Received 11/18/2025 3:57:44 PM Supreme Court Middle District

Filed 11/18/2025 3:57:00 PM Supreme Court Middle District
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: November 18, 2025

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I. INTRODUCTION

Article I, Section 13 of the Pennsylvania Constitution prohibits the infliction of "cruel punishments", which applies to lawfully convicted Pennsylvanians, like Ivory King, regardless of the crime. PA. CONST. art. I, § 13 ("Section 13"). The rights enshrined in Article I, which is the Declaration of Rights, like the right against cruel punishments, "are inherent, not created rights" that "'shall forever remain inviolate,'" and protected against infringement by the government. *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs*., 309 A.3d 808, 897 (Pa. 2024) (quoting PA. CONST. art. I, § 25). Importantly, the right against cruel punishments neither excuses nor minimizes the gravity of the crime committed. Rather, as intended by the drafters of Section 13, it ensures that the government's power to punish remains just and humane. And contrary to the arguments of the Commonwealth and its *amici*, this Court has the unbridled authority and responsibility to decide the meaning of "cruel punishments," and to determine whether Section 13 protects youth capable of change and rehabilitation from dying in prison, either because they have an actual life or aggregated *de facto* life without parole sentence.

Tellingly, neither the Commonwealth nor its *amici* dispute the substance of Mr. King's recitation of Pennsylvania history, which reveals that Pennsylvanians had a distinct, novel understanding of cruelty, and that at the time Section 13 was

drafted, "cruel punishments" meant any punishments that were more severe than necessary to reform the criminal and deter crime. Moreover, neither the Commonwealth nor its *amici* dispute that the historical origins and purpose of Section 13's prohibition on "cruel punishments" differ from the origins and purpose of the Eighth Amendment's prohibitions on "cruel and unusual punishments."

Instead, the Commonwealth and its *amici* respond by distorting the issues and warning of a parade of imaginary horribles. From falsely decrying the end of consecutive sentencing to relitigating the resentencing hearing itself, the Commonwealth skirts the margins of the real issues before this Court and offers virtually no rebuttal to the merits of Mr. King's arguments. At its core, this case is about the state constitutional limits on the power of the Commonwealth to sentence youth to die in prison where they have proven their capacity for change and rehabilitation. Mr. King argues that those limits are clearly set forth in Section 13, and that his aggregate 80 years to life sentences cannot withstand scrutiny under Section 13.

II. ARGUMENT

A. MR. KING PRESERVED ALL QUESTIONS PRESENTED

The record proves that Mr. King preserved the issues now before this Court. "The issue preservation requirement 'ensure[s] that the trial court that initially hears a dispute has had an opportunity to consider the issue[,]' which in turn 'advances the orderly and efficient use of our judicial resources[,]' and provides fairness to the

parties." *Commonwealth v. Eisenberg*, 98 A.3d 1268, 1274 (Pa. 2014) (quoting *In re F.C. III*, 2 A.3d 1201, 1212 (Pa. 2010)). As set forth in his Petition for Allowance of Appeal to this Court ("Petition"), 562 MAL 2024, at 3-5, Mr. King preserved his three questions presented.

Mr. King preserved his first question presented, that a *de facto* life sentence without parole for a child capable of change and rehabilitation constitutes a cruel punishment prohibited by Section 13, in his Sentencing Memorandum to the trial court dated October 21, 2022, page 5:

> [A] *de facto* life sentence may violate the Pennsylvania Constitution's prohibition against "cruel punishment." The Pennsylvania Constitutional protection against "cruel punishment" is broader than the United States Constitutional prohibition against "cruel and unusual punishment." *Cf.* U.S. CONST. Amend. 8; PA. CONST. art. 1, § 13.

R. 452a (Docket Entry).

Mr. King reiterated this argument prior to sentencing in his Supplemental Briefing Concerning the Application of *Miller v. Alabama* dated November 22, 2022 ("Supplemental Briefing"), closing argument, and Post-Sentencing Motion for Reconsideration dated December 1, 2022. R. 455a (Docket Entries), R. 393a-395a, 404a.

Mr. King preserved his second question presented, that his sentences in the aggregate constitute a functional equivalent of life without parole prohibited by Section 13, in his Post-Sentencing Motion for Reconsideration, paragraphs 2, 7, 17, 25. R. 455a (Docket Entry). He preserved his third question presented, that as

applied to Mr. King a *de facto* life sentence is disproportionate under the Eighth Amendment because he was found capable of change and rehabilitation, in his Supplemental Briefing and Post-Sentencing Motion for Reconsideration, paragraphs 2, 17-26. *Id*.

After the trial court denied Mr. King's Motion for Reconsideration, R. 1a-4a, Mr. King preserved his three questions presented in his Rule 1925(b) Statement of Errors Complained of on Appeal ("Statement of Errors"). *See* Appellant Br., App'x C, at ¶¶ 1, 2, 4, 6, 7, 8, 10, 12, 14. The Commonwealth argues that Mr. King did not preserve his Eighth Amendment argument because he did not use the terms "narrow proportionality" or "grossly disproportionate," but the Commonwealth misconstrues United States Supreme Court jurisprudence on the applicability of the Eighth Amendment to youth sentencing. Appellant Br. at 46-48. The proper standard is set forth in *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), which Mr. King refers to in his Statement of Errors where he argues that ***his sentences*** are disproportionate under the Eighth Amendment. *See* Appellant Br., App'x C, ¶¶ 6, 7, 8, 10, 11.

