, the term of years that youth convicted of first degree or capital murder are required to serve prior to being eligible for parole or sentence modification ranges from 15 to 40 years, with most requiring between 20 and 25 years. *See Legislation Eliminating Life-Without-Parole Sentences for Juveniles*, JUVENILE SENTENCING PROJECT.[16] In Pennsylvania, the minimum a youth between 15 and 17 years old must serve for first degree murder is 35 years. *See* 18 Pa.C.S.A.§ 1102.1(a)(1). Where, as here, the current sentencing statute does not apply, and a youth has demonstrated he is capable of change and rehabilitation, that youth should similarly be eligible for parole after serving no more than 35 years.

Accordingly, this Court should hold courts must aggregate consecutive sentences when determining whether a youth's total period of incarceration constitutes a *de facto* life sentence prohibited by Section 13; that Mr. King's aggregate consecutive sentences totaling 80 years to life is a *de facto* life sentence; and that, pursuant to section VII(A), *supra*, Mr. King's *de facto* life sentence is a

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2014) (finding that petitioner's aggregate sentence of just over 45 years "result[s] in the functional equivalent of life without parole."); *Sam v. State*, 401 P.3d 834 (Wyo. 2017) (consecutive sentences of a minimum of 52 years, with release possible when he is 70 years old was a *de facto* life sentence); *People v. J.I.A.*, No. G040625, 2013 WL 342653, *5 (Cal. Ct. App. Jan. 30, 2013) (unpublished) (finding *de facto* life sentence when defendant's life expectancy was "anywhere from [sixty-four] to [seventy-six] years" and he was eligible for parole at age seventy).

[16] https://juvenilesentencingproject.org/legislation-eliminating-lwop/ (last visited July 29, 2025).

cruel punishment prohibited by Article I, Section 13 of the Pennsylvania Constitution.

C. THE IMPOSITION OF A *DE FACTO* LIFE SENTENCE ON MR. KING, WHO WAS EXPLICITLY FOUND BY THE TRIAL COURT TO BE CAPABLE OF CHANGE AND REHABILITATION, VIOLATES THE EIGHTH AMENDMENT'S PROHIBITION OF CRUEL AND UNUSUAL PUNISHMENTS

1. The As-Applied Standard

In *Felder*, following *Jones*, this Court held 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." 269 A.3d at 1246. However, *Felder* did not address whether the defendant could have made an as-applied challenge to the proportionality of his sentence, recognizing it remains an open question post-*Jones. Id.*, at n.16. Indeed, *Jones* left open the possibility that a youth could make an as-applied Eighth Amendment claim of disproportionality. *See Jones*, 593 U.S. at 118 ("[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.") The Superior Court did not address Mr. King's as-applied challenge to his aggregated 80 years to life sentence. 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*., 325 A.3d 502, 509 (Pa. 2024). Neither this Court nor the Supreme

Court has established a standard for an as-applied challenge to a juvenile life without parole or *de facto* life sentence. However, *Jones*, in dicta, cites 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. *Jones*, 593 U.S. at 118 (citing *Harmelin*, 501 U.S. at 996–1009) (Kennedy, J., concurring in part and concurring in judgment). Notably, *Jones* did not endorse the narrow proportionality standard as controlling as-applied proportionality challenges to youth sentences.

In fact, in *Miller* and *Graham*, the Supreme Court rejected an argument by Alabama and Arkansas that *Harmelin* precluded its holding. 567 U.S. at 481. In those cases, it interpreted the Eighth Amendment as placing limits on categories of punishment for youth based on 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.

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. 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, n.15 (Sotomayor, J., dissenting). 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, 138 (2019) (quoting *Wilson v. Seiter*, 501 U.S. 294, 299, n.1 (1991)).

Accordingly, this Court should apply the same legal standard to as-applied challenges to the Eighth Amendment by juvenile defendants as the Supreme Court applied in categorical challenges. As applied to Mr. King, the aggregate sentence of 80 years to life is disproportionate under the Eighth Amendment.

