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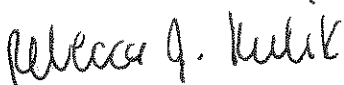
Joseph D. Seletyn, Esquire  
Prothonotary  
Office of the Prothonotary  
Superior Court of Pennsylvania  
Third Floor, Suite 315  
530 Walnut Street  
Philadelphia, PA 19106

Re: Commonwealth vs. Qu'eed Batts  
Docket No. 1764 EDA 2014

Dear Attorney Seletyn:

Enclosed please find an original and six copies of the Brief for Appellee, along with a copy of my Praecipe for Appearance. Two copies have also been sent to Philip D. Lauer, Esquire, Joshua D. Fulmer, Esquire, and Alexander O. Ward, Esquire, Attorneys for Appellant.

Very truly yours,

  
Rebecca J. Kulik  
Assistant District Attorney

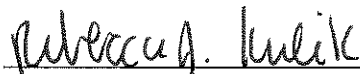
COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT  
 : OF PENNSYLVANIA  
VS. :  
 :  
 :  
 :  
 : NO. 1764 EDA 2014  
QU'EED BATTS :

PRAECIPE FOR APPEARANCE  
TO THE PROTHONOTARY OF THE SUPERIOR COURT

Please enter my appearance as Attorney for the Commonwealth of Pennsylvania, Appellee in the above-captioned matter.

**SEND ALL NOTICES TO:**

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\_\_\_\_\_  
Signature

**IN THE SUPERIOR COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

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**Superior Court Docket No. 1764 EDA 2014**

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**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**QU'EED BATTS**

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**BRIEF OF APPELLEE COMMONWEALTH OF PENNSYLVANIA**

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**Appeal from Judgment of Sentence entered May 2, 2014, in the  
Court of Common Pleas of Northampton County, Pennsylvania  
at No. CP-48-CR-0001215-2006**

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**COUNTER-STATEMENT OF THE QUESTIONS INVOLVED**

I. DID THE COURT ABUSE ITS DISCRETION IN SENTENCING APPELLANT?

Suggested Answer: No.

II. WAS APPELLANT'S RESENTENCING HEARING UNCONSTITUTIONAL?

Suggested Answer: No.

III. WAS APPELLANT'S SENTENCE ILLEGAL?

Suggested Answer: No.

## COUNTER-STATEMENT OF THE CASE

### I. FACTUAL HISTORY

On February 7, 2006, Appellant, who is a member of the Bloods gang, was in a car with several other gang members. Notes of Testimony ("N.T."), 7/30/07, at 44-45, 58. As the car approached 713 Spring Garden Street, located in Easton, Pennsylvania, Vernon Bradley, a senior gang member, asked the other individuals in the car "who's going to put work in?" *Id.* at 64. On the porch of 713 Spring Garden Street was sixteen year old Clarence Edwards, eighteen year old Corey Hilario, and Clarence Edwards' father, Chucky Edwards. N.T., 7/24/07, at 108-09. Appellant did not know any of the individuals on the porch, but he was told that Clarence Edwards and Corey Hilario had allegedly stolen money and drugs from the female gang member driving the car. N.T., 7/27/07, at 81-82; N.T., 7/30/07, at 63. When Bradley asked who wanted to "put work in," Appellant interpreted this question as an instruction to kill Clarence Edwards and Corey Hilario. *Id.* at 65. Appellant agreed to do the job. *Id.* at 66.

After Appellant agreed to "put work in," Bradley handed him a mask and a gun. *Id.* Appellant took the items, exited the car, and put on the mask. *Id.* Appellant also put on one glove, which he already had in his possession. *Id.* Appellant walked up the front steps to the house and ordered the three individuals to get down. N.T., 7/24/07, at 110-12. The three individuals attempted to run into the house, but only Chucky Edwards



was able to make it inside. **Id.** at 112-13; **see** N.T., 7/30/07, at 68. As Corey Hilario attempted to enter the house, Appellant shot him in the back. **Id.** at 113. Clarence Edwards had fallen and was lying on the porch. N.T., 7/30/07, at 68. Appellant walked over to where Clarence Edwards was lying and looked at his face. Appellant then fired two shots from close range into Clarence Edwards' head. **Id.** at 136-38. Appellant turned, left the house, got back into the car, and drove away. **Id.** at 68, 140. Clarence Edwards, who was discovered on the porch by his grandmother who raised him, was transported to the hospital, but died as a result of multiple gunshot wounds to the head. N.T., 7/24/07, at 99-101; N.T., 7/25/07, at 102; N.T., 7/27/07, at 30. Corey Hilario survived the shooting, but suffered a fractured rib and scapula, and the bullet remains in his body because of the depth at which it was lodged in his muscle tissue. N.T., 7/25/07, at 95-96, 98

The day after Appellant committed these crimes, he left Pennsylvania and began staying with gang members in Phillipsburg, New Jersey in an attempt to avoid being arrested. **See** N.T., 7/30/07, at 72. Appellant's mother urged him to turn himself in, however he declined to do so. **See** Trial Court Opinion, 8/27/14, at 37-38. Three days after the shooting, police apprehended Appellant in New Jersey. In a continuing attempt to avoid arrest, Appellant hid his face in a hoodie sweatshirt and gave a false name to police when asked to identify himself. N.T., 7/25/07, at 37-38. In an interview with police following his arrest, Appellant initially denied being a

member of the Bloods gang and named Bradley as the shooter. **See** N.T., 7/26/07, at 34-35. However, Appellant later confessed to shooting Clarence Edwards and Corey Hilario. N.T.7/26/07, at 19.

## II. PROCEDURAL HISTORY

As a result of the above-described criminal actions, Appellant was charged with criminal homicide,<sup>1</sup> attempted murder,<sup>2</sup> aggravated assault,<sup>3</sup> and two counts of conspiracy.<sup>4</sup> On March 13, 2006, Appellant filed a motion to transfer the case to the Juvenile Division. On April 13, 2006, a preliminary hearing was held, and all charges were bound over to the Northampton County Court of Common Pleas. On April 27, 2006, formal arraignment was held, and Appellant entered a plea of not guilty.

On February 22, 2007, following a hearing, the trial court denied Appellant's transfer motion. On February 23, 2007, the Commonwealth filed a motion to join Appellant's case with that of his co-defendant, Vernon Bradley. That motion was denied on April 1, 2007. Appellant filed an omnibus pre-trial motion on April 3, 2007 and an amended motion on May 2, 2007. Appellant's motion to change venire and/or venue was denied without

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<sup>1</sup> 18 Pa.C.S.A. § 2501.

<sup>2</sup> *Id.* at § 901(a).

<sup>3</sup> *Id.* at § 2702(a)(1).

<sup>4</sup> *Id.* at § 903(a)(2).

prejudice<sup>5</sup> by the trial court on May 24, 2007. On June 7, 2007, the trial court also denied Appellant's motion to suppress statements.

On July 6, 2007, jury selection began in Appellant's case.<sup>6</sup> On July 31, 2007, the jury found Appellant guilty of first degree murder, attempted murder, and aggravated assault. Appellant was found not guilty of the two counts of criminal conspiracy. At the time, Pennsylvania law required the trial court to impose a mandatory sentence of life imprisonment without the possibility of parole. The court imposed such a sentence on October 22, 2007.

Appellant file a post-sentence motion on October 29, 2007. The trial court denied this motion on February 25, 2008. Appellant appealed to the Superior Court, which affirmed judgment of sentence on April 7, 2009. ***Commonwealth v. Batts***, 766 EDA 2008 (Pa. Super. 2009) (unpublished memorandum).