The trial court understood and addressed these issues in its Rule 1925 Opinion:

> The question of whether "any or all components of *Batts II* remain in place with respect to the Pennsylvania Constitution's prohibition of [']cruel punishments[']" under Article I, Section 13 of the Pennsylvania Constitution (or "further developments in the law as to the legality of

> juvenile life without parole Sentences") "remains an open question" in Pennsylvania. *See Commonwealth v. Felder*, 269 A.3d at 1247-1250 (Donahue, J. Concurring Opinion joined by Justice Todd).
>
> And so, if or until the Pennsylvania appellate courts address additional legality of the sentence claims raised by juvenile murder defendants in relation to the language and protections of Article l, Section 13 of the Pennsylvania Constitution versus the language and protections of the 8th Amendment of the U.S. Constitution (or other due process or equal protection claims), *Felder* is the controlling case law in Pennsylvania when resentencing juvenile murder defendants.
>
> Therefore, the legality of the sentence claims Appellant raises in his 1925(b) Statement are now moot. The Commonwealth was not required to prove, and this court was not required to find, Appellant "permanently incorrigible" before imposing what Appellant argues is an aggregate *de facto* life sentence.

Id., App'x B, at pp. 28-29 (footnotes and internal citations omitted).

Mr. King likewise preserved the three questions presented in his appeal to the Superior Court. The Superior Court held that it could not aggregate Mr. King's sentences under *Commonwealth v. Foust*, 180 A.3d 416 (Pa. Super. 2018), and found that even if Mr. King's combined sentences were a *de facto* life sentence, it was a product of a discretionary sentencing system and, whether viewed in the aggregate or not, did not violate the Eighth Amendment. *See* Appellant Br., App'x A at 17. The Superior Court declined to address Mr. King's challenges to his aggregated sentences under the Pennsylvania Constitution. *Id.*, at 17, n. 4.

The Commonwealth also asserts that Mr. King has now "abandoned" his claim that his aggregated sentences constitute a *de facto* life sentence that is disproportionate under the Eighth Amendment because the third question presented

did not specifically ask this Court to aggregate Mr. King's consecutive sentences to make that constitutional determination. Appellee Br. at 11-13. In the Petition, Mr. King's third question presented specifically asks the Court to review his "*de facto* life sentence," which is only *de facto* when his sentences are combined. 562 MAL 2024, at 2, 29. The Petition also asks this Court to decide whether "as applied to Mr. King, the aggregate sentence of 80 years to life is disproportionate under the Eighth Amendment." *Id*., at 32. Indeed, for this Court to find in favor of Mr. King, it will necessarily have to agree that Mr. King's four consecutive 20-years to life sentences aggregate to an 80-years to life sentence. Thus, if not explicitly stated, the issue is "fairly suggested" by Mr. King's third question presented and therefore preserved. Pa.R.A.P.2116(a). Indeed, Mr. King fully briefed the issue of aggregation in his opening brief, citing case law supporting the proposition that aggregate *de facto* life without parole sentences for youth found to be capable of change and rehabilitation are disproportionate under the Eighth Amendment and Section 13. *See* Appellant Br. at 7 ("Mr. King raises three questions… [including] whether Mr. King's aggregated sentence of 80 years is an unconstitutional sentence as applied to him under the Eighth Amendment."); *id.*, at 10 ("the aggregate sentence of 80 years to life is unconstitutionally disproportionate under the Eighth Amendment."); *see also id.*, at 39, 42.

B. SECTION 13 PROHIBITS COURTS FROM IMPOSING ACTUAL OR *DE FACTO* LIFE WITHOUT PAROLE SENTENCES ON YOUTH CAPABLE OF CHANGE AND REHABILITATION

1. This Court Has Not Yet Addressed Mr. King's First Question Presented.

The Commonwealth argues that this Court addressed and resolved Mr. King's first question presented in *Commonwealth v. Batts*, 66 A.3d 286 (Pa. 2013) ("*Batts I*"). Appellee Br. at 28-30. This is incorrect. Mr. King argues that "cruel punishments," as that term was understood and intended by its drafters when Section 13 was proposed and adopted, means punishments more severe than necessary to deter crime and reform those who have been convicted. He asserts that life or *de facto* life without parole sentences (hereinafter, "life or *de facto* life sentences") for youth who are capable of change and rehabilitation are cruel because they neither deter crime nor rehabilitate the youth. In contrast, the issue in *Batts I* was whether "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,'" such as Mr. King urges here. 66 A.3d at 298 (emphasis added).

