

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

**COMMONWEALTH OF
PENNSYLVANIA**

V.

STEVE JONES, JR.

777 EDA 2015

APPELLANT'S REPLY BRIEF

**Appeal From Order Of The Court Of Common Pleas Of Delaware County,
Criminal Division, Dismissing PCRA Petition Without A Hearing Entered
February 18, 2014 in
CP-23-CR-0001881-2002**

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September 14, 2015

Appellant Steve Jones, Jr., through counsel, respectfully submits this Reply Brief in further support of his appeal. In this Reply, Mr. Jones responds to the arguments made by the Commonwealth in its Brief for Appellee. In all other respects, Mr. Jones relies on the arguments set forth in the Brief for Appellant.

Evenhanded Justice Requires Resentencing Now. In The Alternative, This Appeal Should Be Held Pending The United States Supreme Court’s Decision In *Montgomery v. Louisiana*.

Mr. Jones remains incarcerated based upon a constitutionally disproportionate sentence that could not be imposed today. *See Miller v. Alabama*, 132 S. Ct. 2455, 2475 (2012) (finding “the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment’s ban on cruel and unusual punishment”). He does not deserve to die in prison without pre-sentencing consideration of the unique attributes of youth simply because he was convicted more than ten years ago. Accordingly, for the reasons addressed in his Brief for Appellant, Mr. Jones seeks a remand for a new sentencing hearing, consistent with *Miller v. Alabama*. In the alternative, Mr. Jones respectfully requests that this Court hold his appeal pending the United States Supreme Court’s decision in *Montgomery v. Louisiana*, 135 S. Ct. 1546 (2015), *cert. granted*, regarding the retroactivity of *Miller*.

The United States Supreme Court granted a writ of *certiorari* in *Montgomery v. Louisiana*, 135 S. Ct. 1546 (2015). The question presented in

Montgomery is precisely the issue in this appeal: whether *Miller v. Alabama* applies retroactively to cases in which the convictions were final at the time of the *Miller* decision. The Commonwealth contends that, “until the Supreme Court determines [that *Miller*] applies retroactively to cases on collateral review, *Miller* provides no relief for the defendant.” (Appellee’s Brief at 30). Although Mr. Jones maintains that *Miller* is retroactive and that this Court should apply *Miller* to him, in the alternative Mr. Jones requests that this Court hold his appeal pending the disposition of *Montgomery*.

Over 500 men and women in Pennsylvania are serving mandatory life-without-parole sentences for offenses that occurred when they were juveniles. After the *Miller* decision, many of those individuals, like Mr. Jones, filed PCRA petitions seeking relief from their unconstitutional sentences. In many instances, the PCRA courts have denied those petitions. Nonetheless, the Pennsylvania Supreme Court has not foreclosed the possibility of relief for these petitioners. The Pennsylvania Supreme Court has opted to hold *Miller*-based allocatur petitions pending the resolution of *Montgomery*. See, e.g., Per Curiam Order Holding Pet. Allowance Appeal, *Commonwealth v. Johnson*, (May 26, 2015) (No. 62 WAL 2015) (“the Petition for Allowance of Appeal is HELD pending *Montgomery v. Louisiana*, 135 S. Ct. 1546 (2015).”). Mr. Jones submits that the Pennsylvania Supreme Court has placed this case on hold in the interest of judicial economy; if

the United States Supreme Court concludes that *Miller* is retroactive, petitioners whose allocatur petitions are pending will not need to file new PCRA petitions in order to receive the relief to which they are entitled. The same logic applies here. If this Court is inclined to conclude that *Miller* is not retroactive, Mr. Jones's appeal should be held pending the resolution of *Montgomery v. Louisiana*.

CONCLUSION

Mr. Jones respectfully requests that this Honorable Court reverse the lower court's denial of his PCRA Petition, vacate the Order of Sentence against him, and remand the case for a new sentencing hearing, consistent with *Miller v. Alabama*. In the alternative, Mr. Jones requests that this Honorable Court hold his appeal pending the United States Supreme Court's resolution of *Montgomery v. Louisiana*.

Respectfully submitted,

/s/ Marsha Levick

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CERTIFICATE OF SERVICE

I, Marsha L. Levick, hereby certify that on this 14th day of September, 2015,

I caused copies of the foregoing document to be served via United States Postal Service First Class Mail upon the following individuals:

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Respectfully,

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