On May 7, 2009, Appellant filed a petition for allowance of appeal with the Pennsylvania Supreme Court. On September 17, 2009, the Supreme Court granted the petition, limited to two issues: (1) whether Appellant's sentence was constitutional in light of ***Roper v. Simmons***, 543 U.S. 551

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<sup>5</sup> The trial court denied the motion without prejudice because Bradley was scheduled to go to trial two months prior to Appellant. The trial court left open the possibility of Appellant re-filing a motion to change venire and/or venue following the conclusion of Bradley's trial.

<sup>6</sup> Bradley entered a guilty plea on July 9, 2007, to two counts of criminal solicitation to commit robbery and was sentenced to twenty to forty years' imprisonment.

(2005) and (2) whether the mandatory nature of Appellant's sentence violated his Eighth and Fourteenth Amendment rights. **Commonwealth v. Batts**, 318 MAL 2009 (Pa. 2009). In a December 6, 2011 order, the Supreme Court placed the matter on hold pending the United States Supreme Court's decision in two pending cases, **Jackson v. Hobbs** and **Miller v. Alabama**. Following the issuance of the United States Supreme Court's opinions in those matters,<sup>7</sup> the Pennsylvania Supreme Court vacated the Superior Court's decision and remanded this matter to the trial court for resentencing. **Commonwealth v. Batts**, 66 A.3d 286 (Pa. 2013).

On May 1, 2014, the trial court<sup>8</sup> held a resentencing hearing. The following day, the trial court sentenced Appellant to a term of life imprisonment without the possibility of parole. Appellant filed a post-sentence motion, which was denied on May 13, 2014. Appellant filed a timely notice of appeal to the Superior Court on June 10, 2014 and a timely Concise Statement of Matters Complained of on Appeal on July 1, 2014. The trial court filed its opinion on August 27, 2014. **See** Pa.R.A.P. 1925.

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<sup>7</sup> Following the decisions in **Miller v. Alabama** and **Jackson v. Hobbs**, 132 S.Ct. 2455 (2012), the Pennsylvania Supreme Court directed the parties to file supplemental briefs and appear for a second argument session as to the appropriate remedy and relief for Appellant. **Commonwealth v. Batts**, 79 MAP 2009 (Pa. 2012).

<sup>8</sup> The original trial judge, the Honorable William F. Moran, retired prior to the remand. This matter was reassigned to the Honorable Michael J. Koury, Jr. for resentencing.

## SUMMARY OF THE ARGUMENT

The Commonwealth contends that Appellant's first issue, while presented as a challenge to the sufficiency of the evidence, is really a challenge to the discretionary aspects of his sentence. The Commonwealth asserts that Appellant has failed to properly preserve this claim. **See** Pa.R.A.P. 2119(f). Second, the Commonwealth argues that Appellant has set forth an inappropriate standard of review. The proper standard of review in reviewing such a claim is an abuse of discretion. **See *Commonwealth v. Seagraves***, 103 A.3d 839 (Pa. Super. 2014). Utilizing this standard, the Commonwealth argues that the court did not abuse its discretion in sentencing Appellant. The court reviewed all relevant factors, including the trial record, evidence presented during the resentencing hearing, Appellant's childhood and upbringing, Appellant's age, Appellant's prior record, and the nature and circumstances of the offenses with which Appellant was convicted. The court did not abuse its discretion in sentencing Appellant.

The Commonwealth further contends that Appellant's resentencing proceeding was not unconstitutional. There was no error in the procedure followed by the court following remand of this matter. Contrary to Appellant's assertions, there is no case law or statutory authority requiring a sentencing court to empanel a jury, apply certain presumptions, or hold the Commonwealth to a beyond a reasonable doubt standard prior to sentencing a juvenile murderer to life imprisonment without the possibility of parole.

Finally, the Commonwealth argues that Appellant's sentence is not illegal. Appellant claims that his sentence is illegal because the court did not impose a minimum term of years. The Commonwealth contends that Appellant's argument relies on a misinterpretation of language in the **Batts** decision. **See Batts**, 66 A.3d at 297. Both the case law and the legislative intent are clear that life imprisonment without the possibility of parole is still available as a sentencing alternative for juvenile murderers.

## ARGUMENT

Appellant raises several arguments on appeal. First, he contends that there was insufficient evidence presented to warrant a sentence of life imprisonment. Second, he alleges that his resentencing hearing was unconstitutional because it had less procedural safeguards than an adult capital sentencing proceeding. Third, Appellant claims that his sentence is illegal because there was no minimum sentence given. The Commonwealth contends that these claims are without merit and urges the Superior Court to affirm judgment of sentence.

Prior to June 25, 2012, a juvenile offender who was convicted of first-degree murder in Pennsylvania would be sentenced to a mandatory term of life imprisonment without the possibility of parole. **See** 18 Pa.C.S.A. § 1102. However, on June 25, 2012, the United States Supreme Court issued its decision in **Miller**, 132 S.Ct. 2455, holding “that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eight Amendment’s prohibition on ‘cruel and unusual punishments.’” **Miller**, 132 S.Ct. at 2460. In reaching this conclusion, the Court relied on precedent which “establish[ed] that children are constitutionally different from adults for purposes of sentencing” based on children’s “diminished culpability and greater prospects for reform[.]” **Id.** at 2464 (citing **Roper**, 543 U.S. 551 and **Graham v. Florida**, 560 U.S. 48 (2010)). The Court pointed to three main differences between juvenile and

adult offenders: a child's lack of maturity and underdeveloped sense of responsibility, a child's vulnerability to outside pressures and influences, and the fact that a child's character is "less fixed" and not as "well formed" as an adult's. *Id.* (citations omitted). The Court emphasized that "youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole." *Id.* at 2465.

As a result of these concerns, the Court found that mandatory sentencing schemes, such as Pennsylvania's, were constitutionally deficient because they "prevent the sentencer from taking account of" the defendant's age and attendant characteristics. *Id.* at 2466. The Court found that, because life without the possibility of parole is the most severe punishment that can be inflicted upon a juvenile offender, an individualized sentencing proceeding, where the sentencer can take into consideration the defendant's youth, personal characteristics, and background, is required. *Id.* at 2467-68. The Court concluded that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* at 2469.

However, the Court did not issue a categorical ban on sentencing a juvenile murderer to a term of life imprisonment without the possibility of parole. In fact, the Court specifically stated that its "decision does not categorically bar a penalty for a class of offenders[.]" *Id.* at 2471. Rather, the decision dictated that "a sentencer follow a certain process—considering



an offender's youth and attendant characteristics—before imposing a particular penalty." *Id.* The Court did note that such a sentence should be "uncommon" and stated that, before imposing such a sentence, a sentencer must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 2469 (footnote omitted).

Less than a month after the *Miller* decision, the Superior Court issued two opinions in the cases of twin brothers who were convicted of second degree murder and sentenced to a mandatory term of life imprisonment without the possibility of parole. The Court vacated the sentences of the brothers and remanded for resentencing, providing the following guidance for the trial court:

We emphasize that our disposition does not mean that it is unconstitutional for a juvenile actually to spend the rest of his life in prison, only that the mandatory nature of the sentence, determined at the outset, is unconstitutional. Therefore, although *Miller* did not delineate specifically what factors a sentencing court must consider, at a minimum it should consider a juvenile's age at the time of the offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation. Prior to sentence, we anticipate that the trial court will order briefs from the Commonwealth and Appellant, and accept briefs from their *amici*, if any, on these factors and the issue of whether life with or without the possibility of parole should be imposed.

***Commonwealth v. Devon Knox***, 50 A.3d 732, 745 (Pa. Super. 2012) (citing ***Miller***, 132 S.Ct. 2455); ***see Commonwealth v. Jovon Knox***, 50 A.3d 749 (Pa. Super. 2012) (setting forth an almost identical list of factors to consider in sentencing a juvenile murderer).

