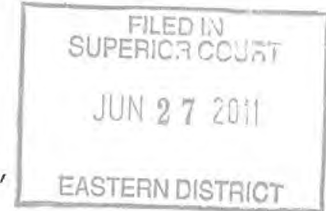
IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

NO. 3427 EDA 2010



COMMONWEALTH OF PENNSYLVANIA,
APPELLEE

VS.

AARON PHILLIPS,
APPELLANT

BRIEF FOR APPELLEE

Appeal from the Order of the Honorable Richard J. Hodgson, President Judge, dated November 30, 2010, denying relief under the Post-Conviction Relief Act, IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA, CRIMINAL DIVISION, at No. 25720-1986

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COUNTER STATEMENT OF QUESTIONS PRESENTED

I. WHETHER DEFENDANT'S FOURTH PCRA PETITION IS TIME-BARRED AS IT WAS FILED MORE THAN A DECADE AFTER HIS JUDGMENT OF SENTENCE BECAME FINAL, AND HE HAS FAILED TO MEET HIS BURDEN OF ESTABLISHING THE APPLICABILITY OF ANY OF THE STATUTORILY-ENUMERATED EXCEPTIONS TO THE TIME-BAR?

(answered in the affirmative by the trial court)

COUNTER STATEMENT OF THE CASE

On January 4, 1988, Aaron Phillips ("defendant") was convicted of second-degree murder and related offenses. He was sentenced to life imprisonment for second-degree murder. At the time of the murder, defendant was seventeen-years-old.

On July 16, 2010, more than two decades after his sentence was imposed, defendant filed the PCRA petition that gave rise to this appeal, his fourth. In the petition, he alleged he was entitled to relief on the basis of the recent United States Supreme Court decision of *Graham v. Florida*, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010), which held that it is unconstitutional to sentence a juvenile to life imprisonment without parole where the juvenile was convicted of a *non*-homicide offense. As noted, defendant was convicted of a *homicide* offense.

FACTUAL HISTORY

On the night of July 9, 1986, defendant approached Dennis Andrew Gibbs and asked him if he wanted "to get paid"—in other words, rob someone (N.T. Trial, 12/29/87, pp. 218-219). After Gibbs responded that he did, defendant informed him of the proposed target; an elderly man who lived nearby, whose house defendant had already "checked out" earlier in the evening (*id.* at 219-220). Defendant and Gibbs then left the residence they shared with the intent of robbing eighty-six year old Anthony McEvoy (*id.* at 218-222).

Upon arriving at the McEvoy home, the back door was unlocked; defendant snuck into the house and hid in the kitchen next to the refrigerator (*id.* at 223, 225). Gibbs then knocked on the door. As Mr. McEvoy responded to Gibbs' knock and

opened the door, defendant grabbed him from behind in a "full nelson," using such force that he was lifted completely off the ground (*id.* at 223-227). Thereupon, Gibbs entered the house and rifled through Mr. McEvoy's pockets, taking his wallet (*id.* at 223, 227). After he took the wallet, Gibbs fled, but as he looked back, he saw defendant lift Mr. McEvoy in the air. He then heard a scream[1] (*id.* at 223, 228 269).

The police were summoned to the McEvoy residence shortly after the burglary. Upon arrival, they noticed that Mr. McEvoy appeared to be in pain and was having trouble walking—he was hunched over and was walking with a severe limp. He also had blood on his forehead (*id.* at 120-121, 149).

Mr. McEvoy's daughter-in-law, Esther Giovinazzo, also arrived at the residence shortly after the incident. She testified that when she arrived, her father-in-law informed her that he was thrown against something and onto the floor and "they hurt [him] very badly." (N.T. Trial, 12/28/87, pp. 29-30, 35). She observed blood on his face and on the wall, and she also observed that he was having difficulty getting around and kept holding onto his side (*id.* at 32, 35, 44).

