

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

FILED

DEC 20 2016

SUPREME COURT
WESTERN DISTRICT

No. 127, ^{WM} M.D. Misc. Docket 2016

***IN RE RICHARD LEE OLDS, ON HIS OWN BEHALF AND ON
BEHALF OF ALL OTHER SIMILARLY SITUATED INDIVIDUALS
APPEALING FROM OR AWAITING RESENTENCING PURSUANT
TO MILLER V. ALABAMA AND MONTGOMERY V. LOUISIANA***

**APPLICATION OF RICHARD LEE OLDS AND SIMILARLY
SITUATED INDIVIDUALS FOR EXERCISE OF EXTRAORDINARY
JURISDICTION OR KING'S BENCH POWER**

RECEIVED

DEC 20 2016

SUPREME COURT
WESTERN DISTRICT

Marc Bookman,
Pa. Bar No. 37320
Atlantic Center for Capital Representation
1315 Walnut Street, Suite 1331
Philadelphia, PA 19107
215-732-2227
mbookman@atlanticcenter.org

Marsha Levick
Pa. Bar No. 22535
Juvenile Law Center
1315 Walnut Street, Suite 400
Philadelphia PA 19107
215-625-0551
mlevick@jlc.org

Wendy Williams
Pa. Bar No. 50379
Wendy L. Williams and Associates
417 Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 434-5757
wendy.williams.law@gmail.com

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**APPLICATION FOR THE EXERCISE OF KING'S BENCH POWER
OR EXTRAORDINARY JURISDICTION**

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to the Judicial Code, 42 Pa. Cons. Stat. §§ 502 & 726, Section 1 of the Schedule to the Judicial Article of the Pennsylvania Constitution, and Rule 3309 of the Pennsylvania Rules of Appellate Procedure, this Court may assume plenary jurisdiction, and, for the reasons outlined below, it should assume jurisdiction to resolve procedural and substantive questions of law arising out of Pennsylvania's implementation of *Miller v. Alabama*, 567 U.S. ---, 132 S. Ct. 2455 (2012), and *Montgomery v. Louisiana*, ---U.S.---, 136 S. Ct. 718 (2016), with respect to Mr. Olds and other similarly situated individuals who have been convicted of murder as a result of participation in a felony under 18 Pa.C.S. §2502 (b), who did not kill or intend to kill, and whose re-sentencing rights have not been addressed by this Court. In *Commonwealth v. Batts*, 620 Pa. 115 (Pa. 2013) ("*Batts I*"), this Court explicitly stated that its ruling did not apply to juveniles convicted of second degree murder who neither killed nor intended to kill and whose cases were final prior to June 12, 2012: "[D]espite the broad framing of the questions at hand, Appellant has confined his arguments to the context of first-degree murder; hence, the issues identified by Justice Breyer in his *Miller* concurrence, see *Miller*, 567 U.S. at ----, 132 S.Ct. at 2476 (Breyer,

J., concurring) (discussing additional constitutional concerns connected with the imposition of life-without-parole sentences on juveniles convicted of murder as a result of participation in a felony who have neither killed nor intended to kill), *are not implicated in the present matter.*” 66 A.3d at 293-294 (emphasis added).

This petition is appropriate for the Court’s consideration and the granting of relief, as this matter plainly meets this Court’s test of great and immediate public importance. *See* 42 Pa.C.S. § 726. Pursuant to Rule 3309(a), Petitioners show service through an appended Certificate of Service on the parties identified by the appended Certificate.

I. INTRODUCTION: NAMED APPLICANT AND SIMILARLY SITUATED INDIVIDUALS ARE PRESENTING AN ISSUE OF IMMEDIATE PUBLIC IMPORTANCE AND A SETTLED MATTER OF CONSTITUTIONAL LAW

Petitioners ask this Court to invoke its original jurisdiction under 42 Pa.C.S. §§ 502 & 726¹ and exercise its Kings Bench Power and power of Extraordinary Jurisdiction.² While this Court has noted that the exercise of

¹ Per *Bd. of Revision of Taxes v. City of Philadelphia*, 4 A.3d 610 (Pa. 2010), the Court’s King’s Bench Powers are distinguished from its exercise of Extraordinary Jurisdiction by the fact that “an action between the same parties regarding the same issue is pending” in a lower court. See also *In re Dauphin County Fourth Investigating Grand Jury*, 943 A.2d 929 (Pa. 2007). In the instant matter, Petitioner’s sentence is currently being appealed in the Superior Court. However, while Mr. Olds’ sentence is currently on appeal, many members of the class represented by Mr. Olds have not yet been re-sentenced, Thus, Petitioners also request that the Court exercise King’s Bench Powers.