The next development in Pennsylvania related to the sentencing of juvenile murderers was the enactment of 18 Pa.C.S.A. 1102.1. This statute, enacted on October 25, 2012, sets forth the possible punishments for a juvenile who is convicted of first or second degree murder after June 24, 2012. For a juvenile such as Appellant, who was convicted of first degree murder and was fourteen years of age at the time of his offense, the statute sets forth a mandatory minimum term of imprisonment of twenty-five years. 18 Pa.C.S.A. § 1102.1(a)(2). The statute specifically permits a juvenile murderer, regardless of their age at the time of the offense, to be sentenced to a term of life imprisonment without the possibility of parole following an individualized sentencing hearing. ***Id.*** at § 1102.1(a). The statute also sets forth the specific factors a court must consider in determining the appropriate sentence for a juvenile murder. The factors are as follows:

- (1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.
- (2) The impact of the offense on the community.
- (3) The threat to the safety of the public or any individual posed by the defendant.

- (4) The nature and circumstances of the offense committed by the defendant.
- (5) The degree of the defendant's culpability.
- (6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.
- (7) Age-related characteristics of the defendant, including:
  - (i) Age.
  - (ii) Mental capacity.
  - (iii) Maturity.
  - (iv) The degree of criminal sophistication exhibited by the defendant.
  - (v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.
  - (vi) Probation or institutional reports.
  - (vii) Other relevant factors.

***Id.*** at 1102.1(d).

The Commonwealth acknowledges that Section 1102.1 specifically applies to juveniles who are convicted of murder after June 24, 2012. Because Appellant was convicted of murder on July 31, 2007, the statute is not directly applicable to Appellant. However, the Commonwealth believes it can provide guidance to the Court in this matter because it is an expression of the legislative intent following the ***Miller*** decision as to the procedure to follow in sentencing juvenile murderers.

At the time ***Miller*** was decided, Appellant's case was pending on direct appeal before the Pennsylvania Supreme Court. In its decision following the issuance of the ***Miller*** decision, the Supreme Court recognized the need for an individualized sentencing hearing, but rejected Appellant's contention that

he should be sentenced as if he had been convicted of third-degree murder.

The Supreme Court explained:

Appellant's argument that the entire statutory sentencing scheme for first-degree murder has been rendered unconstitutional as applied to juvenile offenders is not buttressed by either the language of the relevant statutory provisions or the holding in *Miller*. Section 1102, which mandates the imposition of a life sentence upon conviction for first-degree murder, *see* 18 Pa.C.S. § 1102(a), does not itself contradict *Miller*; it is only when that mandate becomes a sentence of life-without-parole as applied to a juvenile offender—which occurs as a result of the interaction between Section 1102, the Parole Code, *see* 61 Pa.C.S. § 6137(a)(1), and the Juvenile Act, *see* 42 Pa.C.S. § 6302—that *Miller*'s proscription squarely is triggered. *See Miller*, --- U.S. at ----, 132 S.Ct. at 2469. *Miller* neither barred imposition of a life-without-parole sentence on a juvenile categorically nor indicated that a life sentence with the possibility of parole could never be mandatorily imposed on a juvenile. *See id.* at ----, 132 S.Ct. at 2469. Rather, *Miller* requires only that there be judicial consideration of the appropriate age-related factors set forth in that decision prior to the imposition of a sentence of life imprisonment without the possibility of parole on a juvenile. *See id.* at ----, 132 S.Ct. at 2467–68.

We recognize, as a policy matter, that *Miller*'s rationale—emphasizing characteristics attending youth—militates in favor of individualized sentencing for those under the age of eighteen both in terms of minimum and maximum sentences. In terms of the actual constitutional command, however, *Miller*'s binding holding is specifically couched more narrowly. *See id.* at ----, 132 S.Ct. at 2469 (“We ... hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.”) (emphasis added). The High Court thus left unanswered the question of whether a life sentence with the possibility of parole offends the evolving standards it is discerning.

Significantly, in the arena of evolving federal constitutional standards, we have expressed a reluctance to “go further than what is affirmatively commanded by the High Court” without “a common law history or a policy directive from our Legislature.”

**Commonwealth v. Sanchez**, 614 Pa. 1, ----, 36 A.3d 24, 66 (Pa.2011), cert. denied, --- U.S. ----, 133 S.Ct. 122, 184 L.Ed.2d 58 (2012). Moreover, barring application of the entire statutory scheme as applied to juveniles convicted of first-degree murder, based solely on the policy discussion in **Miller** (short of its affirmative holding), would contradict the “strong presumption that legislative enactments do not violate the constitution.” **Commonwealth v. Chase**, 599 Pa. 80, 89, 960 A.2d 108, 112 (2008); **see also** 1 Pa.C.S. § 1922(3) (presumption that the General Assembly does not intend to violate the federal or state constitutions when it enacts legislation).

In addition, Appellant’s argument that he should be sentenced as if he had been convicted of the lesser offense of third-degree murder finds little support in the authorities upon which he relies, as such caselaw is simply inapplicable to the present circumstances. In **Story**, for example, this Court imposed a life sentence because the effectuation of a death sentence would violate the defendant’s equal protection and due process rights. **See [Commonwealth v.] Story**, 497 Pa. [273,] 281, 440 A.2d [488,] 492 [(Pa. 1981)] (“Because appellant was tried, convicted, and sentenced to death under an unconstitutional statute, he must be treated the same as all those persons whose death penalties have been set aside.”). Notably, the life sentence imposed in **Story**, like the death penalty that was vacated, was a legislatively sanctioned punishment for first-degree murder and not a lesser offense. **See id.** at 277, 440 A.2d at 490. **Rutledge** is similarly distinguishable, as that case involved the vacation of one conviction and sentence where the defendant had been convicted of two separate crimes, one of which was determined to be a lesser-included offense. **See Rutledge [v. United States]**, 517 U.S. [292,] 307, 116 S.Ct. [1241,] 1250 [(1996)]. Here, by contrast, Appellant’s conviction for first-degree murder has not been vacated; rather, we are tasked with determining an appropriate scheme for resentencing for that offense, consistent with **Miller**.

Regarding the appropriate age-related factors, as the Commonwealth and its amicus observe, the Superior Court has considered the impact of **Miller** and vacated and remanded for resentencing, instructing the trial court that:

[A]t a minimum it should consider a juvenile's age at the time of the offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation.

**Knox**, 50 A.3d at 745 (citing **Miller**, --- U.S. at ----, 132 S.Ct. at 2455). We agree with the Commonwealth that the imposition of a minimum sentence taking such factors into account is the most appropriate remedy for the federal constitutional violation that occurred when a life-without-parole sentence was mandatorily applied to Appellant.

We recognize the difference in treatment accorded to those subject to non-final judgments of sentence for murder as of **Miller's** issuance and those convicted on or after the date of the High Court's decision. As to the former, it is our determination here that they are subject to a mandatory maximum sentence of life imprisonment as required by Section 1102(a), accompanied by a minimum sentence determined by the common pleas court upon resentencing. Defendants in the latter category are subject to high mandatory minimum sentences and the possibility of life without parole, upon evaluation by the sentencing court of criteria along the lines of those identified in **Miller**. **See** 18 Pa.C.S. § 1102.1. Nevertheless, in the absence of a claim that such difference violates constitutional norms, we have interpreted the statutory provisions applicable to Appellant (and all others similarly situated) in accord with the dictates of the Eighth Amendment as set forth in **Miller**, as well as the Pennsylvania Legislature's intent as reflected in the relevant statutory provisions.

**Batts**, 66 A.2d at 295-97. Ultimately, the **Batts** Court remanded the matter for resentencing in accordance with **Miller**. **Id.** at 299.

