

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA: EAL 2015

VS. : NO.

AARON CLAUDE PHILLIPS, :
Petitioner

PETITION FOR ALLOWANCE OF APPEAL FROM
THE SUPERIOR TO THE SUPREME COURT

Petition To Allow An Appeal From The August 11, 2015
Judgment Of The Superior Court Of Pennsylvania (No. 3005 EDA
2014) Affirming The September 26, 2014 Order of the Montgomery
Country Criminal Division at CP-46-CR-0025720-1986 Dismissing
Without a Hearing the PCRA Petition. dated 9-26-2014

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September, 2015

TABLE OF CONTENTS

| | PAGE |
|-----------------------------------|-------------|
| I. PROCEDURAL HISTORY | 1-2 |
| II. QUESTIONS PRESENTED | 2 |
| III. FACTUAL HISTORY | 2-3 |
| IV. REASONS FOR REQUESTING APPEAL | 4-8 |

EXHIBIT "A" - Superior Court Memorandum Opinion

EXHIBIT "B" - Trial Court Opinion

TABLE OF AUTHORITIES

FEDERAL CASES

| | |
|---|------------------|
| <u>Graham v. Florida</u> , 130 S.Ct. 2011 (2010) | 4, 5 |
| <u>Griffith v. Kentucky</u> , 479 U.S. 314 (1987) | 7 |
| <u>J.D.B. v. North Carolina</u> , 131 S.Ct. 2394 (2011) | 4 |
| <u>Miller v. Alabama</u> , 132 S.Ct. 2455 (2012) | 1, 2, 3, 4, 5, 6 |
| <u>Montgomery v. Louisiana</u> , 135 S.Ct. 1546 (2015) | 1, 2, 3, 4, 5, 7 |
| <u>Roper v. Simmons</u> , 543 U.S. 551 (2005) | 4 |

STATE CASES

| | |
|--|------------|
| <u>Commonwealth v. Batts</u> , 66 A.3d 286 (Pa. 2013) | 6 |
| <u>Commonwealth v. Cunningham</u> , 81 A.3d 1 (Pa. 2013) | 2, 3, 4, 5 |

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA: EAL 2015

VS. : NO.

AARON CLAUDE PHILLIPS, :
Petitioner

PETITION FOR ALLOWANCE OF APPEAL FROM
THE SUPERIOR TO THE SUPREME COURT

TO THE HONORABLE, THE CHIEF JUSTICE AND JUSTICES OF THE
SUPREME COURT:

Aaron Claude Phillips, through Bradley S. Bridge, Assistant Defender, Karl Baker, Assistant Defender, Chief, Appeals Division, Charles A. Cunningham, Acting Defender, and co-counsel, Marsha Levick, Deputy Director, Juvenile Law Center, requests the allowance of an appeal in the captioned matter and respectfully represents:

1. This is a Petition for Allowance of Appeal from the yet unpublished, Superior Court decision of August 11, 2015, in which a panel of that Court affirmed the dismissal without an evidentiary hearing of Aaron Phillips' PCRA petition even though the precise issue involved, the retroactivity of Miller v. Alabama, 132 S.Ct. 2455 (2012), is presently before the United States Supreme Court in Montgomery v. Louisiana, 135 S.Ct. 1546 (2015). The Superior Court's Opinion is attached hereto as Exhibit "A." As the trial judge's opinion is attached hereto as Exhibit "B."

This Court should hold this petition open pending the determination by the United States Supreme Court in Montgomery v. Louisiana of the retroactivity of Miller v. Alabama or, alternatively, grant review of the constitutionality of sentencing those convicted of second degree murder, such as Aaron Phillips, to life without parole when that sentence is not permitted under current Pennsylvania law.

2. The questions presented by the instant Petition For Allowance Of Appeal are:

Does not Miller v. Alabama, 132 S.Ct. 2455 (2012) apply retroactively to cases on collateral review?

Should not this Court's opinion in Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013) be reconsidered in light of the United States Supreme Court's granting of review in Montgomery v. Louisiana, 135 S.Ct. 1546 (2015)?

Does not the imposition of a life without parole sentence for a juvenile convicted of second degree murder violate the 8th Amendment to the United States and Article I, Section 13 of the Pennsylvania Constitution when such a sentence is not permitted under current Pennsylvania law?