Further, Batts's arguments were not premised on a historical account of the meaning of "cruel punishments," and this Court stated that its decision was limited to the arguments Batts presented, concluding "nothing" in his arguments supported a broader proportionality rule. *Id.* at 299. In contrast, Mr. King's argument is

premised upon a historical account that establishes that the term "cruel punishments" in Section 13 means something different than "cruel and unusual punishments" in the Eighth Amendment. Appellant Br. at 15-24. Justice Donohue's concurrence in *Commonwealth v. Felder*, where she summarizes the decision in *Batts I*, observes that in *Batts I* there was not "directed advocacy on the separate question of whether the [Section 13 and the Eighth Amendment] should be identical for all purposes…." *Felder*, 269 A.3d 1232, 1248 (Pa. 2022).

The Commonwealth also argues that this Court's finding in *Felder* that "absent some constitutional impetus, [the *Batts II*] procedures are no longer the product of a proper exercise of this Court's authority over judicial administration," 269 A.3d at 1244, implies that *Batts I* resolved all questions about the meaning of Section 13's applicability to youth sentences because, if it had not, this Court would have relied on Section 13 to avoid eliminating the *Batts II* procedures. Appellee Br. at 28-30. But, as Justice Donohue noted in her concurrence, *Felder* "addresses only the constitutional mooring with respect to the Eighth Amendment. It remains an open question whether any or all components of *Batts II* remain in place with respect to the Pennsylvania Constitution's prohibition of 'cruel punishments.'" 269 A.3d at 1247 (internal footnote omitted). Thus, Mr. King's first question presented was not addressed in *Batts I* and is ripe for review now.

2. An *Edmunds* Analysis Supports a Finding that An Actual Life or *De Facto* Life Without Parole Sentence for A Youth Found to Be Capable of Change and Rehabilitation is An Unconstitutional Cruel Punishment

a. This Court Has Not Held that Section 13 and the Eighth Amendment Are Coextensive in The Context of Youth Sentences

The Commonwealth argues that, although the text of Section 13 and the Eighth Amendment are different, this Court has previously held that Section 13 is coextensive with the Eighth Amendment, citing *Commonwealth v. Zettlemoyer*, 454 A.2d 937 (Pa. 1982). *See* Appellee Br. at 31-32. *Zettlemoyer* is distinguishable because it spoke to a coextensive standard only within the context in which that case was decided. *See Commonwealth v. Means*, 773 A.2d 143, 151 (Pa. 2001) (acknowledging that *Zettlemoyer* rejected only the argument that Section 13 provided greater protection against the imposition of a sentence of death than the Eighth Amendment). The other cases cited by the Commonwealth are also distinguishable because they do not address Section 13 in the context of youth sentences. *See Commonwealth v. Real Prop. & Improvements*, 832 A.2d 396 (Pa. 1981) (analyzing forfeiture); *Jackson v. Hendrick*, 503 A.2d 400 (Pa. 1986) (analyzing the death penalty).

Further, the Commonwealth does not distinguish the multiple decisions from this Court emphasizing its vital role in analyzing the scope of rights under the Pennsylvania Constitution, including overruling prior precedent that it subsequently concluded was wrongly decided. *See Allegheny Reprod. Health*, 309 A.3d at 869,

933-34; *Commonwealth v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991) (collecting cases). This Court may and should address the meaning of "cruel punishments" prohibited by Section 13 in the context of youth sentences.

b. The Commonwealth Does Not Dispute that the History of Section 13 Proves that Cruel Punishments Are Punishments Unnecessary in Severity to Deter and Rehabilitate

The Commonwealth does not dispute Mr. King's detailed historical account of the meaning of "cruel punishments," including that Pennsylvania considered "cruel punishments" to be punishments unnecessary in severity to deter and rehabilitate. Appellant Br. at 15-24. Instead, the Commonwealth argues that the account of the origins and meaning of the Eighth Amendment in Justice Scalia's plurality opinion in *Harmelin v. Michigan*, 501 U.S. 957 (1991), cited in Mr. King's opening brief, is irrelevant to understanding the meaning of "cruel and unusual punishments" because it was not endorsed by a majority of the Court. Appellee Br. at 32-33. But the majority did adopt Justice Scalia's historical conclusion regarding mandatory penalties. *Harmelin*, 501 U.S. at 994-95 ("Severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense…. There can be no serious contention, then, that a sentence which is not otherwise cruel and unusual becomes so simply because it is 'mandatory.'") Moreover, this historical account of the Eighth Amendment was recently reiterated in *Bucklew v. Precythe*, which permitted a lethal injection protocol, because "what unites the punishments the

Eighth Amendment was understood to forbid, and distinguishes them from those it was understood to allow, is that the former were long disused (unusual) forms of punishment that intensified the sentence of death with a (cruel) 'superadd[ition]' of 'terror, pain, or disgrace.'" 587 U.S. 119, 133 (2019) (internal quotations omitted) (quoting *Baze v. Rees*, 553 U.S. 35, 48 (2008)).

