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DEFENDER ASSOCIATION OF PHILADELPHIA

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COMMONWEALTH OF PENNSYLVANIA : THE COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION
: 0311352-1953
VS. : CP-51-CR-0301133-1953
: CP-51-CR-0301135-1953

JOSEPH LIGON : CHARGES: MURDER

COMMONWEALTH OF PENNSYLVANIA :
:
VS. : 1102961-1987
: CP-51-CR-0301135-1953

KEMPIS SONGSTER : CHARGES: MURDER

COMMONWEALTH OF PENNSYLVANIA :
:
VS. : CP-51-CR-0207921-1973

KEVIN VAN CLIFF : CHARGES: MURDER

COMMONWEALTH OF PENNSYLVANIA :
:
VS. : CP-51-CR-1229872-1991

THEODORE BURNS : CHARGES: MURDER

COMMONWEALTH OF
PENNSYLVANIA :
 :
VS. : CP-51-CR-0400013-1992

SHARVONNE ROBBINS : CHARGES: MURDER

COMMONWEALTH OF
PENNSYLVANIA :
 :
VS. : CP-51-CR-1003691-1995

TAMIKA BELL : CHARGES: MURDER

COMMONWEALTH OF
PENNSYLVANIA :
 :
VS. : CP-51-CR-0634051-1981

ALPHONSO LEAPHART : CHARGES: MURDER

**DEFENDANTS' QUESTIONS OF LAW TO BE RESOLVED PRIOR TO
RE-SENTENCING PURSUANT TO GENERAL COURT REGULATION #1
OF 2016**

Pursuant to General Court Regulation #1 (2016), defendants Joseph Ligon, Sharvonne Robbins, and Tamika Bell, by Bradley S. Bridge, Shonda Williams, Karl Baker, and Keir Bradford-Grey, Defender Association of Philadelphia, and Marsha Levick, Juvenile Law Center; Kempis Songster, by Douglas Fox, Cozen O'Connor; Kevin Van Cliff, by Daniel Silverman, Silverman and Associates;

Alphonso Leaphart, by Peter Goldberger, and Theodore Burns, by Melissa R. Gibson, Akin Gump Strauss Hauer and Feld, hereby present the following questions of law for resolution by an *en banc* panel of this court:

1. Whether it is unconstitutional to ever impose a maximum sentence of life imprisonment for an offense committed by a person who was under 18 years of age at the time of the offense or whether such a maximum sentence of life may be imposed mandatorily, under *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), *Commonwealth v. Batts*, 66 A.3d 286 (Pa. 2013), and *Songster v. Beard*, ___F.Supp.3d___, 2016 WL 4379233 (E.D. Pa., 2016);

2. Whether this court may constitutionally impose any sentence other than a sentence for third degree murder, which is the only statutorily lawful sentence in Pennsylvania in a case of first degree murder committed by a person under 18 years of age or, for such persons convicted of second degree murder, a sentence for third degree murder or for the felony associated with the second degree murder conviction following *Miller*. Since *Miller* invalidated the only existing sentencing scheme in Pennsylvania for juveniles convicted of first or second degree murder prior to 2012, but left intact the sentencing scheme for lesser included offenses, that is the only applicable and constitutional sentencing scheme for this class of

defendants. Alternatively, if no lawful sentencing scheme survives *Miller*, defendants must be released on sentences of “time served” or be given flat sentences;

3. Whether, since 18 Pa. C.S.A. § 1102.1 explicitly does not apply retroactively to those convicted on or before June 24, 2012, the court may use §1102.1 as a guide for re-sentencing or whether instead each defendant must be afforded an individualized sentencing hearing with the judge having complete discretion to set a minimum sentence;

4. Whether there is a presumption against reimposition of a life without parole sentence at resentencing under *Miller v. Alabama* and *Montgomery v. Louisiana*, establishing that such sentences should be rare and uncommon, and further whether these cases also establish a presumption of immaturity and reduced culpability;

5. Whether the Commonwealth must establish beyond a reasonable doubt that the defendant’s crime reflects permanent incorrigibility, irreparable corruption or irretrievable depravity before such defendant may receive a sentence of life without parole;

6. Whether defendant has a right to have a jury determine if he or she is permanently incorrigible, irreparably corrupt or irretrievably depraved prior to the

imposition of a sentence of life without parole;

7. Whether expert testimony is required to establish that the defendant's crime reflects permanent incorrigibility, irreparable corruption or irretrievable depravity;

8. Whether Rule 573, Pa. R. Cr. P., governs the disclosure of any expert reports;

9. Whether, in accordance with *Graham, Miller and Montgomery*, affording defendants a "meaningful opportunity" for release if life without parole is not imposed means release before defendant reaches, or is approaching, his/her life expectancy, and whether *de facto* life sentences are constitutionally barred;

10. Whether there are constitutional limits on victim impact testimony;

11. Whether the Court must provide funds to the defendant for a mitigator sufficiently before the time of sentencing so that counsel can adequately and effectively prepare to represent his or her client at sentencing;

12. Whether the Court must provide funds to the defendant for expert witnesses to assist the defense sufficiently before the time of sentencing so that counsel can adequately and effectively prepare to represent his or her client at sentencing.

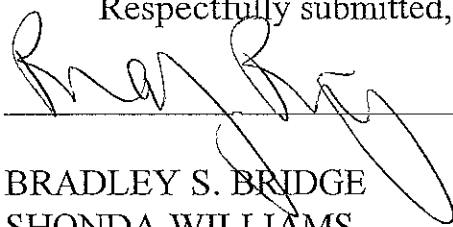
13. Whether, if the Commonwealth is seeking reimposition of life without

parole, the Commonwealth must provide notice of such intent at the conclusion of the JLSWOP status hearing at which the date for resentencing is set, and whether such notice must set forth the specific basis for concluding that the defendant is permanently incorrigible, irreparably corrupt or irretrievably deprived;

14. Whether the parties must disclose thirty days prior to the resentencing hearing any evidence or witnesses the parties intend to introduce at sentencing, and whether, in the event of any challenge to the admissibility of such evidence, a judge other than the sentencing judge shall be assigned to rule on that challenge;

15. Whether Dawson v. Delaware, 503 U.S. 159, 112 S. Ct. 1093 (1992), governs the admissibility at the resentencing hearing of any evidence of gang membership.

Respectfully submitted,



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