3. The facts giving rise to the instant Petition For Allowance of Appeal: Aaron Phillips was found guilty in 1988 of second degree murder and was sentenced to a mandatory life without parole sentence. Commonwealth v. Phillips, slip opinion at 1. On August 20, 2012 Aaron Phillips filed a *pro se* PCRA petition. Relying upon Miller v. Alabama, 132 S.Ct. 2455 (2012), he maintained that imposition upon a juvenile of a mandatory life without parole sentence violated the 8th Amendment to the United States Constitution. Present counsel subsequently

amended that petition to include an allegation that habeas corpus under the Pennsylvania Constitution was available as a remedy based, in part, on former Chief Justice Castille's concurring opinion in Commonwealth v. Cunningham, 83 A.3d 1 (Pa. 2013). Commonwealth v. Phillips, slip opinion at 2-3. The PCRA court, finding that the petition was not timely filed, dismissed it; Mr. Phillips timely appealed to the Superior Court. Commonwealth v. Phillips, slip opinion at 3.

On August 11, 2015, the Superior Court rejected these arguments. The Superior Court found that it was bound by Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013) which held that Miller was not to be applied retroactively. Commonwealth v. Phillips, slip opinion at 6-7. The Superior Court so held even though it acknowledged that the United States Supreme Court granted review on precisely that issue in Montgomery v. Louisiana, 135 S.Ct. 1546 (2015). Commonwealth v. Phillips, slip opinion at 8, n. 2.

4. Reasons for granting this Allowance Of Appeal.

A. As Miller v. Alabama, 132 S.Ct. 2455 (2012) should apply retroactively to cases on collateral review, should not this Court's contrary opinion in Commonwealth v. Cunningham, 81 A.3d 1 (Pa., 2013) be reconsidered and should not Aaron Phillips be given a new sentencing hearing?

Aaron Phillips was given a mandatory life without parole sentence when he was convicted of second degree murder in 1988. In 2012 the United States Supreme Court in Miller v. Alabama, 132 S.Ct. 2455 (2012) held that mandatory life sentences for crimes committed by juveniles violates the 8th Amendment to the United States

Constitution because juveniles are different from adults and their sentencing should reflect that fact. Juveniles are capable of change and it would only be an unusual or rare juvenile whose actions demonstrated such irretrievably depraved character as to justify a life without parole sentence. While this Court in Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013), held that Miller should not be retroactively applied, the United States Supreme Court is considering precisely that question in Montgomery v. Louisiana, 135 S.Ct. 1546 (2015). This Court should hold the instant petition open pending the decision in Montgomery.

Recent United States Supreme Court precedent has established that children convicted of crimes – even serious and violent offenses – are categorically less culpable than adults and less deserving of society’s harshest punishments. In Miller v. Alabama, 132 S.Ct. 2455, 2469 (2012), the United States Supreme Court held “that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.” Acknowledging the unique status of juveniles and reaffirming its recent holdings in Roper v. Simmons, 543 U.S. 551 (2005), Graham v. Florida, 130 S.Ct. 2011 (2010), and J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011), the Court in Miller held that “children are constitutionally different from adults for purposes of sentencing,” *id.* at 2464, and therefore the “imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Id.* at 2466.

Miller was explicit in articulating the Supreme Court’s rationale for its holding: the mandatory imposition of sentences of life without parole “prevents those meting

out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' Graham v. Florida, 130 S.Ct. 2011, 2026–27, 2029–30 (2010), and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." Miller at 2460. Mandatory life without parole sentences are unconstitutional as applied to juveniles because "[b]y making youth (and all that accompanies it) irrelevant to imposition of the harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Id.* at 2469. In the non-homicide context, Graham requires that states must provide children "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 130 S.Ct. at 2030.

That rationale compelled the United States Supreme Court in a companion case to Miller to strike down Kuntrell Jackson's life without parole sentence as unconstitutional. This was true even though Jackson was proceeding on collateral review. The Supreme Court's decision in Kuntrell Jackson's case should have led this Court in Cunningham to have found Miller to be retroactive. The decision of the Supreme Court in Montgomery to review Miller's retroactivity should similarly cause this Court to revisit the retroactivity question it thought was resolved by Cunningham. This Court should hold this petition for review open pending the Supreme Court's decision in Montgomery. If Montgomery holds Miller to be retroactive, Aaron Phillips' sentence should be vacated and remanded for a new sentencing hearing where a life without parole sentence be barred. Commonwealth v. Batts, 66 A.3d 286 (Pa. 2013).