The Commonwealth further suggests that Pennsylvanians' understanding of cruel punishments at the time Section 13 was adopted is itself irrelevant because neither Pennsylvania courts nor its General Assembly have recognized this meaning of "cruel punishments" and have, in the past, sanctioned more serious punishments for youth, like the death penalty. Appellee Br. at 34-37. But this constitutional history of the text and what it was intended to prohibit at the time it was drafted ***is*** the second *Edmunds* factor. *See Edmunds,* 586 A.2d at 896. Further, the Commonwealth's argument flouts Pennsylvania's understanding of its own Constitution, which recognizes that fundamental rights exist independent of governmental or institutional recognition. *See* PA. CONST. art. I, § 25; *W. Pa. Socialist Workers 1982 Campaign v. Conn. Gen. Life Ins. Co.*, 515 A.2d 1331, 1335 (Pa. 1986); *Allegheny Reprod. Health*, 309 A.3d at 896-97. It is the courts' "responsibility through the process of judicial review — to 'say what the law is.'" *Krasner v. Ward*, 323 A.3d 674, 695-96 (Pa. 2024) (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). Further, "'when disagreements arise, the Court has the final

word regarding the Constitution's meaning.'" *Id.* (quoting *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414, 435-36 (Pa. 2017)).

This is the first time the question about the meaning of "cruel punishments" in the context of youth sentences has been presented to this Court, which could not raise it *sua sponte* in other cases. *Commonwealth v. Bishop*, 217 A.3d 833, 841 n.10 (Pa. 2019) ("It would be untenable for a court to decide an important state constitutional question as a precedential matter in the absence of any argumentation and without any analytical treatment on its own part of the departure question[.]") Nothing in the Commonwealth's brief undermines the law and scholarship presented by Mr. King: When Pennsylvania adopted Section 13, "cruel punishments" were punishments unnecessary in severity to reform the offender and to deter crime, and only the least severe punishments for reformation and deterrence were permissible. Appellant Br. at 15-24.

c. Cases From the Highest Courts in Other States Support Finding in Favor of Mr. King

The Commonwealth argues that the decisions from the highest courts in other states are ambiguous on the issues presented. Appellee Br. at 38-45. In fact, most of those decisions share a common principle: courts in states whose constitutions prohibit certain punishments with text that differs from the Eighth Amendment have held that their constitutions prohibit life or *de facto* life sentences for a youth capable of change and rehabilitation.

Of the states that, like Pennsylvania, prohibit "cruel punishments," only Washington's Supreme Court has addressed what constitutes cruel punishment in the context of youth defendants. *See State v. Haag*, 495 P.3d 241, 248 (Wash. 2021); *State v. Bassett*, 428 P.3d 343, 353-54 (Wash. 2018). *Bassett* is particularly analogous because, contrary to the Commonwealth's characterization, the Court engaged in an *Edmunds*-like analysis that considered its state common law and constitutional history "to determine whether the Washington Constitution's ban on cruel punishment should be considered as extending broader rights to its citizens than the Eighth Amendment…." *Bassett,* 428 P.3d at 349. *Bassett* found that the "'historical evidence reveals that the framers of [Wash.] Const. art. 1, § 14 were of the view that the word "cruel" sufficiently expressed their intent, and refused to adopt an amendment inserting the word "unusual."'" *Id.* (quoting *State v. Fain*, 617 P.2d 720, 723 (Wash. 1980)). The Court concluded that "these factors weigh in favor of interpreting article I, section 14 as affording broader rights than the Eighth Amendment." *Id.*

Bassett also rejected Washington State's argument that Washington's historic sentencing practices for children, including the death penalty, weighed against a ban on life without parole or other long sentences for children. Calling this historic record "shameful," the Court cited, among other things, the growing trend nationwide to prohibit or curtail youth life sentences as persuasive in concluding that

such sentences violated the Washington State Constitution. *Id.* at 352. Similarly, here, Pennsylvania's prior sentencing practices, to which the Commonwealth refers in its brief, should have no bearing on this Court's interpretation of Section 13 in light of the historical evidence.

Notably, the Commonwealth does not address *Haag*, where the Washington Supreme Court held that the youth's 46-year minimum sentence amounted to a *de facto* life sentence, and violated both the Eighth Amendment and its constitution because, as in Mr. King's case, the resentencing court "expressly found Haag was 'not irretrievably depraved nor irreparably corrupt'" but erroneously "placed far more emphasis on retributive factors than on mitigation factors when determining" the new sentence. 495 P.3d at 251 (citation omitted).[1]

The Commonwealth cites the Delaware Supreme Court's decision, *Sanders v. State*, 585 A.2d 117, 144 (Del. 1990), because the Delaware Constitution mirrors Pennsylvania's prohibition on "cruel punishments." Appellee Br. at 42-43. But *Sanders* is distinguishable because it does not address youth sentences, and because Delaware's Constitution, like the Eighth Amendment, traces its heritage to the English Bill of Rights of 1689. *Sanders,* 585 A.2d at 144. As set forth in Mr. King's

[1] One year later, in *State v. Anderson*, the Court clarified: "*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 for youth whose crimes do not reflect the mitigating qualities of youth).

opening brief and section II.B.2.b, *supra*, Section 13's "cruel punishments" prohibition is rooted in Enlightenment philosophy, unlike the Eighth Amendment, which was predicated on the English Bill of Rights. *See* Appellant Br. at 15-24.

