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45 MAP 2016

IN THE SUPREME COURT OF PENNSYLVANIA

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45 MAP 2016

COMMONWEALTH OF PENNSYLVANIA

V.

QU'EED BATTS, APPELLANT

BRIEF OF APPELLANT

Appeal from the Pennsylvania Superior Court decision at 1764 EDA 2014 of September 4, 2015, which denied reargument on November 10, 2015, and had affirmed the May 2, 2014 sentencing order of the Court of Common Pleas of Northampton County, CP-48-CR-0001215-2006, which had reimposed a life without parole sentence.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

I. STATEMENT OF JURISDICTION

The Supreme Court of the Commonwealth of Pennsylvania has jurisdiction of this appeal from the Pennsylvania Superior Court pursuant to the provisions of the Act of July 9, 1986, P.L. 586, No. 142, § 2, 42 Pa.C.S.A. § 724. This Court granted Qu'eed Batts' petition for allowance of appeal on April 19, 2016.

II. ORDER IN QUESTION

On September 4, 2015, the Pennsylvania Superior Court issued a precedential opinion that affirmed the sentencing order of the Court of Common Pleas of Northampton County. *Commonwealth v. Batts*, 125 A.3d 33, 46 (Pa. Super. Ct. 2015), *reargument denied* (2015), *appeal granted in part*, 135 A.3d 176 (Pa. 2016).

III. SCOPE AND STANDARD OF REVIEW

This Court granted review of this matter to consider the proper procedures that a sentencing court must follow when a juvenile is being sentenced for a first degree homicide in implementation of the mandate of *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012) to guarantee that the discretionary imposition of a life without parole sentence should be "uncommon" and reserved for the "rare juvenile offender whose crime reflects irreparable corruption." This is a legal issue and this Court has a plenary standard and scope of review.

This Court also granted review to assess what should be the appropriate standard of appellate review of a life without parole sentence. This is a legal issue and this Court has a plenary standard and scope of review.

This Court's rule-making authority to address these questions under the Pennsylvania Constitution, Pa. Const. art. V, § 10 is broad.

> Our supervisory power over state criminal proceedings is broad, and this Court need not, as a matter of state law, limit its decision to the minimum requirements of federal constitutional law. E.g., *Commonwealth v. Mills*, 286 A.2d 638 (Pa. 1971); *Commonwealth v. Blackman*, 285 A.2d 521 (Pa. 1971); *Commonwealth v. Ware*, 284 A.2d 700 (Pa. 1971), *order granting cert. Vacated and Cert. Denied*, 406 U.S. 910 (1972); *Commonwealth v. McIntyre*, 208 A.2d 257 (Pa. 1965). *See Commonwealth v. Willman*, 255 A.2d 534, 535 (Pa. 1969). *Compare Santobello v. New York*, 404 U.S. 257 (1971) (decided

> Dec. 20, 1971), with *Commonwealth v. Alvarado*, 276 A.2d 526 (Pa. 1971) (decided Apr. 22, 1971).

Commonwealth v. Campana, 314 A.2d 854, 855-56 (Pa. 1974) (footnotes and parallel citations omitted).

IV. STATEMENT OF THE QUESTIONS INVOLVED

1. In *Miller v. Alabama*, the U.S. Supreme Court outlawed mandatory life without parole for juveniles ("LWOP"), and instructed that the discretionary imposition of this sentence should be "uncommon" and reserved for the "rare juvenile offender whose crime reflects irreparable corruption."

   A. There is currently no procedural mechanism to ensure that juvenile LWOP will be "uncommon" in Pennsylvania. Should this Court exercise its authority under the Pennsylvania Constitution to promulgate procedural safeguards including (a) a presumption against juvenile LWOP, (b) a requirement for competent expert testimony, and (c) a "beyond a reasonable doubt" standard of proof?

   Suggested answer: Yes.

   B. The lower court reviewed the Petitioner's sentence under the customary abuse of discretion standard. In light of *Miller* should this Court reverse the lower court's application of this highly deferential abuse of direction standard and instead require *de novo* appellate review?

   Suggested answer: Yes.

2. In *Miller*, the U.S. Supreme Court stated that the basis for its individualized sentencing requirement was *Graham's* comparison of juvenile LWOP to the death penalty. The Petitioner received objectively less procedural due process than an adult facing capital punishment. Should the Court address the constitutionality of the Qu'eed Batts' resentencing proceeding?

   Suggested answer: Yes.

V. STATEMENT OF THE CASE

A. Procedural History

On July 31, 2007, a jury convicted Qu'eed Batts of murder, attempted murder and aggravated assault. Qu'eed was 14 years old when he committed these crimes at the behest of his superior in the "Bloods" gang.