Ms. Giovinazzo further testified that her father-in-law was not sick or hurt before this incident (*id.* at 32, 44, 55). James Cain, M.D., Mr. McEvoy's family physician who

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[1] In his brief, defendant contends that there was conflicting testimony about his involvement in the case. More specifically, he contends that "[o]ne witness testified that Mr. Gibbs told him that Mr. Gibbs choked the victim and took his wallet ... though Mr. Gibbs testified that [defendant] grabbed the victim." *Defendant's Brief,* p. 6 (citing N.T. 12/28/87, pp. 190, 226-227). Contrary to defendant's assertion, there was no evidence presented at trial that Gibbs pushed Mr. McEvoy to the ground, or otherwise physically assaulted him. To the contrary, the record reveals that *defendant* physically assaulted Mr. McEvoy, while Gibbs merely searched his pockets.

saw him as a patient twice a month, and last saw him within a couple of weeks before the robbery, also testified that he was in good health for someone his age and able to perform daily activities (N.T. Trial, 12/30/87, p. 291). While Dr. Cain testified that Mr. McEvoy did have some physical ailments, he stated that they were all under control and none of them were life-threatening (*id.* at 290-291, 300).

Mr. McEvoy was transported to the hospital shortly after the assault, where he was found to have trauma to the chin, extensive bruising of the back and a hip fracture of the left femur (*id.* at 333). He returned home later that night, as he wanted to get home to his ailing wife (N.T. 12/28/87, p. 44). Upon returning home, however, he could not stand; he had to be carried out of the car and into the house (*id.* at 44-45). He returned to the hospital the next morning[2] (N.T. 12/28/98, pp. 51-52).

Upon returning to the hospital, Mr. McEvoy had surgery to repair the fractured femur he suffered as a result of the robbery (N.T. 12/30/87, p. 293). Shortly thereafter, he suffered a bowel obstruction, which was caused by the use of anesthesia during the hip operation. A successful second operation was performed to clear the blockage (*id.* at 293-294). Mr. McEvoy then developed a ventricular arrhythmia, unrelated to a prior heart condition (*Id.* at 294-297). He died several days later—eighteen days after the assault committed upon him by defendant.

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[2]The hip fracture was not initially noted by the emergency room doctor who viewed Mr. McEvoy's X-rays on the night of the incident. Rather, it was discovered by the X-ray doctor, who viewed the X-rays after Mr. McEvoy had already been discharged from the hospital. Dr. Cain explained that fractures in the elderly are "very hard to see" because the calcium level of the bone is very faint (N.T. 12/30/87, p. 305).

Dr. Fillinger, a forensic pathologist, testified that "[t]here is a direct causal relationship between the fracture [of Mr. Elroy's femur] and the subsequent events that produced this man's death. It is the underlying cause of death; the terminal mechanism being one of a cardiac nature but the underlying mechanism of death goes to the root of the trauma, the fracture of the left femur" (*id.* at 332-333). More specifically, Dr. Fillinger opined, to a reasonable degree of medical certainty, that the initial injuries started an unbroken chain of events which ultimately resulted in Mr. McEvoy's death (*id* at 333). In this regard, he explained:

> The initial trauma of the deceased ... consists of three separate points: the trauma to the chin; the extensive bruising of the back, and the blunt impact on the left thigh caused the production of a fracture for which he went to the hospital, was examined, returned the following day to be treated for the fracture of the hip and X-rays disclosed it was, in fact, fractured.
>
> As a result of that fracture and the shock produced by the surgery which was necessitated in repairing the fracture, produced what is known as an ileus which is a blockage of the bowel. The bowel became entrapped behind adhesions from a previous operation.
>
> This contention was relieved but the stresses resultant from that procedure as well as from the fracture caused changes in the heart muscle which subsequently produced his death.

(*Id.* at 333-334). Dr. Fillinger then stated that he was unaware of any supervening cause of Mr. McEvoy's death (*id.* at 340-341).

Finally, Dr. Fillinger stated that Mr. McEvoy's hip injury was consistent with a person being thrown to the ground; the injury to the back of the body with extensive

bruising was consistent with a knee into the back; and the injury to the chin was consistent with the application of a full nelson, if it is done with such violence to lift the body off the ground (*id* at 338-339).

PROCEDURAL HISTORY

On January 4, 1988, defendant was convicted of second-degree murder and related offenses[3] following a bench trial. On September 16, 1988, he was sentenced to life imprisonment without parole for his second-degree murder conviction. This Court affirmed the conviction on appeal. *Commonwealth v. Phillips*, 2798 EDA 1988 (Pa. Super. Apr. 18, 1990) (Memorandum). On March 28, 1991, the Pennsylvania Supreme Court denied *allocatur*.