The Commonwealth also asserts that other court decisions prohibiting life or *de facto* life sentences for youth capable of change and rehabilitation are distinguishable because those cases relied upon their constitutions' prohibitions on "cruel or unusual" punishments. Appellee Br. at 39-40. The text of these cases tells a different story. While the Michigan and Massachusetts Supreme Courts employed disproportionality tests in rendering their decisions, relevant here is that both courts focused on the "the important mitigating ways that children are different from adults." *People v. Stovall*, 987 N.W.2d 85, 91 (Mich. 2022); *see also Diatchenko v. District Attorney for the Suffolk District*, 1. N.E.3d 270, 283-85 (Mass. 2013) (youth life without parole sentence "is disproportionate not with respect to the offense itself, but with regard to the particular offender.")

The Commonwealth also attempts to distinguish cases from Alaska. Appellee Br. at 39. Alaska's Supreme Court has not addressed this issue, but its intermediate appellate courts have construed its state constitution's prohibition on "cruel and unusual punishments" as "requir[ing] a sentencing court to affirmatively consider the juvenile offender's youth and its attendant characteristics and to provide an on-the-record sentencing explanation that explicitly or implicitly finds that the juvenile

offender is one of the 'rare' juvenile offenders 'whose crime reflects irreparable corruption.'" *Fletcher v. State*, 532 P.3d 286, 308 (Alaska Ct. App. 2023). In explaining its rationale, *Fletcher* distinguished *Jones v. Mississippi*, 593 U.S. 98, 120 (2021): "the federalist concerns that led to the restrained approach adopted by *Jones* are not at issue when state courts are determining the scope and meaning of their own independent state constitutions … Alaska law has a well-established tradition of requiring on-the-record sentencing explanations and meaningful appellate review of criminal sentences." 532 P.3d at 308-09. Pennsylvania similarly requires a statement of the reason or reasons for the sentence imposed. 42 Pa.C.S. § 9721(b).

Finally, the Commonwealth cites cases where courts have ruled their constitutions are coextensive with the Eighth Amendment, but these cases are distinguishable. Appellee Br. at 41-42. They neither address youth sentencing nor contain any analyses of the history of their constitutional provisions. *See State v. Wilson*, 413 S.E.2d 19 (S.C. 1992) (death sentence for mentally ill adult was not disproportionate, overruled by *Roper v. Simmons*, 543 U.S. 551 (2005)); *State v. Venman*, 564 A.2d 574 (Vt. 1989); (addressing constitutionality of sentence for adult convicted of filing false Medicaid claims); *State v. Taylor*, 70 S.W.3d 717, 720 (Tenn. 2002) (addressing whether fine for DUI was "cruel and unusual").

d. Pennsylvania Policy Reflects an Abiding Concern that Youth Defendants Be Treated Differently.

The Commonwealth does not dispute that "there is an abiding concern, in Pennsylvania, that juvenile offenders be treated commensurate with their stage of emotional and intellectual development and personal characteristics," *Batts I*, 66 A.3d at 299, or that Pennsylvania has a long history of providing special sentencing protections to youth. Appellant Br. at 30-32. Instead, the Commonwealth argues that finding in Mr. King's favor would overturn "decades and centuries of law…," that it is the legislature's right to fix punishment, and that finality in sentences is important. Appellee Br. at 44-45. As addressed in section II.B.2.a, *supra*, this Court has not previously addressed Mr. King's question presented, and it is this Court's responsibility to say what the law is. *See Krasner*, 323 A.3d at 695–96. It is also this Court's role to interpret Pennsylvania's Constitution and determine when a policy or law violates those fundamental rights independent of governmental or institutional recognition. *See* Pa. Const. art. I, § 25; *W. Pa. Socialist Workers 1982 Campaign*, 515 A.2d at 1335; *Allegheny Reprod. Health*, 309 A.3d at 896-97. Thus, if this Court finds that Section 13's prohibition on cruel punishments prohibits sentencing a youth capable of change and rehabilitation to life or *de facto* life, it is because that right is inherent to all Pennsylvanians, and all sentences which violate that right were never properly imposed to begin with.

The Commonwealth also asserts, without citing facts, that finding in Mr. King's favor will require courts to resentence more than 500 juvenile lifers. Appellee Br. at 34. To the contrary, the Juvenile Lifer Statistics published by the Commonwealth as of January 31, 2025 reflect that, of the 520 juvenile lifers, 497 have been resentenced and, of those, 318 have been released or died prior to release.[2] While there does not appear to be published data on the number of the currently incarcerated juvenile lifers who are serving life or *de facto* life sentences, the number is far fewer than alleged by the Commonwealth.

e. Based Upon the *Edmunds* Analysis, a Life or *De Facto* Life Sentence for a Youth Found to Be Capable of Change and Rehabilitation Is an Unconstitutional Cruel Punishment.