B. As a Life Without Parole Sentence is barred for a juvenile convicted of second degree murder, should not this Court vacate Aaron Phillips life imprisonment sentence and remand for a new sentencing hearing?

The Pennsylvania sentencing scheme for juveniles convicted of either first or second degree murder was rendered invalid because of Miller v. Alabama, 132 S.Ct. 2455 (2012) . As a consequence, the legislature in 2012 enacted a new sentencing scheme that eliminated mandatory life without parole sentences for juveniles conviction of second degree murder, establishing instead either a twenty or thirty year mandatory minimum sentence depending on the age of the juvenile at the time of the commission of the homicide. To ban life without parole sentences for those convicted of murder after the decision in Miller but to permit them for cases that arose before Miller, would violate due process and equal protection. This Court should grant review of the instant sentencing scheme and mandate that Aaron Phillips be sentenced consistent with the new sentencing scheme.

The new sentencing scheme for juvenile convicted after June 24, 2012 of second degree murder mandates either a twenty year (for those who were under the age of 15) or a thirty year (for those who were 15 or older) mandatory minimum sentence. 18 Pa.C.S.A. §1102.1 (c). Discretionary life without parole, while permitted for first degree murder, 18 Pa.C.S.A. §1102.1(a), was eliminated for second degree murder.

Had Aaron Phillips been convicted after June 24, 2012, he would not be subject to a life without parole sentence. As result, the sentencing scheme by distinguishing between those convicted before and those after June 24, 2012, violates due process

and equal protection under both the federal and Pennsylvania constitutions. See Griffith v. Kentucky, 479 U.S. 314, 322-24 (1987). This Court should grant review and remand for re-sentencing consistent with the new sentencing statute.

VII. CONCLUSION

For the reasons stated above, Aaron Claude Phillips requests that this Honorable Court hold open this petition for allowance of appeal pending the decision by the United States Supreme Court in Montgomery v. Louisiana. Alternatively, this Court should grant review of the instant life without parole sentence for second degree murder to determine whether that sentencing scheme violates due process and equal protection.

Respectfully submitted,

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WHEREFORE, for all of the foregoing reasons, this Court should grant the instant Petition for Allowance of Appeal and reverse the order of the Superior Court.

Respectfully submitted,

/S/

BRADLEY S. BRIDGE, Assistant Defender

Identification No. 39678

KARL BAKER, Assistant Defender

Chief, Appeals Division

CHARLES A. CUNNINGHAM, Acting Defender

VERIFICATION

The facts set forth in the foregoing are true and correct to the best of the undersigned's knowledge, information and belief, and are verified subject to the penalties for unsworn falsification to authorities under Pennsylvania Crimes Code Section 4904 (18 Pa.C.S. Section 4904).

/S/
BRADLEY S. BRIDGE, Assistant Defender
Attorney Registration No. 39678

Date: September 8, 2015

EXHIBIT "A"

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

AARON CLAUDE PHILLIPS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3005 EDA 2014

Appeal from the PCRA Order of September 26, 2014
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-CR-0025720-1986

BEFORE: MUNDY, OLSON and PLATT,* JJ.

MEMORANDUM BY OLSON, J.:

FILED AUGUST 11, 2015

Appellant, Aaron Claude Phillips, appeals from the order entered on September 26, 2014, dismissing his fifth petition filed under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

As we previously explained:

On January 4, 1988, following a bench trial, Appellant, who was a juvenile at the time of his crimes, was convicted of second-degree murder, burglary, and related offenses. On September 16, 1988, the [trial] court sentenced Appellant to [the mandatory term of] life in prison without the possibility of parole for his second-degree murder conviction, and Appellant filed a direct appeal. We affirmed his judgment of sentence, and Appellant filed a timely petition for allowance of appeal, which the Pennsylvania Supreme Court denied on March 28, 1991.

Commonwealth v. Phillips, 32 A.3d 835 (Pa. Super. 2011) (unpublished memorandum) at 1.

*Retired Senior Judge assigned to the Superior Court.