On July 27, 1995, defendant filed his first petition pursuant to the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §9541, *et seq.*, alleging, *inter alia*, ineffective assistance of counsel. Following an evidentiary hearing, his petition was denied. This Court affirmed the trial court's denial of PCRA relief. *Commonwealth v. Phillips*, 716 PHL 1998 (Pa. Super. Oct. 21, 1998) (Memorandum).

On July 1, 1998, defendant filed a second PCRA petition. Following the filing of a "no merit" letter pursuant to *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988), the court dismissed defendant's petition without a hearing, and this Court affirmed the

[3] Specifically, defendant was convicted of burglary, aggravated assault, robbery, simple assault, criminal conspiracy, theft by unlawful taking, and recklessly endangering another person.

dismissal. *Commonwealth v. Phillips,* No. 3329 EDA 1999 (Pa. Super. Aug. 24, 2004) (Memorandum).

On May 5, 2005, defendant filed a third PCRA petition, claiming, *inter alia,* that his sentence was in violation of the *Roper v. Simmons,* 543 U.S. 551 (2005), which held that the Eighth and Fourteenth Amendments prohibit the imposition of the death penalty on those who were under the age of eighteen at the time they committed their crimes. The court dismissed this petition on the basis of untimeliness. This Court affirmed on appeal. *Commonwealth v. Phillips,* 2729 EDA 2005 (Pa. Super. Sep. 20, 2006) (Memorandum).

On July 16, 2010, defendant filed the PCRA petition that forms the basis of this appeal, his fourth, alleging that his life without parole sentence violates both the Pennsylvania and United States Constitution. In support of this claim, defendant relies on the recent United States Supreme Court case of *Graham v. Florida, supra*, which held that it is unconstitutional to sentence a juvenile to life imprisonment without parole where the juvenile was convicted of a *non-homicide offense*. The trial court dismissed defendant's petition without a hearing on the basis of untimeliness, and this appeal followed.

SUMMARY OF ARGUMENT

The trial court properly dismissed defendant's fourth PCRA petition without a hearing where said petition was time-barred. More specifically, defendant filed his petition well over a decade after his judgment of sentence became final. His reliance on *Graham v. Florida, supra,* in support of his claim that a new constitutional right has been recognized that applies retroactively to him is misplaced. The *Graham* Court stated, in no uncertain terms, that its decision applied only to those juveniles who committed *non-homicide* offenses. Defendant was convicted of a *homicide* offense. Thus, since the *Graham* decision has absolutely no bearing on this defendant's judgment of sentence, the case cannot be used by him to bring his facially-timely petition within the confines of the "newly-recognized constitutional right" exception to the PCRA time-bar.

In any event, defendant's sentence was in all respects proper. The Courts in this Commonwealth have expressly held that a sentence of life imprisonment for juvenile defendant convicted of murder offends neither the Pennsylvania Constitution nor the United States Constitution.

ARGUMENT

I. DEFENDANT'S FOURTH PCRA PETITION IS TIME-BARRED AS IT WAS FILED MORE THAN A DECADE AFTER HIS JUDGMENT OF SENTENCE BECAME FINAL, AND HE HAS FAILED TO MEET HIS BURDEN OF ESTABLISHING THE APPLICABILITY OF ANY OF THE STATUTORILY-ENUMERATED EXCEPTIONS TO THE TIME-BAR.

On July 16, 2010, more than two decades after his sentence was imposed, defendant filed the instant PCRA petition, his fourth, contending he is entitled to relief on the basis of the then-recent United States Supreme Court decision of *Graham v. Florida,* which held that it is unconstitutional to sentence a juvenile to life imprisonment without parole where the juvenile was convicted of a *non-homicide* offense. His petition was time-barred, however, so the trial court properly denied relief.