Even though the Commonwealth told the trial court to credit Mr. King for his change and rehabilitation, R. 410a-411a, 418a, 423a, 429a, the Commonwealth now argues that the trial court's own findings that Mr. King is capable of change and rehabilitation were merely "gratuitous," where the trial court concluded that the crimes were part of an "ongoing drug business rather than the commission of a crime reflective of 'transient immaturity.'" Appellee Br. at 21-22. If the Commonwealth suggests "gratuitous" in this context means unwarranted or without merit, then the Commonwealth is incorrect because the sentencing judge found that "***[Mr. King]***

[2] *Official Website of the Commonwealth of Pennsylvania*, Juvenile Lifer Statistics, (last visited Nov. 18, 2025), https://www.pa.gov/agencies/parole/resources/statistics.

has demonstrated a capacity for change" and "***[the trial court] did find that [Mr. King] was capable of rehabilitation***…." R. 54a, R. 438a (emphasis added), a finding supported by unrebutted expert testimony that Mr. King meets all the *Miller* factors. R.60a-90a, 321a-363a. Finally, the trial court's imposition of sentences of 20 years to life for each victim — substantially below the mandatory minimum of 35 years to life under the current Pennsylvania statute, 18 Pa.C.S. § 1102.1(a)(1) — is a further testament to the trial court's determination that Mr. King has the capacity for rehabilitation and its belief in his reduced culpability.

As set forth fully in Mr. King's opening brief, sentencing a youth capable of change and rehabilitation to either a life or a *de facto* life sentence is a cruel punishment. Appellant Br. at 32-25. Based upon extensive scientific research on the developmental and neurological attributes of youth, we now know that the threat of a lifetime in prison does not deter youth, nor will it reform them. Indeed, as set forth in the unrebutted testimony of Mr. King's expert witness in prison adjustment and readiness for release from incarceration, research shows youth age out of criminal behavior even without punishment. R. 97a-98a, 265a. Here, however, because the trial court found that Mr. King is capable of change and rehabilitation, sentencing Mr. King to a *de facto* life sentence is unconstitutional under Article 1, Section 13.

C. THIS COURT SHOULD FOLLOW THE MAJORITY OF COURTS AND FIND THAT AGGREGATE SENTENCES THAT CONSTITUTE *DE FACTO* LIFE WITHOUT PAROLE SENTENCES TRIGGER CONSTITUTIONAL PROTECTIONS.

1. Evaluating the Constitutionality of Mr. King's Four 20-Years-to-Life Sentences in the Aggregate Does Not Run Afoul of this Court's Concern Regarding "Volume Discounts" in Sentencing.

Mr. King asks this Court to hold that when a youth is sentenced to multiple terms of years sentences, which in the aggregate constitute a functional life sentence, Section 13's protections against cruel punishments apply. He does not, as the Commonwealth suggests, ask this Court to hold either that consecutive sentences *per se* violate Section 13 or that trial courts are prohibited from imposing separate sentences for multiple crimes committed by the youth.[3]

Contrary to arguments of the Commonwealth and its *amici*, or the Superior Court's reasoning in *Foust* — which has no precedential value before this Court — Mr. King's position does not run afoul of Pennsylvania case law that disfavors "volume discounts." This Court's decisions disapproving of "volume discounts" arise in the context of the merger doctrine or compulsory joinder. In *Commonwealth v. Anderson*, cited by the Commonwealth, this Court held that "the same facts may support multiple convictions and separate sentences for each conviction except in cases where the offenses are greater and lesser included offenses" asserting that the purpose of the rule is to avoid giving criminals a "'volume discount' on crime." 650

[3]This is why an *Edmunds* analysis is not necessary, contrary to the Commonwealth's brief. Appellee Br. at 48-56.

A.2d 20, 22 (Pa. 1994). Other cases cited by the Commonwealth and *amici* from this Court that disfavor "volume discounts" address it in the context of the merger doctrine or compulsory joinder. *See Commonwealth v. Belsar*, 676 A.2d 632 (Pa. 1996) (merger doctrine); *Commonwealth v. Gatling*, 807 A.2d 890, 892 (Pa. 2002) (same); *Commonwealth v. Davidson*, 938 A.2d 198, 218 (Pa. 2007) (same); *Commonwealth v. Nolan,* 855 A.2d 834, 840 (2004); *Commonwealth v. Reed*, 990 A.2d 1158, 1161 (Pa. 2010). Notably, none of these cases involve either youth defendants or the constitutionality of aggregated sentences.

Thus, while the Commonwealth and its *amici* are correct in rooting their "volume discounts" argument in *Anderson*, they confuse sentencing issues arising in cases involving merger of some or all offenses with sentencing in cases involving distinct and separate crimes. Where crimes merge, separate sentences may not be meted out for each of the merged criminal convictions. Where they do not merge, however, separate sentences *should* be imposed for each separate crime. In other words, in this Court's cases cautioning against "volume discounts," the caution is against imposing a single sentence for multiple, separate criminal acts, *i.e.* the "discount" referred to is a reduction in the number of sentences. Here, Mr. King received four first degree murder sentences, one for each homicide victim, and he does not seek a reduction in that number. Mr. King argues that when a trial court imposes multiple sentences on a youth that aggregate to a *de facto* life sentence, it is

the total number of years the youth must serve that must withstand constitutional scrutiny.