From 1995 until 2010, Appellant filed four petitions for post-conviction collateral relief under the PCRA, and all requests for relief were denied by the courts.

On August 20, 2012, Appellant, acting *pro se*, filed the current PCRA petition. The petition constitutes Appellant's fifth attempt to secure post-conviction collateral relief under the PCRA. Within the petition, Appellant claimed that, in **Miller v. Alabama**, ___ U.S. ___, 132 S.Ct. 2455 (2012), the United States Supreme Court created a new constitutional right that entitled him to relief. Appellant's Fifth PCRA Petition, 8/20/12, at 2. Specifically, Appellant claimed, in **Miller**, the United States Supreme Court created the new rule of law that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without [] possibility of parole for juvenile offenders." Appellant's Fifth PCRA Petition, 8/20/12, at 4; quoting **Miller**, ___ U.S. at ___, 132 S.Ct. at 2469. Since Appellant filed his PCRA petition within 60 days of the date **Miller** was decided,¹ Appellant claimed that his PCRA petition was timely under the "newly recognized constitutional right" exception to the PCRA's one-year time-bar. Appellant's Fifth PCRA Petition, 8/20/12, at 4; 42 Pa.C.S.A. § 9545(b)(1)(iii) and (2).

Appellant later retained counsel and, on December 4, 2013, counsel filed a self-titled "Amended Petition for *Habeas Corpus* Relief Under Article 1,

¹ The Supreme Court decided **Miller** on June 25, 2012.

Section 14 of the Pennsylvania Constitution and for Post-Conviction Relief Under the Post Conviction Relief Act” on Appellant’s behalf. In this amended petition, Appellant reiterated the claim that he was entitled to relief under **Miller**. Further, Appellant claimed, even if the constitutional right announced in **Miller** were not retroactive to cases on collateral review, Appellant was entitled to relief in the form of a writ of *habeas corpus*.

On August 1, 2014, the PCRA court provided Appellant with notice that it intended to dismiss Appellant’s fifth PCRA petition in 20 days without holding a hearing, as the petition was untimely. The PCRA court dismissed Appellant’s petition on September 26, 2014 and Appellant filed a timely notice of appeal to this Court. Appellant raises three claims on appeal:

1. Does the failure to apply **Miller v. Alabama** retroactively to a juvenile offender sentenced to life in prison without the possibility of parole for a conviction of second-degree murder violate Appellant’s rights under the [United States] Constitution or the Pennsylvania Constitution?
2. Does *habeas corpus* provide Appellant with a mechanism for relief?
3. Did the [PCRA] court err in denying the petition for post-conviction collateral relief without granting a hearing?

Appellant’s Brief at 4.

We conclude that the PCRA court properly dismissed Appellant’s untimely PCRA petition.

As our Supreme Court held, we “review an order granting or denying PCRA relief to determine whether the PCRA court’s decision is supported by

evidence of record and whether its decision is free from legal error.” ***Commonwealth v. Liebel***, 825 A.2d 630, 632 (Pa. 2003).

The PCRA contains a jurisdictional time-bar, which is subject to limited statutory exceptions. This time-bar demands that “any PCRA petition, including a second or subsequent petition, [] be filed within one year of the date that the petitioner’s judgment of sentence becomes final, unless [the] petitioner pleads [and] proves that one of the [three] exceptions to the timeliness requirement . . . is applicable.” ***Commonwealth v. McKeever***, 947 A.2d 782, 785 (Pa. Super. 2008); 42 Pa.C.S.A. § 9545(b). Further, since the time-bar implicates the subject matter jurisdiction of our courts, we are required to first determine the timeliness of a petition before we consider the underlying claims. ***Commonwealth v. Yarris***, 731 A.2d 581, 586 (Pa. 1999). Our Supreme Court has explained:

the PCRA timeliness requirements are jurisdictional in nature and, accordingly, a PCRA court is precluded from considering untimely PCRA petitions. ***See, e.g., Commonwealth v. Murray***, 753 A.2d 201, 203 (Pa. 2000) (stating that “given the fact that the PCRA’s timeliness requirements are mandatory and jurisdictional in nature, no court may properly disregard or alter them in order to reach the merits of the claims raised in a PCRA petition that is filed in an untimely manner”); ***Commonwealth v. Fahy***, 737 A.2d 214, 220 (Pa. 1999) (holding that where a petitioner fails to satisfy the PCRA time requirements, this Court has no jurisdiction to entertain the petition). [The Pennsylvania Supreme Court has] also held that even where the PCRA court does not address the applicability of the PCRA timing mandate, th[e court would] consider the issue *sua sponte*, as it is a threshold question implicating our

subject matter jurisdiction and ability to grant the requested relief.