In a concurring opinion, Justice Baer recommended that, upon resentencing Appellant, the trial court seek guidance in the newly-enacted Section 1102.1. **Batts**, 66 A.3d at 300. While acknowledging that the statute did not apply to Appellant because it was passed after his conviction, Justice Baer explained that the statute represented the legislature's view on appropriate juvenile sentencing procedure, that it provided individualized characteristics to evaluate in determining an appropriate sentence, and that adherence to the intent of the statute would promote consistency in juvenile homicide sentencing. **Id.**

I. THE SENTENCING COURT DID NOT ABUSE ITS DISCRETION IN SENTENCING APPELLANT.

In his first claim on appeal, Appellant makes several arguments. Generally, he argues that there was insufficient evidence presented at the resentencing hearing to establish beyond a reasonable doubt that Appellant is incorrigible and deserves a sentence of life imprisonment without the possibility of parole. **See** Appellant's Brief, at 48. As part of this argument, Appellant contends that certain standards and presumptions should apply when sentencing a juvenile murderer. **See id.** at 49-50. Appellant also argues that the sentencing court focused too much on the circumstances of the crime and failed to properly consider certain mitigating factors. **See id.** at 51. The Commonwealth contends that Appellant's claim is really a challenge to the discretionary aspects of sentencing, subject to review under an abuse of discretion standard. The Commonwealth contends that Appellant failed to properly preserve such a claim, that Appellant's issue fails to raise a substantial question, and that the underlying claim is without merit.

Appellant begins his argument on his first claim by stating: "To date, there is no Pennsylvania decision reviewing the discretionary imposition of a juvenile LWOP sentence for a pre-*Miller* murder conviction." **Id.** at 48. This statement is incorrect. On November 6, 2014, more than five months before Appellant filed his brief, the Superior Court issued its opinion in



**Commonwealth v. Seagraves**, 103 A.3d 839 (Pa. Super. 2014),<sup>9</sup> in which the Court “address[ed] a challenge to the discretionary aspects of a sentence imposed following a re-sentencing hearing in accordance with **Miller** and the Pennsylvania Supreme Court’s decision in **Batts**.” **Seagraves**, 103 A.3d at 839 (citations omitted). Like Appellant in the instant matter, the defendant’s case in **Seagraves** was on direct appeal at the time of the **Miller** decision. His case was remanded for resentencing, and, following an individualized sentencing hearing, the trial court sentenced the defendant to life imprisonment without the possibility of parole. The defendant appealed, claiming that the resentencing court failed to properly consider the factors listed in **Miller** and instead considered inappropriate evidence, a challenge to the discretionary aspects of sentencing. The Court set forth the applicable standard of review as follows:

In reviewing a challenge to the discretionary aspects of sentencing, [the Superior Court] evaluate[s] the court’s decision under an abuse of discretion standard. When, as here, the trial court has the benefit of a pre-sentence report, we presume that the court was aware of relevant information regarding the defendant’s character and weighed those considerations along with any mitigating factors.

**Id.** at 842 (citations omitted). “[A]n abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the

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<sup>9</sup> Following entry of the Superior Court’s opinion, the defendant filed a petition for allowance of appeal to the Pennsylvania Supreme Court. The Court denied that petition on May 20, 2015. **Commonwealth v. Seagraves**, 908 MAL 2014 (Pa. 2015).

law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.” **Commonwealth v. Shugars**, 895 A.2d 1270, 1275 (Pa. Super. 2006) (citation omitted).<sup>10</sup>

Thus, despite Appellant’s assertion to the contrary, the Superior Court has, in fact, already reviewed a challenge to the imposition of a sentence of life imprisonment without the possibility of parole following the **Miller** and **Batts** decisions and has applied an abuse of discretion standard. The Commonwealth contends that the abuse of discretion standard is the appropriate standard to apply in reviewing Appellant’s sentencing claim.

As with any discretionary aspects of sentencing claims, there is no absolute right of appeal. **Commonwealth v. Hornaman**, 920 A.2d 1282, 1284 (Pa. Super. 2007). To preserve the discretionary aspects of sentencing

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<sup>10</sup> Appellant argues that “the Superior Court should reduce its customary deference to the sentencing judge under *Commonwealth v. Bullicki* [513 A.2d 990 (Pa. Super. 1986)].” Appellant’s Brief, at 66. Appellant is correct that in **Bullicki** the trial judge had retired and a new judge was appointed to impose sentence, as in the instant matter. **See Bullicki**, 513 A.2d at 991. However, unlike the instant matter, in **Bullicki**, the judge imposed a sentence significantly below the minimum sentence recommended by the Sentencing Guidelines. **Id.** at 990. The **Bullicki** Court stated that, based on the trial judge’s retirement, it “view[ed] this as a case in which a sentence outside the guidelines requires unusually strong support since it is not based on the extensive trial exposure normally possessed by the sentencing judge.” **Id.** at 991. In the instant matter, there were no applicable guidelines in effect for Appellant; however, the sentence is within the dictates of what the courts found to be permissible in **Miller** and **Batts**. The Commonwealth also notes that, while 42 Pa.C.S.A. § 1102.1 is not directly applicable to Appellant’s case, the sentence imposed is one that would be statutorily permitted for a juvenile convicted of first-degree murder under the post-**Miller** statutory sentencing scheme. Thus, the Commonwealth does not believe that any decreased deference is appropriate in this matter.

for appellate review, the issue must be raised during sentencing or in a timely post-sentence motion, the appellant's brief must contain a concise statement of reasons relied upon pursuant to Pennsylvania Rule of Appellate Procedure 2119(f), and the appellant must demonstrate that there is a substantial question his sentence is inappropriate under the Sentencing Code. **Id.**; **Commonwealth v. Fiascki**, 886 A.2d 261, 263 (Pa. Super. 2005).

In the instant matter, Appellant has arguably preserved his issues in his post-sentence motion filed on October 29, 2007. However, Appellant has failed to adhere to the other requirements necessary to preserve his claim. First, Appellant's brief does not include the requisite Rule 2119(f) statement. The Pennsylvania Supreme Court has stated that the inclusion of a Rule 2119(f) statement "is more than mere formalism." **Commonwealth v. Goggins**, 748 A.2d 721, 726 (Pa. Super. 2000) (quoting **Commonwealth v. Tuladziecki**, 522 A.2d 17, 19 (Pa. 1987)). The Rule 2119(f) statement serves both to preserve the rights of the parties and limits review of sentencing decisions "to exceptional cases." **Id.** Because Appellant has failed to include a Rule 2119(f) statement, his claim is waived.<sup>11</sup> **See, e.g., Commonwealth v. Karns**, 50 A.3d 158, 168 (Pa. Super. 2012) (waiving

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<sup>11</sup> Appellant never even acknowledged in his brief that his claim may be considered a discretionary aspects of sentencing claim. He alleges his claim is a challenge to the sufficiency of the evidence or, in the alternative, to the weight of the evidence. **See** Appellant's Brief, at 52.

discretionary aspects of sentencing claim where appellant failed to include Rule 2119(f) statement in his brief).