Regardless, 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). If this Court holds in Mr. King's favor, nothing will prevent trial courts from imposing separate consecutive sentences for multiple counts of first-degree murder. *See* 42 Pa.C.S. § 9721(a).

2. When Consecutive Sentences in the Aggregate Constitute a *De Facto* Life Sentence for a Youth, Section 13's Protections Apply.

This Court should join the chorus of other state supreme and intermediate appellate courts that have held that the constitutionality of multiple sentences should be considered in the aggregate. Appellant Br. at 41-43 (listing cases). The Commonwealth does not directly address these cases. Instead, it reviews case law on this issue and concludes that the rationale in these cases turn on the unique policies of each state. Appellee Br. at 49-51. In fact, the through-line among these cases, whether decided under the Eighth Amendment or state constitutions, is the agreement that children are different from adults, with diminished moral culpability and the capacity to demonstrate growth and maturity. This is why retribution, which the Commonwealth concedes is one of the implicit penological justifications for a consecutive sentence structure, does not justify imposing a *de facto* life sentence on

a youth capable of change and rehabilitation. Retribution is related to moral culpability, and substantial psychological and neurological research confirms that youth have reduced moral culpability and a greater chance at reform. *See Miller*, 567 U.S. at 471-72.

For example, the Supreme Court of Ohio endorsed this reasoning when it rejected the argument "that *Graham* does not extend to juveniles sentenced to lengthy prison terms consisting of multiple, consecutive fixed-term sentences," acknowledging "[w]hether the sentence is the product of a discrete offense or multiple offenses, the fact remains that it was a juvenile who committed the one offense or several offenses and who has diminished moral culpability." *State v. Moore*, 76 N.E.3d 1127, 1142 (Ohio 2017). Similarly, the Nevada Supreme Court held that "the *Graham* rule applies to aggregate sentences that are the functional equivalent of a sentence of life without the possibility of parole" because "[t]he functional-equivalent approach best addresses the concerns… regarding the culpability of juvenile offenders and the potential for growth and maturity of these offenders." *State v. Boston*, 363 P.3d 453, 457-58 (Nev. 2015). And both the Wyoming and Iowa Supreme Courts have observed that children are constitutionally different from adults for sentencing purposes and "[a] juvenile offender sentenced to a lengthy aggregate sentence 'should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under

Miller.'" *Bear Cloud v. State*, 334 P.3d 132, 142 (Wyo. 2014) (quoting *State v. Null*, 836 N.W.2d 41, 72 (Iowa 2013)).

The minority of state courts that held otherwise under the Eighth Amendment did so either because the defendant would be eligible for parole in their 50s, *see Lucero v. People*, 394 P.3d 1128, 1133 (Colo. 2017), or like *Foust*, 180 A.3d at 421-22, based upon a narrow interpretation of *Graham* and *Miller*.[4] *Foust* also does not grapple with the fact that its decision allows judges to design sentence structures solely to evade constitutional scrutiny, and that while it guarantees constitutional review for youth with, for example, concurrent 80-year-to-life sentences, it denies constitutional review to youth like Mr. King, whose aggregate consecutive sentences mean they must also wait 80 years before parole eligibility. *See State v. Zuber*, 152 A.3d 197, 211-12 (N.J. 2017).

Consistent with the majority of other state court cases, this Court should hold that it is an unconstitutional cruel punishment to sentence a youth capable of change and rehabilitation to a life or *de facto* life sentence, including in the aggregate. To hold otherwise would allow Section 13 to be "circumvented simply by stating the sentence in numerical terms that exceed any reasonable life expectancy rather than

[4] *See State v. Slocumb*, 827 S.E.2d 148, 155 (S.C. 2019); *Proctor v. Kelley*, 562 S.W.3d 837, 842 (Ark. 2018); *State v. Helm*, 431 P.3d 1213, 1215 (Ariz. Ct. App. 2018); *Veal v. State*, 810 S.E.2d 127, 128-29 (Ga. 2018).

labeling it a 'life' sentence." *Carter v. State*, 192 A.3d 695, 737 (Md. 2018) (Barbera, C.J., concurring in relevant part).

Additionally, *Amicus* Pennsylvania District Attorneys Association's suggestion that this Court should deny relief to Mr. King because he can apply for clemency is unavailing. Clemency is a discretionary power of the executive branch, not a constitutional right. *Commonwealth v. Michael*, 56 A.3d 899, 903-04 (Pa. 2012). Executive discretion does not supplant the judiciary's authority to correct a sentence that violates the Pennsylvania Constitution. Indeed, if the Commonwealth's contention that the executive branch can cure unconstitutional sentences through clemency is correct, then there would be no point in this Court or any court ever ruling on criminal defendants' constitutional sentencing claims.