Commonwealth v. Whitney, 817 A.2d 473, 475-476 (Pa. 2003).

In the case at bar, Appellant's judgment of sentence became final in 1991. As Appellant did not file his current petition until August 20, 2012, the current petition is manifestly untimely and the burden thus fell upon Appellant to plead and prove that one of the enumerated exceptions to the one-year time-bar applied to his case. **See** 42 Pa.C.S.A. § 9545(b)(1); ***Commonwealth v. Perrin***, 947 A.2d 1284, 1286 (Pa. Super. 2008) (to properly invoke a statutory exception to the one-year time-bar, the PCRA demands that the petitioner properly plead all required elements of the relied-upon exception).

Here, Appellant claims to invoke the "newly recognized constitutional right" exception to the time-bar. This statutory exception provides:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

...

(iii) the 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.

...

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

42 Pa.C.S.A. § 9545(b).

As our Supreme Court explained:

Subsection (iii) of Section 9545(b)(1) has two requirements. First, it provides that the 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 provided in this section. Second, it provides that the right "has been held" by "that court" to apply retroactively. Thus, a petitioner must prove that there is a "new" constitutional right and that the right "has been held" by that court to apply retroactively. The language "has been held" is in the past tense. These words mean that the action has already occurred, *i.e.*, "that court" has already held the new constitutional right to be retroactive to cases on collateral review. By employing the past tense in writing this provision, the legislature clearly intended that the right was already recognized at the time the petition was filed.

Commonwealth v. Copenhefer, 941 A.2d 646, 649-650 (Pa. 2007), quoting ***Commonwealth v. Abdul-Salaam***, 812 A.2d 497, 501 (Pa. 2002) (internal corrections omitted).

As Appellant notes, in ***Miller v. Alabama***, the United States Supreme Court recognized the new constitutional right that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without [] possibility of parole for juvenile offenders." Appellant's Fifth PCRA Petition, 8/20/12, at 4; quoting ***Miller***, ___ U.S. at ___, 132 S.Ct. at 2469. Appellant claims that ***Miller*** entitles him to relief under the PCRA and that, since he filed his petition within 60 days of the date that ***Miller*** was decided, his current petition is timely under 42 Pa.C.S.A. § 9545(b)(1)(iii). This claim, however, fails because, in ***Commonwealth v. Cunningham***, the

Pennsylvania Supreme Court held that **Miller** does not apply retroactively to cases on collateral review. **Commonwealth v. Cunningham**, 81 A.3d 1, 11 (Pa. 2013) (“applying settled principles of appellate review, nothing in [a]ppellant’s arguments persuades us that **Miller’s** proscription of the imposition of mandatory life-without-parole sentences upon offenders under the age of eighteen at the time their crimes were committed must be extended to those whose judgments of sentence were final as of the time of **Miller’s** announcement”). Thus, the Pennsylvania Supreme Court has already held that individuals such as Appellant cannot rely upon **Miller** to satisfy the “newly recognized constitutional right” exception to the PCRA’s one-year time-bar. 42 Pa.C.S.A. § 9545(b)(1)(iii).

On appeal, Appellant essentially requests that this Court reconsider the issue of **Miller’s** retroactivity. This claim necessarily fails, as we have no authority to overrule our Supreme Court. **See, e.g., Preiser v. Rosenzweig**, 614 A.2d 303, 306 (Pa. Super. 1992) (“[a]s an intermediate appellate court, we are not free to disregard the existing law of this Commonwealth and the decisions of our [S]upreme [C]ourt”). Further, to the extent Appellant claims that **Miller** should be applied retroactively based upon Pennsylvania’s broader retroactivity principles, we note that we have already rejected this argument. **See Commonwealth v. Seskey**, 86 A.3d 237, 243 (Pa. Super. 2014) (“[a]ppellant attempts to circumvent the effect that **Cunningham** has upon our jurisdiction by arguing . . . that **Miller**

should be applied retroactively based upon Pennsylvania's broader retroactivity principles. . . . [W]e are confined by the express terms of subsection 9545(b)(1)(iii) and our Supreme Court's decision in **Cunningham**. Combined, those two elements require us to conclude that we lack jurisdiction)."