Further, the Commonwealth contends that Appellant has failed to raise a substantial question for the Superior Court's review. Appellant's claims related to sentencing are allegations that the sentencing court did not give the proper weight to certain factors. **See** Appellant's Brief, at 50-52. Appellant's argument essentially calls for a reweighing of the evidence presented at the sentencing hearing. The Superior Court has repeatedly held that a claim "that the sentencing court 'failed to consider' or 'did not adequately consider' various factors does not raise a substantial question that the sentence was inappropriate." **Commonwealth v. McKiel**, 629 A.2d 1012, 1013 (Pa. Super. 1993); **see Commonwealth v. Lewis**, 911 A.2d 558, 567 (Pa. Super. 2006).<sup>12</sup>

Moreover, the Commonwealth contends that Appellant's challenge, which is properly a challenge to the discretionary aspects of sentencing, is without merit. As stated **supra**, the proper standard of review in such a

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<sup>12</sup> While **Seagraves** was also a challenge to the discretionary aspects of sentencing, in that case, the defendant raised a claim that the sentencing court improperly relied on factors from the decertification hearing while resentencing the defendant. It is well-established that a claim that the sentencing court relied on an improper factor raises a substantial question for the Superior Court's review. **See, e.g., Commonwealth v. Downing**, 990 A.2d 788, 792 (Pa. Super. 2010); **Commonwealth v. Druce**, 796 A.2d 321, 334 n.15 (Pa. Super. 2002). In contrast, Appellant in the instant matter does not contend that the sentencing court improperly considered any factor; rather, he is challenging the weight the sentencing court gave to the evidence presented.

challenge is an abuse of discretion. **Seagraves**, 103 A.3d at 842. The Commonwealth emphasizes that “[s]entencing is a matter vested in the sound discretion of the sentencing judge[.]” **Shugars**, 895 A.2d at 1275. The Commonwealth also notes that where the sentencing court possesses and considers a pre-sentence investigation (“PSI”) report, “the presumption arises that the sentencing court was aware of and weighed all relevant information contained therein along with any mitigating sentencing factors.” **Commonwealth v. Marts**, 889 A.2d 608, 615 (Pa. Super. 2005) (citation omitted).

At the resentencing hearing in the instant matter, the court began by reviewing the procedural history of this matter. **See** N.T., 5/1/14, at 33-36. Next, each party called three witnesses. The Commonwealth called Dr. Timothy Michaels, a physician specializing in clinical and forensic psychiatry, who evaluated Appellant in 2006 and 2014, and Ms. Delores Howell, the victim’s grandmother, who read a letter she wrote about the effect of her grandson’s death on her and her family. **See id.** at 41-85; 85-91. On rebuttal, the Commonwealth also called Lieutenant Thomas Serbin, the security lieutenant for State Correctional Institution—Retreat, where Appellant is incarcerated, who testified as to Appellant’s continuing affiliation with the Bloods gang. **See id.** at 171-223. Appellant presented testimony from Dr. Frank M. Dattilio, a clinical and forensic psychologist, who evaluated Appellant in 2013, and Shaniqua Batts, Appellant’s mother, who

read a letter into the record about her son. **See id.** at 93-161; 165-66. Appellant also exercised his right to allocution. **See id.** at 168-70. Further, the court read into the record a letter from Appellant's former middle school assistant principal. **See id.** at 80-82.

Following the close of the evidence, both attorneys presented argument. **See id.** at 224-52. The court then took a recess to review the evidence presented at the resentencing hearing. **See id.** at 252. The following morning, the trial court gave both the Commonwealth and the defense the opportunity to present any supplemental evidence or argument. **See** N.T., 5/2/14, at 2. The court then provided an extensive summation of the factual and procedural background of the case and thoroughly discussed the general sentencing considerations, as well as each of the criteria set forth in **Batts** and the factors listed in Section 1102.1, which the court acknowledged was not controlling, but stated it would rely on for guidance. **See id.** at 2-7; 13-15, 27-30, 30-32.

Prior to imposing sentence, the court listed all the material reviewed, which included a PSI report. **See id.** at 8-10, 12-13. The Commonwealth notes that the PSI report recommended that the court impose a sentence of life imprisonment without the possibility of parole. **See** Presentence for Northampton County, 10/11/13, at 9. The court reviewed Appellant's prior record score, the maximum possible sentences, and the applicable standard ranges. **See id.** at 11. The court then engaged in an extensive review of all

the factors to be considered in determining an appropriate sentence. The court reviewed Appellant's background and childhood, including a discussion of Appellant's relationship with his parents, his foster care placements, the time he spent living with extended family members, and Appellant's recent allegation of a childhood sexual assault. **See id.** at 15-25. The court also reviewed Appellant's involvement with the Bloods gang. **See id.** at 25-27. The court then looked at the education, employment, and activities Appellant has been involved in since his incarceration, as well as his six prison misconducts. **See id.** at 32-35; **see also** N.T., 5/1/14, at 117-20. The court reviewed Appellant's current family relationships and his support network and noted that Appellant had no mental illnesses or disorders. **See** N.T., 5/2/15, at 35-37. The court also reviewed psychological testing undergone by Appellant and the findings of the defense expert. **See id.** at 38-40.

Next, the court reviewed the evidence presented specifically in terms of the sentencing factors set forth in **Knox** and **Batts**. The court discussed each factor, including Appellant's personal characteristics and home environment, Appellant's education and employment, Appellant's drug and alcohol use, and Appellant's past exposure to violence. **See id.** at 41-44. The court also considered Appellant's criminal history—though he had no prior arrests or convictions, Appellant had a history of getting in fights and admitted to both using and selling drugs. **Id.** at 43. The court next

reviewed the circumstances of the crime and noted that Appellant “acted alone” in shooting the victims. **Id.** at 44. As to Appellant’s alleged justification of duress, the court explained that the jury did not believe that justification, as evidenced by its verdict, and that Appellant’s “description of the events was inconsistent with his assertion that he acted out of fear.” **Id.** at 45. The court further stated that Appellant’s own description of the event sounded “like a person who wanted to prove to his fellow gang members that he was capable of committing cold-blooded murder.” **Id.** at 46. The court also considered Appellant’s age, emotional maturity, and development at the time of the offenses. The court noted that Appellant “did not act on impulse,” but rather “had time to plan and deliberate,” as evidenced by his use of a mask and glove. **Id.** at 47. The court concluded that Appellant “made a calculated decision to shoot two defenseless boys at point blank range.” **Id.** at 48. The court, in reviewing the factors of familial and peer pressure, noted that Appellant had sought out gang membership, and he did so knowing about the violence inherently involved in gang affiliation. **See id.** at 49. The court also reviewed evidence related to Appellant’s ability to deal with the police and assist his attorney, as well as his taking responsibility for his actions and displaying remorse at the resentencing hearing. **See id.** at 49-50, 54. The court also noted that Appellant failed to cooperate with police; in fact, Appellant fled the state, tried to conceal his identity when apprehended, and initially lied about his involvement in the



crime. **See id.** at 54. The court considered Appellant's mental health history, his diminished culpability, and his capacity for change and rehabilitation. **See id.** at 50-54. The court further considered the impact Appellant's crimes had on the victim's families and the community, the vulnerability of the victims, and the need to avoid minimizing the seriousness of the crimes Appellant committed. **See id.** at 55. The court also considered whether Appellant posed a danger to society and acknowledged the need to protect the public. **See id.** at 55-56. Finally, the court noted the recommendations that had been made by the various parties involved in this matter. **See id.** at 56.

After this extensive review of the evidence presented, the court proceeded to carefully weigh the evidence and balance the competing concerns. Weighing against leniency for Appellant, the court found that Appellant "executed a cold-blooded murder and attempted murder of two defenseless boys [Appellant] did not know for the purpose of advancing [his] personal interest in the Bloods gang. It was a premeditated act. It was brutal, unprovoked and senseless." **Id.** at 56-57. The court also noted that Appellant was only concerned with being caught by the police, rather than feeling any sympathy for the victims he killed and injured. **See id.** at 57. Also weighing against Appellant was the fact that he acted alone and that there was no justification for his acts. **See id.** The court specifically stated that, like the jury, it did not find Appellant's allegation of duress to be

credible. **Id.** at 57-58. The court also found that the vulnerability of the victims, Appellant's attempts to avoid arrest, and the impact these crimes had on the victims and their families weighed against leniency for Appellant. **See id.** at 57-58. The court also wished to avoid minimizing the seriousness of Appellant's offenses and recognized the need to protect the public. **See id.** at 59-60. Finally, the court stated that Appellant's amenability to treatment was uncertain, based on the expert reports and Appellant's numerous prison misconducts. **See id.** at 59.