² 42 Pa.C.S. § 726 states: “Notwithstanding any other provision of law, the Supreme

extraordinary jurisdiction should be used sparingly, *Washington County Commissioners v. Pennsylvania Labor Relations Board*, 417 A.2d 164 (Pa. 1980), in matters “of immediate public importance” it has been found appropriate to assume jurisdiction in order to conserve judicial resources, expedite the proceedings and provide guidance to the lower courts on a question that is likely to recur. *Commonwealth v. Lang*, 537 A.2d 1361 (Pa. 1988); *Commonwealth v. Martorano*, 634 A.2d 1063 (Pa. 1993); 42 Pa.C.S. § 726. Consistent with these considerations, this Court should accept jurisdiction and decide the following issues:

1. Whether the ruling in *Commonwealth v. Batts*, 620 Pa. 115 (Pa. 2013) (*Batts I*), applies to Petitioner Olds and other individuals similarly situated, who were convicted of second degree murder as a result of participation in a felony but who did not kill or intend to kill, where *Batts I* explicitly states that such cases “are not implicated” in the *Batts* opinion?
2. Whether, for the approximately 500 juveniles awaiting resentencing in Pennsylvania whose convictions became final before *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the ruling in *Batts I* applies, where the opinion appears to refer only to Mr. Batts and those juveniles similarly situated (and unlike Mr. Olds) whose convictions were not yet final but on direct appeal as of June 12, 2012?
3. Whether Petitioner Olds and other individuals similarly situated are eligible for bail pending appeal?

Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.”

The instant petition involves issues of “immediate public importance,” as required by section 726 of the Judicial code. 42 Pa.C.S. § 726. Lead petitioner Richard Lee Olds was illegally sentenced on November 21, 2016; nearly 200 additional petitioners, who were juveniles at the time and whose convictions became final before *Miller v. Alabama*, 132 S. Ct. 2455 (2012), await sentencing or are on appeal as well. Of the approximately 500 individuals eligible for re-sentencing under *Miller* and *Montgomery*, it estimated that at least 175³ have been convicted of second degree murder, which typically involves conviction for a homicide committed in the course of a felony. Many of these individuals neither killed nor intended to kill, and thus are plainly excluded from *Batts I*. This Court has not provided guidance to the Courts of Common Pleas across Pennsylvania regarding the parameters of such resentencings, and prosecutors across the Commonwealth are wrongly claiming that *Batts I* imposes sentencing requirements for this class of individuals. Although this Court recently heard argument⁴ and is now considering Mr. Batts’ appeal of his re-sentencing, it remains unclear whether juveniles who neither killed nor intended to kill and have either been re-sentenced or awaiting re-sentencing are in fact within the scope of that appeal.

³ This number is based upon data, records and information made available by the Pennsylvania Department of Corrections, publicly available records, and data collected and reviewed by Juvenile Law Center.

⁴ *Commonwealth v. Batts* was argued before this Court on December 8, 2016.

This Court has recently recognized the important series of United States Supreme Court cases that have “explored the distinctions between juveniles and adults,” and at the same time recognized the mandate of the Pennsylvania courts “to be always watchful of juveniles’ rehabilitation.” *In Re J.B.*, 107 A.3d 1 (Pa. 2014). Indeed, this Court has exercised plenary jurisdiction via a Kings Bench petition regarding juveniles’ due process rights in delinquency proceedings, particularly their constitutional right to counsel, in Luzerne County juvenile court. *See In re J.V.R.*, No. 81 MM 2008, Order dated 2/11/09.