Therefore, since our high Court has held that the constitutional right announced in **Miller** does not apply retroactively to cases on collateral review, Appellant's first claim on appeal fails as a matter of law.²

Appellant next claims that the PCRA court erred when it failed to afford him *habeas corpus* relief. However, other than citing to former Chief Justice Castille's concurring opinion in **Cunningham** – where the Chief Justice opined, "there is at least some basis in law for an argument that the claim is cognizable via a petition under Pennsylvania's *habeas corpus* statute" – and then claiming that he is entitled to *habeas corpus* relief, Appellant has provided this Court with no developed argument as to why he would be entitled to *habeas corpus* relief. **See** Appellant's Brief at 32. Therefore, Appellant's claim on appeal is waived. **See Seskey**, 86 A.3d at 244 (appellant's claim that he was entitled to *habeas corpus* relief, as he was a juvenile offender who received a mandatory term of life imprisonment

² We note that the United States Supreme Court granted a petition for writ of *certiorari* in **Montgomery v. Louisiana**, ___ U.S. ___ 135 S.Ct. 1546 (2015), to consider whether **Miller** should be given retroactive effect.

without the possibility of parole and his judgment of sentence became final prior to **Miller**, was waived where the appellant simply cited to Chief Justice Castille's concurrence in **Cunningham** and then "list[ed] five constitutional provisions that he believes should be read in conjunction with that statute"); **Rabatin v. Allied Glove Corp.**, 24 A.3d 388, 396 (Pa. Super. 2011) (holding that the Superior Court may not act as counsel for an appellant and develop arguments on his behalf).

Finally, Appellant claims that the PCRA court erred when it dismissed his fifth PCRA petition "without granting a hearing to allow an opportunity to demonstrate why he is entitled to an individualized resentencing hearing." Appellant's Brief at 45. However, Appellant's PCRA petition is manifestly untimely and Appellant did not properly plead any of the statutory exceptions to the one-year time-bar. Therefore, neither the PCRA court nor this Court have subject matter jurisdiction to consider Appellant's claims. The PCRA court thus did not err when it dismissed Appellant's petition without holding a hearing. **Commonwealth v. Jackson**, 30 A.3d 516, 523 (Pa. Super. 2011); Pa.R.Crim.P. 907(1).

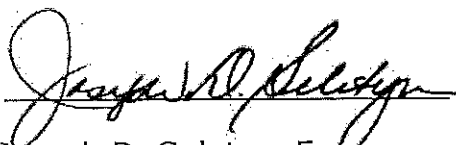
Order affirmed. Jurisdiction relinquished.

Judge Platt joins this memorandum.

Judge Mundy concurs in the result.

J-S35028-15

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/11/2015

EXHIBIT “B”

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : No. CP-46-CR-0025720-1986
: :
v. : :
: :
AARON CLAUDE PHILLIPS :

OPINION

DEMCHICK-ALLOY, J.

DECEMBER 9, 2014

Appellant, Aaron Claude Phillips, appeals from this court's order filed September 26, 2014, which order denied without a hearing his "Amended Petition for Habeas Corpus Relief Under Article I, Section 14 of the Pennsylvania Constitution and for Post-Conviction Relief Under the Post-Conviction Relief Act" (hereinafter, "the petition"). This opinion will henceforth refer to appellant as "petitioner." The reasons for the order already appear in the record: on July 31, 2014, pursuant to Pa.R.Crim.P. 907(1), the undersigned judge filed a memorandum and order that recited the facts and procedural history relevant to the petition and stated the relief sought by petitioner and the grounds petitioner pled. The memorandum then discussed the fundamental question of whether this court had jurisdiction to reach the merits of the petition. Citing the controlling legal authority, the discussion concluded that this court lacked jurisdiction. The undersigned judge incorporates the memorandum and order filed July 31, 2014 in partial satisfaction of her obligation under Pa.R.A.P. 1925(a), but submits this opinion to provide a small amount of supplementary information.