The court also found that there were several factors that weighed in Appellant's favor. For example, the court found that Appellant's troubled childhood and exposure to violence were factors weighing in Appellant's favor. The court also found that Appellant had a "heightened need for the support of a caring family," which attracted him to gang membership. **Id.** at 61. The court observed that Appellant was fourteen years of age at the time of his crimes, though it noted that his "young age does not significantly diminish[ his] culpability[.]" **Id.** at 61. However, the court did state that Appellant's age "weighs slightly in favor in assessing [his] amenability to treatment and rehabilitation and [his] capacity for change." **Id.** The court also weighed Appellant's lack of prior record and school attendance in Appellant's favor. **See id.** at 61-62. Further, the court recognized that Appellant has "acknowledged the wrongfulness of [his] conduct" since being incarcerated and, during the resentencing hearing, "show[ed] some

compassion for [his] victims.” *Id.* at 62. The court found that it weighed in Appellant’s favor that he held employment and took several courses in prison. *See id.* The court also considered Appellant’s attempt to be a positive role model for his younger brother, which the court deemed to weigh in favor of Appellant. *See id.*

Ultimately, the court concluded:

[A]fter careful consideration and weighing all the factors listed above, . . . the factors not in defendant’s favor significantly outweigh the factors in his favor. Weighing all the factors including the brutal nature of the crime, the recommendation of the prosecutor, the fact that you acted alone, the fact that you acted for your own personal gain, your lack of justification for your crimes, the particular vulnerability of the victims, your lack of cooperation with the authorities, the impact your crime has had on the victims, the victims’ families and the community, the need to avoid minimizing the seriousness of your crime, the uncertainty of your amenability to treatment, the need to protect the public, your troubled childhood, your young age and stage of development at the time you committed your crimes and, in particular, the fact that you were only 14-years-old at the time of your crimes, an age that warrants particular consideration as determined by the U.S. Supreme Court, the fact that your crimes appeared to be out of character for you and the opinions of several of the experts that you are amendable to treatment -- amenable to treatment and might be rehabilitated with years of psychotherapy, the Court concludes that the factors not in defendant’s favor significantly outweigh the facts in his favor.

*Id.* at 64-65. As a result of this conclusion, the court sentenced Appellant to a term of life imprisonment without the possibility of parole.<sup>13</sup> *Id.* at 67.

The trial court’s statement of reasons on the record, as well as its subsequent Rule 1925(a) opinion, was extremely thorough and displayed an

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<sup>13</sup> Appellant was also sentenced to a concurrent term of ten to twenty years’ imprisonment on the attempted murder count.

obvious understanding of the nuances of this particular case. The court's statements clearly demonstrate the careful weighing of factors undertaken before reaching a sentencing determination. In light of the court's extensive review of the record and careful balancing of all the sentencing factors, including the court's consideration of the PSI report, the Commonwealth contends that the court did not abuse its discretion in sentencing Appellant. **See Seagraves**, 103 A.3d at 842; **Marts**, 889 A.2d at 615.

The Commonwealth believes that this discussion fully address the discretionary aspects of sentencing issue raised by Appellant, however will briefly address some of the specific points raised by Appellant as well. Appellant contends that the court focused solely on the circumstances of the crime while "push[ing] aside" all mitigating arguments. Appellant's Brief, at 51. This is simply not true, as a review of the resentencing record demonstrates. While the court did, as required by statute, discuss the nature of Appellant's offenses, he also reviewed all mitigating factors, including Appellant's age, his upbringing, and the opinions of the experts who evaluated Appellant as to his potential for rehabilitation. Similarly, Appellant contends that the court failed to properly consider Appellant's gang membership as a mitigating factor. **Id.** at 74-75. Again, this is simply untrue. While finding that Appellant's gang membership did not "diminish [his] culpability," the court acknowledged that Appellant's upbringing may have prompted him to join the gang and those factors pointed towards

Appellant benefitting from treatment. N.T., 5/2/14, at 60. The Commonwealth points out that both these arguments made by Appellant are essentially a request for the Superior Court to reweigh the evidence presented, which it is not appropriate for an appellate court to do. **See Commonwealth v. Bowen**, 975 A.2d 1120, 1123 (Pa. Super. 2009) (explaining that “an appellate court could not substitute its own weighing of [sentencing] factors”); **Commonwealth v. Dickerson**, 590 A.2d 766, 769 (Pa. Super. 1991) (explaining that the appellate court will not “substitute [its] judgment for that of the sentencing court”).

Appellant also argues that “[b]ut for’ his youthful incompetency, [Appellant] might have been charged and convicted of something less than first-degree murder.” Appellant’s Brief, at 81. Appellant appears to be contending that Appellant’s charges and subsequent conviction would not have occurred absent his confession. **See id.** at 81-84. This is pure speculation. It is ridiculous to assert that Appellant would not have been charged with first-degree murder absent his confession; this is clearly untrue. As to a conviction, a review of the evidence presented at trial demonstrates that, even absent Appellant’s confession, there was overwhelming evidence of his guilt, sufficient to sustain a first-degree murder conviction.

Finally, Appellant also spends a significant portion of his argument discussing the evaluations prepared by expert witnesses and Appellant’s

capacity to be rehabilitated. The Commonwealth will briefly review this evidence as well.

Dr. Michaels was called as an expert witness by the Commonwealth. He testified that he first examined Appellant in 2006 related to the decertification hearing, after which he determined that Appellant was not amenable to treatment in the juvenile system. **Id.** at 42, 44. In anticipation of resentencing, he met with Appellant again in January 2014. **Id.** at 43. To reach an opinion, Dr. Michaels met with Appellant, obtained a personal history, and reviewed records and reports, including the reports authored by the court-appointed psychologist and the defense expert, which contained results from psychological testing. **Id.** at 44-45, 48. Dr. Michaels found that Appellant had "a pattern of chronic psychological maladjustment and resistance to personality change[,]" evidenced by his poor judgment and "acting out behaviors." **Id.** at 49; **see id.** at 50. While acknowledging that Appellant had been involved in some positive programs while incarcerated, Dr. Michaels concluded that "who [Appellant] is is unfortunately a negative characteristic and contributes to drive his behavior." **Id.** at 51; **see id.** at 59-60 (stating that it is difficult to change underlying personality traits). He further stated that, based on the results of the psychological testing, it was "highly unlikely that [Appellant] would change." **Id.** at 71. Dr. Michaels also opined that Appellant's actions in killing Clarence Edwards and attempting to kill Corey Hilario were the result of purposeful, volitional, and

deliberate decisions that were not made under duress or as the result of a psychiatric issue. **Id.** at 51-53; **see id.** at 61.

Dr. Dattilio, the defense's expert witness, met with Appellant twice in August 2013 to evaluate whether he "was amenable to a reduction in sentencing or in time[.]" **Id.** at 95. In making his determination, Dr. Dattilio interviewed Appellant's mother, met with Appellant, administered numerous assessment tests, and reviewed the previous expert reports, data from psychological testing, and various school and social services records. **Id.** at 95-97; **see id.** at 115-16. Dr. Dattilio stated that Appellant had a very "tumultuous upbringing" and described how Appellant lived with various biological family members and foster families. **Id.** at 98; **see id.** at 128-30. Dr. Dattilio found that Appellant was drawn to the Bloods as a result of this upbringing, which made him "a ripe apple for some sense of attachment[.]" **Id.** at 100. Dr. Dattilio acknowledged that Appellant "understood that shooting and killing another person was wrong" and knew what he was doing when he killed Clarence Edwards and injured Corey Hilario. **Id.** at 101, 155-56. Dr. Dattilio's ultimate conclusion was that Appellant had matured since the time of the murder and is "pretty stable." **Id.** at 103-04. Dr. Dattilio stated that he believed, at the time of the murder, Appellant had a low level of sophistication, was very vulnerable, and did not know what he was getting into when he made the decision to join the Bloods gang. **Id.** at 107-08. Dr. Dattilio also found that Appellant has the capacity to change, based on his

desire to do so and his remorse for his actions. *Id.* at 110. However, in his report, Dr. Dattilio did note that "given [Appellant's] personality dynamics, he is likely to have some long-term adjustment problems that are repetitive and tend to be resistant to psychological treatment." Psychological Evaluation, 11/21/13, at 14.