This Court has also recognized that issues of bail might be subject to Extraordinary Jurisdiction, 42 Pa.C.S. § 726. *See Commonwealth ex rel. Colville v. Laffey*, 402 A.2d 994 (Pa. 1979). *See generally Commonwealth v. Martorano*, 634 A.2d 1063 at fn. 6 (Pa. 1993). No Pennsylvania court has applied Article 1, §14 to the new juvenile sentencing statute, 18 Pa.C.S. §1102.1, or to the dictates of *Miller* and *Montgomery* that have created numerical minimum and maximum sentences.

Guidance from this Court is urgently needed to ensure that the approximately 500 individuals who face re-sentencing are properly and constitutionally re-sentenced. The questions raised herein are likely to recur, and have in fact recurred across the state. 42 Pa.C.S. § 726 allows this Court to “cause right and justice to be done.” In the instant cases, this means ensuring that juveniles who have not killed or intended to kill are not unfairly saddled with a mandatory lifetime parole pursuant to the “life

maximum” sentence prosecutors are wrongly claiming is required by *Batts I*, and that if errors do occur, juveniles are not precluded from bail if they are otherwise deserving of it.

II. FACTUAL AND LEGAL BACKGROUND

A. Procedural History

On November 13, 1979, Petitioner Olds was arrested for a homicide that occurred on October 9, 1979, when Olds was 14 years old. A 16-year-old and an 18-year-old co-defendant were also arrested. On April 2, 1980, Petitioner Olds was convicted of Second Degree Murder, Robbery and Conspiracy. On April 28, 1981, the Honorable Judge Samuel Strauss, after failing to persuade the Commonwealth to agree to a lesser sentence for Petitioner, sentenced him to mandatory life imprisonment without the possibility of parole for his conviction of Second Degree Murder, with no additional penalty on the charges of Robbery and Conspiracy.

Petitioner’s sentence was vacated by the Superior Court on February 25, 2016 pursuant to *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016). On November 21, 2016, Petitioner was sentenced by the Honorable David Cashman to 20 years to life imprisonment for Second Degree Murder, with no additional punishment for Robbery and Conspiracy. Judge Cashman stated that he would grant non-monetary appellate bond upon Petitioner’s Notice of Appeal, which was filed that same day. The Commonwealth appealed the setting of bail, and Judge Cashman vacated his order on November 22, 2016. On November 29, 2016, the judge denied a Motion to

Reconsider Sentence. On November 30, 2016, the Superior Court denied Petitioner's Application for Appeal Bond. Petitioner has filed with this Court a Motion For Appellate Bond simultaneously with this instant Petition for Extraordinary Jurisdiction.

B. Factual History

Petitioner Olds' case perfectly illustrates an unconstitutional application of mandatory minimum and maximum sentences.

Petitioner Ricky Olds was 14 years old on October 9, 1979, the night of the crime that is the subject of the instant petition. The other participants in this crime, Todd Allen and Claude Bonner, were 16 and 18 years old, respectively. The three found themselves at the Fort Wayne Cigar Store, an all night convenience store, that evening. When co-defendant Allen suggested that he might rob someone, Mr. Olds sarcastically responded "yeah, right." (N.T. 388). Mr. Olds bought a bag of potato chips and joked with the cashier (N.T. 239, 251); when he saw co-defendant Allen pull a gun on the victim, he ran away. (N.T. 275, 396-397). These facts were corroborated by the cashier, an eyewitness, and the co-defendant driver, all of whom were Commonwealth witnesses at trial.

On April 2, 1980, Petitioner was convicted of Second Degree Murder, Robbery, and Conspiracy. Trial Judge Samuel Strauss asked the Pittsburgh District Attorney Robert Colville to negotiate a lower sentence, but the District Attorney refused, stating that Petitioner would be in prison for 17 years and "probably much less." (The Pittsburgh Press, July 6, 1980). This

was a misstatement of the law, which required a mandatory life without parole sentence.

On April 28, 1981, Petitioner was sentenced to a mandatory sentence of life imprisonment without the possibility of parole for his conviction of Second Degree Murder, and given no further penalty for the charges Robbery and Conspiracy by Judge Strauss. Judge Strauss stated that it was his intention to write a letter on Olds' behalf to the Pardon Board. (N.T. 7, 4/28/81). Mr. Olds has now been in prison for 37 years.