All PCRA petitions "*shall* be filed within one year of the date the judgment becomes final." 42 Pa. C.S.A. § 9545(b)(1). A judgment becomes final at the conclusion of direct review, including discretionary review, or at the expiration of time for seeking review. *Id.* at § 9545(b)(3). Where, as here, the judgment of sentence became final before the January 16, 1996 effective date of the 1995 amendments to the PCRA, a petition will be deemed timely if it was filed within one year of the effective date of the amendments, or by January 16, 1997. *Commonwealth v. Davis,* 916 A.2d 1206, 1208 (Pa. Super. 2007). Notably, the timeliness requirements of the PCRA are jurisdictional in nature; thus, neither the trial court—nor this Court for that matter—has jurisdiction to review the merits of an untimely PCRA petition. *Commonwealth v. Albrecht,* 994 A.2d 1091, 1093 (Pa. 2010). Indeed, as noted by the Pennsylvania Supreme Court, "[w]ithout

jurisdiction, we simply do not have the legal authority to address the substantive claims." *Id.* (quoting *Commonwealth v. Chester*, 895 A.2d 520, 522 (Pa. 2006)).

Here, defendant's petition for allowance of appeal to the Supreme Court in connection with his direct appeal from his judgment of sentence was denied on March 29, 1991. His judgment of sentence, therefore, became final on June 26, 1991, the date on which the time for filing a petition for a writ of *certiorari* in the United States Supreme Court expired. *See* 42 Pa. C.S.A. § 9545(b)(3); *see also* U.S. Sup.Ct. Rule 13, 28 U.S.C.A. (providing that "[a] petition for writ of *certiorari* seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when filed with the Clerk within 90 days after entry of the order denying discretionary review"). He thus had until January 16, 1997 to file a timely PCRA petition. *See Davis*, 916 A.2d at 1208. His petition was not filed until July 16, 2010, more than thirteen years later and, thus, is facially untimely; defendant must pled and prove the applicability of one of the three statutorily-enumerated exceptions to the time-bar in order to overcome the untimeliness of his petition. 42 Pa. C.S.A. § 9545(b)(1); *Commonwealth v. Dickerson*, 900 A.2d 407, 410 (Pa. Super. 2006).

Citing to *Graham*, defendant attempts to plead and prove the "newly-recognized constitutional right" exception set forth in 42 Pa. C.S.A. § 9545(b)(1)(iii). Under this subsection, a petitioner must establish the following:

> [T]he right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section *and* has been held by that court to apply retroactively.

Id. (emphasis added). Thus, a petitioner must plead and prove that there has been a "new" constitutional right and that it has been held "by that court" to apply retroactively. *Commonwealth v. Wojtaszek,* 951 A.2d 1169, 1171 (Pa. Super. 2009). Defendant has not met his burden.

Assuming *arguendo* that *Graham* did announce a new constitutional right, the Supreme Court has not made it retroactive. As noted, the PCRA explicitly requires that the Supreme Court *itself* make the new right retroactive in order to toll the one-year statute of limitations. *Wojtaszek*, 951 A.2d at 1171 (noting that the decision must be held to be retroactive by "that court" in order to toll the PCRA's time-bar); *see also Commonwealth v. Copenhefer*, 941 A.2d 646, 649-650 (Pa. 2007) (*citing Commonwealth v. Abdul-Salaam*, 812 A.2d 497 (Pa. 2002)) (same). The Supreme Court in *Graham v. Florida* did not make the right retroactive—nor has any other court[4]—and thus this Court may not apply *Graham v. Florida* to this case.

Even if the right enunciated in *Graham* were to be applied retroactively—though it clearly should not—defendant's claim nevertheless fails. Indeed, a retroactive application of *Graham* would have absolutely no bearing on this case. Thus, defendant has failed to plead and prove that he is entitled to the constitutional right enunciated therein.

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4 In considering a nearly identical claim, the district court for the District of Colorado held that *Graham's* reliance on the "evolving standards of decency" precluded a finding of retroactivity. *Jensen v. Zavaras*, 2010 WL 2825666 (D. Colo. July 16, 2010).

In *Graham v. Florida*, the United States Supreme Court held that the imposition of a life sentence without the possibility of parole for a juvenile offender convicted of a non-homicide offense constituted cruel and unusual punishment under the Eighth Amendment. 130 S. Ct. at 2017-2018, 2030. Notably, the Supreme Court expressly limited its holding to life sentences without the possibility of parole that were imposed on juvenile offenders of *non-homicide* crimes, and did not consider the constitutionality of such a sentence for juveniles convicted of homicide offenses.[5] *Id.* at 2013, 2030 ("[t]he instant case concerns only those juvenile offenders sentenced to life without parole *solely for a nonhomicide offense*") (emphasis added). Indeed, the opening line of the Court's opinion expressly details this limitation: "[t]he issue before this Court is whether the Constitution permits a juvenile offender to be sentenced to life in prison without parole for a *nonhomicide* crime." *Id.* at 2017-2018 (emphasis added).