The court was also in possession of a psychological evaluation performed by Dr. Susan E. Kraus. Dr. Kraus is a licensed psychologist and was appointed by the court to evaluate Appellant. While Dr. Kraus ultimately stated that Appellant has made "significant changes in his thinking and behavior" while incarcerated and that he "appears competent and amendable to treatment," Dr. Kraus highlighted many troubling factors in her report. Psychological Evaluation, 7/25/13, at 12. Dr. Kraus stated that Appellant was "driven by his desire to display an image of hard-boiled strength" and has "tendencies to intimidate and exploit others." *Id.* at 6. Appellant also displayed a "rash willingness to risk harm" and "is easily provoked to anger." *Id.* Dr. Kraus stated: "Actions are likely to be present that raise questions about his personal integrity, such as a ruthless indifference to the rights of others. These may indicate a pervasively deficient social conscience, a disdain of traditional ideals, and a contemptuousness of conventional values." *Id.* Dr. Kraus also found that Appellant "may obtain gratification by humiliating and dominating others," and "he may exhibit a readiness to attack those he distrusts." *Id.* Dr. Kraus



explained that "if [Appellant] is unsuccessful in channeling these omnipresent aggressive impulses, his resentment may mount into periods of manic excitement or into acts of brutal hostility." *Id.* Dr. Kraus also referred to Appellant's "omnipresent undertone of anger and resentment" and stated that the results of psychological testing revealed that Appellant has "features predisposing him to sometimes suspicious, erratic and non-socialized thinking and behavior." *Id.* at 9, 11.

The Commonwealth believes that, when looking at these reports in their totality and considering them as one factor among many that the court is required to consider, the reports and testimony proffered by the three expert witnesses in this case do not require a different sentence than that imposed. The findings indicate that Appellant knew what he was doing when he committed a purposeful killing and attempted killing, that he is resistant to change, and that he has issues with anger and violence. The court was aware of the evaluations by all three experts and properly considered them in fashioning an appropriate sentence. The Commonwealth contends that the sentencing court did not commit an abuse of discretion in sentencing Appellant.

## II. APPELLANT'S RESENTENCING PROCEEDING WAS NOT UNCONSTITUTIONAL.

Appellant contends that Appellant's resentencing proceeding was unconstitutional because it was not conducted with the proper procedural safeguards. Appellant's Brief, at 89. Appellant asserts that a juvenile convicted of first-degree murder is entitled to the same sentencing procedure as an adult facing capital punishment. *Id.* The Commonwealth argues that no constitutional violation took place during the resentencing proceedings in this matter.

Appellant, who devotes much of his argument on this matter to citing 42 Pa.C.S.A. § 9711, which governs the sentencing procedure following an adult first-degree murder conviction, contends that his sentencing proceeding was unconstitutional because the matter was assigned to the sentencing court "without any input from the defense," because "the Commonwealth denied that it had any burden of proof," and because the sentencing court, in its Rule 1925(a) Opinion, stated that the appropriate standard of review for Appellant's sentencing claim was an abuse of discretion. *See id.* at 89-93. Appellant asserts that in order to sentence a juvenile to life imprisonment without the possibility of parole, the determination must be made unanimously by a jury, with the Commonwealth bearing the burden of proof. *Id.* at 93. Appellant also contends that he is entitled to automatic review by the Pennsylvania

Supreme Court. **Id.** Appellant states that, because these procedures were absent, the Superior Court must remand this matter for resentencing and must also “promulgate safeguards to ensure that juvenile LWOP will be ‘uncommon’ in Pennsylvania.” **Id.**

The Commonwealth asserts that this argument is patently without merit. First, the Commonwealth contends that Appellant’s assertion that there was some error committed because defense counsel did not have input into what judge would preside over the resentencing hearing, while true, is completely irrelevant to the disposition of this matter. When a judge retires, accepts a new position, or leaves the bench for another reason, it is routinely the President Judge of the Court of Common Pleas who reassigns any matters previously assigned to the now-absent judge. The Commonwealth also had no input as to which judge received the reassignment in this matter. There was no error in the court following its regularly established procedure for reassignment in this case. Further, even if the Commonwealth agreed that death penalty procedures were to apply in this case, there still appears to be no support for Appellant’s implication that defense counsel should have a say into which judge hears matters on remand.

Second, the Commonwealth contends that there was no error or constitutional violation in the resentencing hearing. While cases such as **Graham** have drawn parallels between a juvenile being sentenced to life

without the possibility of parole and an adult receiving the death penalty, **see Graham**, 560 U.S. at 69-70, there is no authority requiring that the same procedural steps are required to be followed in both circumstances. **See Miller**, 132 S.Ct. at 2468; **Batts**, 66 A.3d at 297-97.

In **Knox**, the Superior Court, discussing **Miller**, stated that, while the Supreme Court "mandate[d] that there be a process" that takes into consideration an offender's age and attendant characteristics, the Supreme Court did "not delineate specific guidelines." **Knox**, 50 A.3d at 745. In fact, the Superior Court pointed out that the Supreme Court, far from dictating a precise procedural regime, did not even "delineate specifically what factors a sentencing court must consider[.]" **Id.** In **Batts**, the Pennsylvania Supreme Court acknowledged that it was "tasked with determining an appropriate scheme for resentencing for [Appellant's first-degree murder conviction], consistent with **Miller**." **Batts**, 66 A.3d at 296-97. In determining what that appropriate sentencing scheme would be, the Court concluded that the matter should be remanded for a new sentencing proceeding, in which the sentencing court would consider the factors listed in **Knox**, in order to remedy the constitutional violation that occurred when Appellant was sentenced to a mandatory term of life imprisonment. **Id.** at 297. The Court did not, and, to date, has not ever, held that the determination of an appropriate sentence must be made by a jury or that the Commonwealth bears a beyond a reasonable doubt burden of proof.

Furthermore, while Appellant urges the Superior Court to “promulgate safeguards,” the Commonwealth is strongly opposed to this suggestion. Appellant’s Brief, at 93. First, generally, if any procedural rules are to be enacted, it is the Pennsylvania Supreme Court that “retains exclusive rule-making authority to establish rules of procedure.” **Commonwealth v. McMullen**, 961 A.2d 842 (Pa. 2008) (citing PA. CONST. art. V, § 10(c)). Second, if juvenile murderer sentencing proceedings are to adhere to the same procedure as death penalty sentencing proceedings, the proper body to enact such a requirement is the legislature. As the Pennsylvania Supreme Court explained in relation to death penalty sentencing procedures:

“It is the province of the legislature to determine the punishment imposable for criminal conduct.” **Commonwealth v. Wright**, 508 Pa. 25, 40, 494 A.2d 354, 361 (1985), *aff’d sub nom. McMillan v. Pennsylvania*, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986) (citing cases). The legislature has enacted a statutory scheme so that a determination can be made as to whether the death penalty should be imposed in a given case. The statute embodies the legislature’s judgment as to what specific factors relating to the nature of the crime and the character and record of the accused should be considered in making that determination. The discretion of the sentencing body is thereby limited and channeled in a manner which we have held is adequate to prevent the arbitrary and capricious imposition of the death sentence. **Commonwealth v. Zettlemoyer** [454 A.2d 937 (Pa. 1982)]. The statute is clearly an appropriate exercise of the legislative function and in no way impairs this Court’s authority to promulgate procedural rules.