On November 21, 2016, pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), Mr. Olds was the subject of a new sentencing hearing before the Honorable David Cashman, Allegheny Court of Common Pleas. At that sentencing hearing, Mr. Olds introduced into evidence a letter from the trial prosecutor asking for Mr. Olds' release. In addition, letters and certificates were introduced establishing that Mr. Olds' behavior in prison over 37 years has been outstanding; that Mr. Olds had a job upon his release; and that a re-entry program was prepared to work with him as well. Finally, Mr. Olds' counsel represented that he had been given information from the Parole Board that Mr. Olds could be paroled without being in custody.

At Mr. Olds' re-sentencing Judge Cashman said to Mr. Olds, "To say that your case is compelling would be an understatement." (N.T. 45,

11/21/16). Nonetheless, the judge declared that a sentence of 23-46 years imposed recently under similar circumstances in Tioga County⁵ was “illegal,” and that the “statute” required a 20-year to life sentence (N.T. 27-28, 11/21/16). Citing this Court’s explicit exclusion of second-degree murder convictions from *Batts I*, Counsel argued that *Batts I* did not control the instant sentencing. Nonetheless, the court rejected Mr. Olds’ argument and sentenced him to 20 years to life. The court denied Mr. Olds’ request that he be sentenced to 15-30 years, declaring that that would be an illegal sentence. (N.T. 27-28, 11/21/16).

As noted in the Procedural History, *supra*, Judge Cashman granted appellate bond pursuant to the prompt filing of a Notice of Appeal; however, the Commonwealth immediately appealed on two grounds⁶:

1) that pursuant to *Commonwealth v. Bishop*, 829 A.2d 1170 (Pa. Super. 2003), Petitioner was not entitled to bail; and

2) that Petitioner was not entitled to bail under Article 1, Section 14 of the Pennsylvania Constitution.

Petitioner remains in custody at S.C.I. Somerset, even though he has now served 17 years more than his new minimum sentence. The instant case

⁵ In *Commonwealth v. Jackie Lee Thompson*, CP-59-CR-0000007-1970, Thompson received a 23-46 year sentence on June 6, 2016 after spending more than 46 years in custody. He was released from the courtroom.

⁶ The Superior Court subsequently dismissed that appeal when Judge Cashman changed his mind about the granting of bail pending appeal.

exemplifies the compelling need for this Court to accept jurisdiction of the issues raised in the Application, as it demonstrates the lack of guidance the lower courts have received in constitutionally resentencing the juveniles whose convictions became final before *Miller*, and the errors that have occurred as a consequence of that lack of guidance.

III. PLENARY JURISDICTION IS NECESSARY TO IDENTIFY AND OBTAIN RELIEF FOR NAMED APPLICANT AND SIMILARLY SITUATED INDIVIDUALS

A. There Is No Case Law Or Statute That Applies To The Juveniles Whose Convictions Became Final Before Miller

Across Pennsylvania, the Commonwealth has claimed that *Batts I* or 18 Pa.C.S. § 1102.1 control the sentencing of all juveniles convicted of first or second degree murder, regardless of when their convictions became final and regardless of the specific statutory basis for their conviction. Yet *Batts I* explicitly does not apply to juveniles who did not kill or intend to kill, such as Petitioner:

[D]espite the broad framing of the questions at hand, Appellant has confined his arguments to the context of first-degree murder; hence, the issues identified by Justice Breyer in his *Miller* concurrence, see *Miller*, 567 U.S. at ----, 132 S.Ct. at 2476 (Breyer, J., concurring) (discussing additional constitutional concerns connected with the imposition of life-without-parole sentences on juveniles convicted of murder as a result of participation in a felony who have neither killed nor intended to kill), ***are not implicated in the present matter.*** 66 A.3d at 293-294 (emphasis added).

Indeed, since *Batts I* narrowly addressed that group of defendants who were on direct appeal at the time of the *Miller* decision, the case is potentially inapplicable to *all of* those defendants whose convictions were final before *Miller* – the overwhelming majority of cases awaiting resentencing in Pennsylvania. *Batts*, 66 A.3d at 288 (“This case concerns the appropriate remedy, *on direct appeal*, for the constitutional violation occurring when a mandatory life-without-parole sentence has been imposed on a defendant convicted of first-degree murder, who was under the age of eighteen at the time of his offense.”) (emphasis added).