I. Issues Raised on Appeal

By order filed October 29, 2014, the undersigned judge directed petitioner to file a statement of errors complained of on appeal. On November 24, 2014, petitioner filed his

statement. In petitioner's words, the statement identified the errors complained of on appeal "in general terms." The statement uses the phrase "this court erred" (or "this court further erred") four times, but it does not enumerate discreet errors. Rather, in apparent violation of the obligations imposed by Pa.R.A.P. 1925(b)(4)(ii) and (iv), the statement comprises a narrative that appears to mix claims of error with argument and citations to legal authority. As a result, the undersigned judge is unsure whether the Superior Court of Pennsylvania will interpret the statement to have raised only four claims (in the sentences that use the phrase "this court erred" or "this court further erred"). Consequently, the discussion below will address only those four claims, but in the event the Superior Court of Pennsylvania discerns that the statement raises additional claims, the undersigned judge respectfully requests the Court remand the matter to give the undersigned judge an opportunity to file a supplemental opinion addressing them. The discussion addresses petitioner's four claims of error *seriatim*.

II. Discussion

Petitioner first claims, "This court erred in failing to vacate Mr. Phillips' unconstitutional life without parole sentence and order that he be resentenced based on his lesser included offenses." The memorandum filed by the undersigned judge on July 31, 2014 addresses this claim at Part II.A., pp. 4-5.

Second, petitioner claims, "This court erred in failing to apply the *Miller*¹ and *Graham*² decisions retroactively to Mr. Phillips pursuant to the Pennsylvania Constitution. Part III of the memorandum filed July 31, 2014 explains that the undersigned judge did not have jurisdiction to address the merits of this claim.

¹ *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

² *Graham v. Florida*, 560 U.S. 48 (2010).

Third, petitioner claims, "This court further erred in rejecting Mr. Phillips' claim that the writ of *habeas corpus* provides a basis for relief. Part III.B. of the memorandum filed July 31, 2014 demonstrates that this court did not err in concluding petitioner failed to adequately support that claim.

"Finally," petitioner claims, "this court erred by denying Mr. Phillips' petition for post-conviction relief without granting a hearing to allow an opportunity to demonstrate why his sentence is unconstitutional pursuant to *Miller* and *Graham* and why he is entitled to be resentenced. Pennsylvania Rule of Criminal Procedure 907 permits a common pleas judge to deny a PCRA petition without a hearing if "there are no genuine issues of material fact and...the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings...." Defendant's petition raised no genuine issues of material fact as to his claims for relief. Every fact upon which his claims and arguments were based was part of the record in the above-captioned matter at or before the time he filed his petition. The question of whether the undersigned judge could exercise jurisdiction to address those claims was also based on facts that appeared on the record at or before the time he filed his petition. Therefore, no purpose would have been served by an evidentiary hearing.

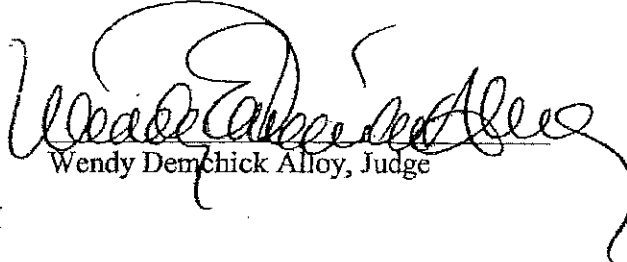
As for a hearing to receive oral argument, petitioner was afforded opportunity to submit written argument in favor of his claims for post-conviction collateral relief, first in the petition itself and again in his "Response to Intention to Dismiss Petition for Habeas Corpus and Post-Conviction Relief Without a Hearing," which he filed on September 15, 2014. Both documents also included extended argumentation attempting to persuade the undersigned judge that she had a lawful basis for exercising jurisdiction over the petition. The memorandum filed July 31, 2014

demonstrated that the undersigned judge lacked a lawful basis for exercising jurisdiction over the petition and therefore no purpose would have been served by hearing oral argument. The undersigned judge therefore submits that this claim of error fails.

CONCLUSION

Upon consideration of the foregoing discussion, the undersigned respectfully submits that the judgment of sentence should be affirmed.

BY THE COURT,



Wendy Demchick Alloy, Judge

copies of the above order sent on *12/9/14*
to the following:

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