**Commonwealth v. DeHart**, 516 A.2d 656, 670-71 (Pa. 1986).

In the case of juvenile murders, the legislature has already taken steps to promulgate what it believes to be the proper procedure by which to

determine an appropriate sentence for a juvenile murder. While Section 1102.1 does not apply to Appellant because of when he committed murder, it does represent the legislature's position as to the appropriate manner in which to handle the sentencing of a juvenile murderer following the **Miller** decision. The legislature believes, as evidenced by Section 1102.1, the best manner in which to handle sentencing juvenile murderers is for the court to impose a sentence after considering certain delineated factors. **See** 18 Pa.C.S.A. § 1102.1(d). Clearly, the legislature did not believe that it was necessary to empanel a jury, to place a beyond a reasonable doubt burden on the Commonwealth, or to require the Pennsylvania Supreme Court to automatically review each sentence. **See id.** at § 1102.1.

Thus, the Commonwealth contends that there is no merit to Appellant's claim that his resentencing proceeding was unconstitutional. The sentencing court adhered to the dictates of **Miller, Knox, and Batts** in resentencing Appellant. The Commonwealth asserts that there were no constitutional errors in the resentencing procedure followed by the court after remand.

### III. APPELLANT'S SENTENCE WAS NOT ILLEGAL.

Appellant argues that the court violated the Pennsylvania Supreme Court's directive in **Batts** when it imposed a sentence of life imprisonment without the possibility of parole. **See** Appellant's Brief, at 94. Essentially, Appellant argues that his sentence is illegal because there was not a minimum sentence imposed. **See id.** The Commonwealth contends Appellant's sentence is legal, and the court did not err in sentencing Appellant to a term of life imprisonment without the possibility of parole.

"An illegal sentence is one that exceeds the statutory limits." **Commonwealth v. Bradley**, 834 A.2d 1127, 1131 (Pa. 2003) (citations omitted). "[T]he issue of whether a sentence is illegal is a question of law; therefore, the task of the Superior Court is to determine where the sentencing court erred as a matter of law and, in doing so, the scope of review is plenary." **Commonwealth v. Druce**, 868 A.2d 1232, 1236 (Pa. Super. 2005).

In **Batts**, the Pennsylvania Supreme Court stated:

We recognize the difference in treatment accorded to those subject to non-final judgments of sentence for murder as of **Miller's** issuance and those convicted on or after the date of the High Court's decision. As to the former, it is our determination here that they are subject to a mandatory maximum sentence of life imprisonment as required by Section 1102(a), accompanied by a minimum sentence determined by the common pleas court upon resentencing. Defendants in the latter category are subject to high mandatory minimum sentences and the possibility of life without parole, upon evaluation by the sentencing court of criteria along the lines of those identified in **Miller**. See 18 Pa.C.S. § 1102.1. Nevertheless, in the absence

of a claim that such difference violates constitutional norms, we have interpreted the statutory provisions applicable to Appellant (and all others similarly situated) in accord with the dictates of the Eighth Amendment as set forth in **Miller**, as well as the Pennsylvania Legislature's intent as reflected in the relevant statutory provisions.

**Batts**, 66 A.3d at 297.

Appellant reads this statement by the Court to mean that, while Appellant is required to get a sentence of life imprisonment, he is entitled to the possibility of parole and the sentencing court is required to impose a minimum sentence for a set term of years. The Commonwealth does not believe that is what the Court intended. While the Commonwealth agrees that this provision gives the sentencing court the discretion to impose a minimum term of years, the Commonwealth does not believe that it is required to do so. Rather, the Commonwealth reads this passage as distinguishing between juveniles who were convicted prior to the **Miller** decision and must receive a mandatory maximum sentence of life imprisonment, with the sentencing judge determining whether that should be with or without the possibility of parole, and juveniles who were convicted after the **Miller** decision, in which case, the court may sentence a juvenile murderer to a term of years and is not required to impose a mandatory maximum sentence of life imprisonment.

The Commonwealth's reading of the language in **Batts** is consistent with the **Seagraves** decision. In **Seagraves**, a defendant whose case was pending on direct appeal at the time of the **Miller** decision was resentenced,



after an individualized hearing, to a term of life imprisonment without the possibility of parole. In that case, the resentencing court also did not impose a minimum sentence for a set term of years. On appeal, the Superior Court stated: "Neither the decision in **Miller** nor **Batts** categorically prohibits the re-imposition of a life without the possibility of parole sentence." **Seagraves**, 103 A.3d at 849. Ultimately, the Superior Court affirmed the defendant's sentence. **Id.** at 850.

Moreover, the Commonwealth's interpretation is supported by **Miller** and its progeny, which makes clear that a sentence of life imprisonment without the possibility of parole is still a viable sentencing alternative for juvenile murders. In **Miller**, the United States Supreme Court did not strike down the possibility of life imprisonment without the possibility of parole for juvenile murderers; rather, the Court struck down the mandatory nature of such a sentence. **See Miller**, 132 S.Ct. at 2475. In **Batts**, the Pennsylvania Supreme Court rejected Appellant's argument that the Pennsylvania Constitution required "a categorical ban on the imposition of life-without-parole sentences on juvenile offenders[.]" **Batts**, 66 A.3d at 297-99. In **Knox**, the Superior Court, after stating that **Miller** did not establish a categorical ban on sentences of life imprisonment without the possibility of parole for juvenile murderers, specifically "emphasize[d] that [its] disposition does not mean that it is unconstitutional for a juvenile to actually spend the rest of his life in prison[.]" **Knox**, 50 A.3d at 744-45.

To read the above-quoted passage from **Batts** to prohibit Appellant from getting a sentence of life imprisonment without the possibility of parole is inconsistent with the United States Supreme Court's holding in **Miller** and the subsequent cases in Pennsylvania which analyzed that holding. Every court that has addressed the issue has clearly stated that life without the possibility of parole is a possible sentencing alternative for a juvenile murderer. The Commonwealth contends that the court did not err in resentencing Appellant. Appellant's sentence is not illegal because the sentencing court had the authority to impose a sentence of life imprisonment without the possibility of parole.

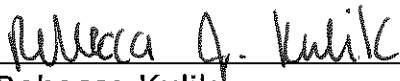
**CONCLUSION**

In light of the foregoing, it is respectfully requested that judgment of sentence be AFFIRMED.

Respectfully submitted,

JOHN M. MORGANELLI  
DISTRICT ATTORNEY

By:

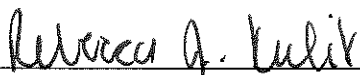
  
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COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
 : PENNSYLVANIA  
VS. :  
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 : NO. 1764 EDA 2014  
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QU'EED BATTS :

**CERTIFICATION OF COMPLIANCE**  
**PURSUANT TO PENNSYLVANIA RULE OF**  
**APPELLATE PROCEDURE 2135(d)**

I HEREBY CERTIFY THAT THE FOREGOING BRIEF IS IN COMPLIANCE WITH THE REQUIREMENTS OF PENNSYLVANIA RULE OF APPELLATE PROCEDURE 2135(a)(1). THE FOREGOING BRIEF IS 10,678 WORDS. THE BRIEF DOES NOT EXCEED THE 14,000 WORD LIMITATION SET FORTH IN RULE 2135(a)(1).

Date: June 1, 2015

  
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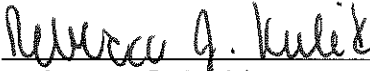
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QU'EED BATTS :

**PROOF OF SERVICE**

I HEREBY CERTIFY THAT I AM THIS DAY SERVING THE FOREGOING BRIEF UPON THE PERSON SET FORTH BELOW, BY FIRST CLASS MAIL ADDRESSED AS BELOW, WHICH SERVICE SATISFIES THE REQUIREMENTS OF Pa.R.A.P. 121.

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