Thus, the entire analysis conducted by the Court therein focuses solely on juvenile offenders serving life without parole sentences for *non-homicide* offenses. In fact, throughout the opinion, the Court continually distinguishes homicide offenses from non-homicide offenses. Specifically, the Court noted as follows:

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[5] Interestingly, in defendant's brief, he incorrectly avers that the *Graham* Court held the "sentence of life without parole unconstitutional as applied to a juvenile offender convicted of a felony in which he did not 'kill or intend to kill.'" *Defendant's Brief,* p. 11. Even a cursory review of *Graham* reveals that this is not the holding. Rather, as noted, the holding was that a life sentence imposed on a juvenile convicted of a non-homicide offense was unconstitutional. 130 S. Ct. at 2013, 2030. This elementary distinction between *Graham* and the case *sub judice* seems to be lost—albeit conveniently—on defendant. Indeed, he fails to even acknowledge in his brief that the *Graham* decision pertained only to non-homicide juvenile offenders.

> There is a line between homicide and other serious violent offenses against the individual. Serious nonhomicide crimes may be devastating in their harm ... but in terms of moral depravity and of the injury to the person and to the public ... they cannot be compared to murder in their severity and irrevocability. This is because [l]ife is over for the victim of the murderer, but for the victim of even a very serious nonhomicide crime, life ... is not over and normally is not beyond repair. Although an offense like robbery or rape is a serious crime deserving serious punishment, those crimes differ from homicide crimes in a moral sense.

Graham v. Florida, 130 S. Ct. at 2027 (internal quotations and citations omitted).

Thus, contrary to defendant's claims, the analysis contained in *Graham v. Florida* is not applicable to his case. Defendant was convicted of second-degree murder, a *homicide* offense. The life of defendant's victim—Anthony McEvoy—is indeed tragically over, due to defendant's own actions. *Graham,* therefore, does not mandate that defendant's life sentence be vacated.

Indeed, recently, in *Commonwealth v. Ortiz,* this Court explicitly held that the holding of *Graham* did not apply to juvenile offenders convicted of second-degree murder, and thereby concluded that the newly-recognized constitutional right exception to the one-year PCRA time-bar did not apply to the defendant's fourth petition. 17 A.3d 417, 421-422 (Pa. Super. 2011). In reaching this conclusion, the Court relied on what is manifest to all from the Supreme Court's analysis in *Graham*, but seems to be lost on defendant—"[t]he Supreme Court in *Graham* limited its holding to life sentences without the possibility of parole that were imposed on juveniles for nonhomicide crimes only, and did not consider the constitutionality of such a sentence for juveniles convicted of a homicide offense." *Id.* at 421. Thus, simply stated, the Court

in *Ortiz* concluded, "unlike in *Graham,* [this defendant] committed the crime of homicide, and thus *Graham* does not apply." *Id.* at 422. Accordingly, like the defendant in *Ortiz,* the defendant here cannot use the recent holding in *Graham* — a case which has absolutely no bearing on the outcome of his case — to save his facially untimely PCRA petition from being time-barred.

In any event, both this Court and the Pennsylvania Supreme Court have specifically held that life imprisonment for a juvenile offender convicted of murder violates neither the Pennsylvania Constitution nor the United States Constitution. Specifically, in *Commonwealth v. Sourbeer,* 422 A.2d 116, 123 (Pa. 1980), our Supreme Court held that a mandatory sentence of life-imprisonment for first-degree murder was not cruel and unusual punishment, even where the defendant was fourteen-years-old. Similarly, in *Commonwealth v. Carter,* 855 A.2d 885 (Pa. Super. 2004), this Court held that the imposition of a mandatory life sentence without parole on a juvenile offender convicted of felony murder does not constitute cruel and unusual punishment. *Id.* at 891-892; *see also Commonwealth v. Waters,* 483 A.2d 855, 861 (Pa. Super. 1984) (holding, when faced with a challenge by a sixteen-year-old defendant that his mandatory life sentence for first-degree murder was unconstitutional, that the "mandatory life sentence, as established by the legislature, is clearly not cruel and unusual punishment for the crime of first-degree murder"). Neither *Graham v. Florida* nor any other decision of the United States Supreme Court holds that sentencing a juvenile offender convicted of murder to life imprisonment violates the Eighth Amendment so as to overrule the

existing Pennsylvania precedent.[6]