Across Pennsylvania, the Commonwealth has repeatedly cited *Commonwealth v. Secreti*, 134 A.3d 77 (Pa. Super. 2016), as support for the argument that *Batts I* in fact applies to all juvenile resentencings. *Secreti*, however, says no such thing. *Secreti*, itself a first-degree murder case, stands simply for the unremarkable proposition that the 60 day period within which to bring PCRA claims based on *Miller* starts to run after the United States Supreme Court opinion in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). The opinion itself says nothing about the application of *Batts I* to the class of juveniles whose convictions became final before *Miller*; any claim otherwise is wrong.

B. Pre-Miller Juveniles Must Be Sentenced Differently Than Those Post-Miller

Admittedly, courts are faced with a difficult challenge when sentencing juveniles recently convicted of murder. Having no crystal ball, it will be difficult for judges to anticipate the sort of adult who will be serving their sentences years hence, when the transient qualities of youth—rashness, proclivity for risk, and inability to assess consequences—are long gone. See *Graham v. Florida*, 130 S.Ct. 2011 at 2027 (2010) (quoting *Roper v. Simmons*, 125 S.Ct. 1183 (2005)). Indeed, *Graham* and *Miller* discuss at length the importance of probable⁷ rehabilitation as a key factor in juvenile sentencing, and it is just such a probability on which the *Graham* and *Miller* majorities rely in banning mandatory life without parole sentences.

Songster v. Beard, 2016 WL 4379233 (E.D. Pa, 2016), explicates the substantive distinction between the class of defendants who have served lengthy sentences and those subject to the ruling in *Batts I* who have been incarcerated for far less time:

Post-sentencing rehabilitation takes on added significance in the resentencing process. Unlike the other factors, it presents the most up-to-date information about the offender's history and characteristics. It is highly relevant to his amenability to rehabilitation. It informs the assessment of whether the offender is permanently incorrigible or irreparably corrupt, placing him into the “rarest of juvenile offender” status deserving of life

⁷ “Probable,” rather than “possible,” is the appropriate word choice here. As *Miller* and *Montgomery* make clear, it is the rare juvenile “who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified.” 136 S.Ct. at 733 (2016).

imprisonment. It is a factor that removes much of the guesswork from predicting whether the offender is capable of being rehabilitated. Since his conviction, Songster has been in prison where his conduct and amenability to rehabilitation have been revealed to prison authorities. His conduct since he has been incarcerated is a significant factor to be considered. Ironically, the sentencing court will be in a better position to assess Songster's potential for rehabilitation than a court would have been twenty-nine years earlier at the time of his conviction.

Mr. Olds has been in continuous custody since the age of 14; he is now 51. His adjustment to prison has been outstanding. Not only does he not require a lifetime parole; to impose such a sentence on him would be onerous and unjust. Obviously this Court will not make such a decision, but requiring lower courts to necessarily impose lifetime parole regardless of the crime or the post-crime rehabilitation, as the Commonwealth has argued, would violate the United States and Pennsylvania Constitutions. The linchpin of the *Miller* and *Montgomery* rulings is the necessity of individualized sentencing. *Batts I* itself makes this clear. 66 A.3d at 296 (“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.”). Mandatory lifetime parole for every juvenile violates this fundamental tenet of *Graham*, *Miller* and *Montgomery*.

C. Pre-*Miller* Juveniles Convicted of Murder As A Result Of

**Participation In A Felony Who Neither Killed Nor Intended
To Kill Must Be Sentenced Differently From Juveniles
Convicted Of First Degree Premeditated Murder**

Mr. Olds, nor the scores of individuals similarly situated across Pennsylvania, did not kill or intend to kill; thus, as declared in *Graham*, he has “twice diminished moral culpability.” This phrase is critically important to understanding why different degrees of murder require a different sentencing scheme. *Graham* notes that “compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed.” 130 S. Ct. at 2026. *Graham* also “recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers.” 130 S.Ct. at 2027. Yet, despite Mr. Olds’ twice-diminished moral culpability, his demonstrated rehabilitation and his apparent readiness to return to society,⁸ the Commonwealth insisted, and Judge Cashman imposed, a sentence with the exact same maximum sentence (“life”) as would be imposed for the most egregious first degree murder conviction coupled with the worst possible