2. Mr. King's Sentences Violate the Eighth Amendment as Applied to His Case

In *Miller* and *Montgomery*, the 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. *Miller*, 567 U.S. at 479; *Montgomery*, 577 U.S. at 212. Here, the trial court found that Mr. King demonstrated the capacity for change and

rehabilitation, thus, he is not irreparably corrupt. Because Mr. King will surely die in prison before reaching the end of his 80 years minimum, he is serving a *de facto* life without parole sentence which also violates the Eighth Amendment.

In its youth sentencing jurisprudence, the 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,* 543 U.S. at 560); *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 youth sentencing. Indeed, the Supreme Court first established over 100 years ago in *Weems v. United States,* 217 U.S. 349 (1910) that under the Eighth Amendment it is "a basic precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Roper,* 543 U.S. at 560 (alteration in original) (quoting *Weems*, 217 U.S. at 367).

In the decades since *Weems*, 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, 303 (1983) (holding that a life without parole sentence was "significantly 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 Supreme 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 (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.

Applying its proportionality principle in its youth sentencing cases, the Supreme Court has held that children are developmentally different from adults and less culpable, 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*, 593 U.S. at 106 n.2 (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. *See 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.

Following *Montgomery*, Mr. King's original sentence of four consecutive terms of life imprisonment without the possibility of parole was found unconstitutional, and he was granted resentencing. *Commonwealth v. King*, Nos. 3323 EDA 2014, 2016 WL 1136304, at *6 (Pa. Super. 2016). While Mr. King awaited resentencing, this Court and others across the country grappled with establishing procedures and processes to ensure compliance with *Miller* and *Montgomery* under the Eighth Amendment. *See, e.g. Commonwealth v. Batts*, 163 A.3d 410, 460 (Pa. 2017) ("*Batts II*") (holding 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.")

In *Jones*, however, the 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 104-05. Rather than mandating specific procedural requirements, the Court reserved to the states the ability to set their own sentencing procedures and processes:

> [O]ur 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.

Id. at 120–21 (internal citations omitted).

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, n. 2 (quoting *Montgomery*, 577 U.S. at 211) (part of the "the key paragraph" in *Montgomery*).

After *Jones*, this Court held in *Felder* that while the Supreme Court "dissolve[d] those procedural requirements in *Batts II* that are not constitutionally required," it also "note[d] that *Jones* did not resolve whether a juvenile homicide offender may raise a viable as-applied Eighth Amendment claim challenging the disproportionality of a given sentence." *Felder*, 269 A.3d at 1246, n.16. *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 the trial court was not required to make an on-the-record finding of incorrigibility prior to issuing its *de facto* life sentence, it nevertheless chose to make an explicit finding that Mr. King is capable of change and rehabilitation. The Commonwealth agreed and urged the trial 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 hold that as-applied to Mr. King, his aggregate 80-year to life *de facto* life sentence is disproportionate under the Eighth Amendment and vacate his sentences.

VIII. RELIEF

For the reasons set forth herein, the Court should hold as follows: juvenile life without parole sentences and juvenile *de facto* life without parole sentences violate Article I, Section 13 of the Pennsylvania State Constitution's prohibition on cruel punishments where a trial court found that the juvenile defendant has demonstrated a capacity for change and rehabilitation; courts should aggregate consecutive sentences when determining whether a juvenile's consecutive sentences constitute a *de facto* life without parole sentence prohibited by Article I, Section 13 of the Pennsylvania Constitution, thus voiding Mr. King's aggregated 80 years to life sentence and; as applied to Mr. King, whom the trial court found capable of change and rehabilitation, Mr. King's sentence violates the Eighth Amendment's prohibition on cruel and unusual punishments.

Accordingly, this Court should vacate Mr. King's four 20 years to life sentences and remand with directions to the trial court to resentence Mr. King in accordance with its decision, and to impose sentences that individually or in the aggregate do not exceed 35 years to life.

IX. OPINIONS AND PLEADINGS

The opinions and pleadings are attached in the Appendix.

X. CONCLUSION

For the foregoing reasons, this Court should grant the relief sought by Mr. King in Section VIII.

Dated: July 31, 2025

Respectfully Submitted,

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X. CONCLUSION

For the foregoing reasons, this Court should grant the relief sought by Mr. King in Section VIII.

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CERTIFICATIONS

This 31st day of July, 2025, I certify:

Word count. This brief contains fewer than 14,000 words as prescribed by Pa. R. App. P. 2135.

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