Moreover, defendant's assertion that his sentence of life without parole violates Article I, Section 13 of the Pennsylvania Constitution[7] in that this provision provides juveniles greater protections than those afforded by the concomitant federal constitutional Amendment is equally unavailing. *See Defendant's Brief*, pp. 34-38. Article I, Section 13 does *not* provide broader protection than the Eighth Amendment. Indeed, it is well-settled that Pennsylvania's ban on cruel or unusual punishment is coextensive with the Eighth Amendment. *Commonwealth v. Zettlemoyer*, 454 A.2d 937, 967 (Pa. 1982); *see Commonwealth v. Cottam*, 616 A.2d 988, 1003 (Pa. Super. 1992) ("The Pennsylvania prohibition against cruel and unusual punishment is coextensive with the Eighth and Fourteenth Amendments of the United States Constitution"); *Commonwealth v. Lucas*, 622 A.2d 325, 327 (Pa. Super. 1993) ("[O]ur prior pronouncements afford the conclusion that "[t]he guarantee against cruel and unusual punishment contained in Pennsylvania Constitution's Article I, section 13, provides no broader protections

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[6] Incidentally, defendant dedicates a significant portion of his brief to a discussion of the view of the international community on life sentences for juvenile offenders, which purportedly mandates that this Court reverse defendant's sentence. *Defendant's Brief*, pp. 30-34. As aptly noted by the Court in *Graham v. Florida*, however, "judgments of other nations and the international community are not dispositive as to the meaning of the Eighth Amendment." *Graham*, 130 S. Ct. at 2033. Defendant fails to cite to any international legal agreement that is binding on the United States that prohibits life without parole sentences for juvenile offenders. Indeed, there is no such agreement.

[7] Similar to its Eighth Amendment counterpart, the Pennsylvania Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted." Pa. Const. Art. I, Sec. 13.

against cruel and unusual punishment than those extended under the United States Constitution").

Finally, it should be noted that in challenging his sentence, defendant is making precisely the same argument he made five years ago in his third PCRA petition. He seeks to have a United States Supreme Court case that clearly does not apply to his case, be extended to include his case. Only this time, instead of relying on *Roper v. Simmons*, he is relying on *Graham v. Florida*—both of which are equally inapposite. In refusing to extend *Roper v. Simmons* to defendant's case several years ago, the trial court aptly noted:

> Defendant's reliance in *Roper, supra,* is misplaced. Even if *Roper* is deemed to be retroactive, it has no application to Defendant's case since its holding involves the abolition of the death penalty for juveniles. Defendant did not receive the death penalty and Defendant's attempt to apply the rationale of *Roper* as it relates to [the death] penalty to Defendant's conviction in this case is convoluted, illogical and unavailing.

Order – Re PCRA Petition, dated May 18, 2005, ¶ 2 (Hodgson, J.)

The trial court's analysis with respect to *Roper v. Simmons* applies with no less force to defendant's current claim involving *Graham v. Florida.* Just as *Roper v. Simmons* did not apply to defendant since did not receive the death penalty, *Graham v. Florida* does not apply to him since he did not receive a life sentence for a *non-homicide* offense. Thus, like his earlier claim, his current claim that the rationale of *Graham v. Florida* is applicable to his case is equally unavailing.

Defendant, accordingly, has failed to establish that his sentence of life imprisonment for his conviction of second-degree murder is unconstitutional. Thus, even if his fourth PCRA was timely — though it clearly was not — no relief is due.

CONCLUSION

WHEREFORE, based on the foregoing, the Commonwealth respectfully requests that this Court affirm the order of the trial court dismissing as untimely defendant's fourth PCRA petition.

RESPECTFULLY SUBMITTED,

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IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA *Appellee*	:	NO: 3427 EDA 2010
V.	:	
AARON PHILLIPS *Appellant*	:	

PROOF OF SERVICE

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