⁸ Petitioner Olds has an outstanding record in prison; a guard referred to him as a “pillar of the community.” He has taken and done very well in a number of college courses while incarcerated, including mathematics, Spanish, Italian and biology. He has a place to stay, a job upon his release, and a reentry program willing to work with him. (N.T. 5-10, 11/21/16)

adjustment to incarceration. Such arbitrary and irrational—indeed foolish—consistency violates the core tenet of *Miller* and *Montgomery*, individualized sentencing. In fact, such a sentencing scheme is no different from the mandatory sentencing schemes found unconstitutional in *Graham* and *Miller*. In addition, the sentence is cruel and unusual in that subjecting a juvenile to lifetime criminal supervision when neither the crime nor his prison adjustment and behavior record warrant it is unconstitutionally disproportionate.

D. Article 1, Section 14 of the Pennsylvania Constitution Does Not Preclude Bail For A Juvenile Who Faces Or Is Serving A Sentence Of Less Than Life Without Parole

Mr. Olds was sentenced to 20 years to life imprisonment and granted appellate bond by the sentencing judge, but the Commonwealth appealed the setting of the bond, and it was subsequently vacated by the same sentencing judge.⁹ The Commonwealth relied on Article 1, Section 14 of the Pennsylvania Constitution to oppose the bail.¹⁰ This reliance is misplaced.

⁹ Petitioner is filing a concomitant application in this Court for bail pending the resolution of this Extraordinary Jurisdiction/King's Bench petition or his appeal in the Superior Court if this petition is denied. Nonetheless, the application of Article 1, Section 14 to juvenile sentencing is an issue likely to recur, and thus is an appropriate issue for this Court's jurisdiction.

¹⁰ The Commonwealth also cited *Commonwealth v. Bishop*, 829 A.2d 1170 (Pa. Super. 2003), but *Bishop* is completely inapposite. *Bishop* does not bear on the question of bail, but rather the question of jurisdiction. There is no question that this Court has jurisdiction to set appellate bond.

The constitutional amendment in question came into effect in 1998, 14 years before *Miller v. Alabama* ruled that mandatory life sentences for juveniles were unconstitutional. While juvenile sentences of life without parole are still constitutional after a post-*Miller* sentencing hearing, such sentences must be “rare” and “uncommon” and can no longer be mandatory. When Article 1, Section 14 was amended in 1998, all life sentences in Pennsylvania were without parole. In short, the language cited by the Commonwealth (“...for which the maximum sentence was life imprisonment...”) applied to all then First and Second Degree murder sentences, for which there was no parole by law. The clear intent of Article 1, Section 14 is to preclude bail when defendants are likely facing a life without parole sentence. Arguing that such language applies in the instant case, where Petitioner has already done 17 years more than his minimum, has adjusted extraordinarily well to prison, and will almost surely be paroled, would be the triumph of form over substance.

Indeed, applying any other logic would place the Pennsylvania Constitution in conflict with Title 61, Section 6137, which begins: “(1) The board may parole subject to consideration of guidelines established under 42 Pa. C. S. Section 2154.5 (relating to adoption of guidelines for parole) and may release on parole any inmate to whom the power to parole is granted to the board by this chapter, except an inmate condemned to death or serving

life imprisonment.” No one contests that Petitioner is eligible for parole nor that others similarly situated have been paroled;¹¹ and no one suggests that Petitioner is serving a sentence of “life imprisonment” as existed when Article 1, Section 14 was adopted. Thus, this Court has reason to accept jurisdiction and clarify the application of Article 1, Section 14 to juveniles facing sentences that allow for the possibility of parole.