Finally, the Commonwealth does not dispute that Mr. King's 80-years-to-life aggregated sentences constitute a *de facto* life sentence and takes no position on what term of years constitutes a *de facto* life sentence, other than to argue that there is no consensus among other courts. Appellee Br. at 49-51. As set forth fully in Mr. King's opening brief, there is a clear trend in other states, both in case law and statutory law, to set that number between 20 and 25 years. Appellant Br. at 44-45. This Court should hold that Mr. King's 80-years-to-life aggregated sentence constitutes a *de facto* life sentence and that where, as here, the current sentencing statute 18 Pa.C.S.A.§ 1102.1(a)(1) does not apply but sets forth a sentencing scheme

going forward, and where the youth has demonstrated he is capable of change and rehabilitation, that youth should be eligible for parole after serving no more than 35 years. Appellant Br. at 45.

D. *JONES* DID NOT CLOSE THE DOOR ON MR. KING'S AS APPLIED EIGHTH AMENDMENT CHALLENGE

The Commonwealth argues that *Jones* did not "open[] the door" for Mr. King to make an as-applied challenge to his *de facto* life sentence under the Eighth Amendment. Appellee Br. at 14. But *Jones* did not need to open a door. Any youth defendant has the right to make as applied challenges to the constitutionality of their sentences. *See Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) (as applied challenges are "'the basic building blocks of constitutional adjudication.'") (quoting Fallon, *As-Applied and Facial Challenges and Third–Party Standing*, 113 Harv. L.Rev. 1321, 1328 (2000)). The more appropriate idiom, and the correct conclusion, is that *Jones* did not close the door on youth making as applied challenges to the constitutionality of their life or *de facto* life sentences as disproportionate under the Eighth Amendment. This is because the Supreme Court only ruled on Mr. Jones's sole categorical challenge to all life without parole sentences for youth where a court had not made a separate finding of permanent incorrigibility, thus "leav[ing] open the possibility of an 'as-applied Eighth Amendment claim of disproportionality.'" *Jones,* 593 U.S. at 144 n.6 (Sotomayor, J., dissenting); *id*. at 120 (The majority holding that "this case does not properly present—and thus we do not consider—

any as-applied Eighth Amendment claim of disproportionality regarding Jones's sentence).

The Commonwealth's second argument is that Mr. King seeks to create a rule that a sentencing court must find a youth to be permanently incorrigible before imposing a life or *de facto* life sentence. But Mr. King's argument is different. He argues that, while a trial court is not required to make such a finding, when a trial court does make an express finding that a youth is capable of change and rehabilitation, a *de facto* life sentence, i.e. the aggregate of his combined sentences, is disproportionate under the Eighth Amendment. Appellant Br. at 46-56. As set forth fully in Mr. King's opening brief, *Miller* recognized that the unique attributes of youth rendered life without parole, even for youth convicted of homicide, a cruel and unusual punishment for all but "the rare juvenile offender whose crime reflected irreparable corruption." *Miller,* 567 U.S. at 479-80; *see also Montgomery*, 577 U.S. at 208 (recognizing that *Miller* created a new substantive rule of constitutional law).

The Commonwealth and its *amici* interpret *Jones* as abandoning *Miller* and *Montgomery*. To the contrary, *Jones* stated explicitly that the decision "carefully follows both *Miller* and *Montgomery*," 593 U.S. at 130, and upheld *Montgomery*'s substantive constitutional rule, reciting "the key paragraph from *Montgomery*… That *Miller* did not impose a formal fact-finding requirement does not leave States free to sentence a child whose crime reflects transient immaturity to life without

parole. To the contrary, ***Miller established that this punishment is disproportionate under the Eighth Amendment***." *Id.* at 106, fn. 2 (emphasis added). While *Jones* may have held that the Eighth Amendment does not require trial courts to make a formal on-the-record fact-finding, Mr. King's sentencing judge chose to do so, and once it found him capable of change and rehabilitation, it had a legal obligation to sentence him to something less than life without parole.

The open question for this Court is which standard should be used for addressing Mr. King's as applied Eighth Amendment challenge. The Commonwealth argues that *Jones* did not intend to incorporate the standard of review for categorical challenges for youth applied by *Miller* and *Graham*. The majority in *Jones* was silent on this point, but the dissent was not: "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 (quoting, *Montgomery*, 567 U.S. at 481) (Sotomayor, J., dissenting). *Miller* and *Graham* 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. Accordingly, this Court should apply the same legal standard to as

applied challenges to the Eighth Amendment by youth as the Supreme Court applied in categorical challenges.

This Court should reverse the Superior Court's holding that Mr. King's *de facto* life sentence does not violate the Eighth Amendment. Eighty years is obviously the equivalent of life without parole. For a youth found capable of maturity and rehabilitation, that sentence, as aggregated, violates the Eighth Amendment.

III. CONCLUSION

For the foregoing reasons, this Honorable Court should grant the relief sought by Mr. King in his opening brief Section VIII, 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 this Court's decision, and to impose sentences that individually or in the aggregate do not exceed 35 years to life.

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Dated: November 18, 2025

CERTIFICATIONS

This 18th day of November, 2025, I certify:

Word count. This brief contains fewer than 7,000 words as prescribed by Pa. R. App. P. 2135.

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