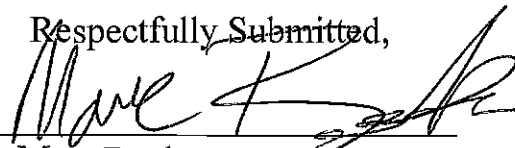
IV. CONCLUSION AND PRAYER FOR RELIEF

Petitioner Richard Lee Olds has been resentenced to 20 years to life in prison for second degree murder, purportedly pursuant to *Commonwealth v. Batts* and Pa.C.S. § 1102.1, *neither of which are applicable* because his conviction became final before *Miller v. Alabama*. Thus, Petitioner Olds is within the class of juvenile offenders expressly excluded from *Batts I*. He has been denied bail on appeal based on a misapplication of Article 1, Section 14 of the Pennsylvania Constitution. Petitioner prays that this Court exercise its Extraordinary Jurisdiction or King’s Bench power over this matter, so that lower courts have the proper guidance to resentence in a constitutional manner those juveniles whose original convictions became final before *Miller*; and who were convicted of murder as a result of participation in a felony, but neither killed nor intended to kill the victim(s).

¹¹ In fact, the Pennsylvania Board of Probation and Parole has already granted parole for nine former juvenile lifers who, at resentencing, received a minimum term of years sentence that had already been served, thereby making them eligible for parole.

In addition, this Court should exercise its Extraordinary Jurisdiction and King's Bench power to establish the proper application of Article 1, Section 14 to sentences that have life maximums but minimums that permit the possibility of parole. Only through the exercise of its extraordinary jurisdiction can this Court provide critical guidance to lower courts across Pennsylvania, and cause right and justice to be done in the case of Petitioner Richard Lee Olds and all others similarly situated.

Respectfully Submitted,



Marc Bookman
Pa. Bar No. 37320
Atlantic Center for Capital Representation
1315 Walnut Street, Suite 1331
Philadelphia, PA 19107
215-732-2227
mbookman@atlanticcenter.org



Marsha Levick
Pa. Bar No. 22535
Juvenile Law Center
1315 Walnut Street, Suite 400
Philadelphia PA 19107
mlevick@jlc.org



Wendy Williams
Pa. Bar No. 50379
Wendy L. Williams and Associates
417 Frick Building
437 Grant Street
Pittsburgh, PA 15219
wendy.williams.law@gmail.com

PROOF OF SERVICE

I herby certify that a true and correct copy of the attached and foregoing Application of Richard Lee Olds and Similarly Situated Individuals for Exercise of Extraordinary Jurisdiction or King's Bench Power was served upon the following persons in the following manner, this 20th day of December, 2016, which services satisfies the requirements of Pa.R.A.P. 121:

DDA Ronald M. Wabby, Jr.
Allegheny County District Attorney's Office
401 Allegheny County Courthouse
436 Grant Street
Pittsburgh, PA 15219
Via Hand Delivery and E-Mail – rwabby@alleghenycountyda.us

Mr. Richard Lee Olds
AP 5288
SCI Somerset
1600 Walter Mill Road
Somerset, PA 15510
Via U.S. Mail



Wendy L. Williams



Marc Bookman

PROOF OF SERVICE

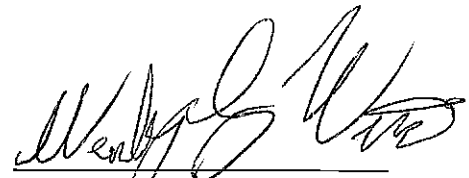
I herby certify that a true and correct copy of the attached and foregoing Application of Richard Lee Olds and Similarly Situated Individuals for Exercise of Extraordinary Jurisdiction or King's Bench Power was served upon the following persons in the following manner, this 20th day of December, 2016, which services satisfies the requirements of Pa.R.A.P. 121:

DDA Ronald M. Wabby, Jr.
Allegheny County District Attorney's Office
401 Allegheny County Courthouse
436 Grant Street
Pittsburgh, PA 15219

Via Hand Delivery and E-Mail – rwabby@alleghenycountyda.us

The Superior Court of the Commonwealth of Pennsylvania
310 Grant Street; Suite 600
Pittsburgh, PA 15219

Mr. Richard Lee Olds
AP 5288
SCI Somerset
1600 Walter Mill Road
Somerset, PA 15510
Via U.S. Mail


Wendy L. Williams


Marc Bookman

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