At that time Pennsylvania law required the trial judge to impose life without parole for the first-degree murder conviction. The trial judge did and the Superior Court affirmed the conviction and sentence, rejecting the defense's arguments that the sentence was unconstitutional.

This Court granted review. On March 26, 2013, this Court vacated the Superior Court's decision and remanded the matter to the trial court to resentence according to the factors outlined in *Miller* and *Commonwealth v. Knox*, a post-*Miller* Superior Court decision. *Commonwealth v. Batts*, 66 A.3d 286, 295 (Pa. 2013).

This matter was assigned to the Honorable Michael J. Koury, Jr. for resentencing. Judge Koury reimposed a juvenile life without parole sentence on May 2, 2014.[1]

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[1] Judge Koury's §1925 opinion is attached as Exhibit "A."

Qu'eed filed a post-sentence motion and, when it was denied the following day, timely appealed to the Superior Court. The Superior Court, in a split decision, declined to review the appeal on its merits.[2] The majority held that Qu'eed had forfeited his ability to challenge Judge Koury's application of *Miller* by failing to include a statement of reasons pursuant to Rule 2119(f).

In his dissenting and concurring opinion, Justice Fitzgerald identified three reasons why the majority's finding of waiver was improper: (1) a murder sentence is not subject to the discretionary review process; (2) the standards for sentencing a juvenile to LWOP do not arise under the Sentencing Code; and (3) the extraordinary legal question presented merited a review despite the procedural defect.

Qu'eed sought re-argument on this basis. He also requested re-argument with respect to, (a) the majority's misapprehension of its challenge to the competency of the Commonwealth's expert testimony as a challenge to its weight, (b) the panel's failure to recognize the facial invalidity of the proceeding and adopt the death penalty standards of proof and review, and (c) the panel's conclusion that Qu'eed was subject to life without parole on remand. The application for re-

[2] A copy of the Superior Court decision is attached hereto as Exhibit "B."

argument was denied on November 10, 2015. On April 19, 2016, this Court granted review

B. Statement Of The Facts

1. The Defendant's Family And Home Environment

Qu'eed Batts was born in 1991; he was 14 years old at the time of the instant crimes. Qu'eed's mother, Shaniqua Batts, was 13 years old when she gave birth to him, and his father was between 16 and 18. Report of Dr. Frank Dattilio 11/21/13 at 3.[3] The defendant's parents never married, and his father received a federal prison term when Batts was 8 years old. Report of Mitigation Specialist Dana Cook 12/31/13 at 2.[4]

Qu'eed went into foster care around the time his father went to jail. Dattilio Report at 4. This was traumatic for him. His initial foster placement ended quickly. The family informed DYFS that they did not want him after he acted up and caused problems. *Id.* at 4-7. After that, Qu'eed was frequently transferred among placements, including foster facilities in Roselle, Passaic, and Irvington, New Jersey; with his paternal grandfather, in Passaic, New Jersey, and later in South

[3] The report of Dr. Dattilio is attached hereto as Exhibit "C."
[4] The report of Dana Cook is attached hereto as Exhibit "D."

Carolina; with his maternal uncle in Elizabeth, New Jersey; and with his paternal grandmother in East Orange, New Jersey. *Id.*

By his own admission, Qu'eed was a "very angry child" due to his sense of abandonment and rejection. *Id.* at 5-6. He got into trouble at school and had been in several fights by the age of 7 or 8. *Id.* Qu'eed was sensitive, and would react negatively when other children teased him about his mother and foster care situation. *Id.*

When Qu'eed was 10, DYFS conducted a bonding assessment to evaluate his relationship with his mother. *Id.* at 14-15. Shaniqua arrived late, which was characteristic of her repeated abandonment and poor attachment with him. *Id.* The evaluator noted little warmth, affection, or intimacy between the two, raising serious concerns about her parenting ability. *Id.* The report stated that Qu'eed longed for a happy family life with a parent who genuinely cared about him. *Id.*

About one year later, Qu'eed reunited with his mother in Phillipsburg, New Jersey. *Id.* at 7. By this time, he was 12 years old. *Id.* Shaniqua had "stepped up to the plate" and complied with DYFS. *Id.* He later relocated with them to Easton, Pennsylvania, where he stayed until Friday, February 3, 2006. *Id.*

2. The Homicide: The Extent Of Qu'eed's Participation And The Influence Of Family And Peer Pressures

The final time that Qu'eed's mother and stepfather saw him before his arrest was on the morning of Friday, February 3, 2006 (N.T. 7/27/2007, 205-206; 7/30/2007, 47-48). The night before, Qu'eed got into an argument with his mother because he had been out late with a female. Dattilio Report at 8. His mother was upset with him for coming in late and had "smacked him around." *Id.*

That night, Qu'eed met Vernon Bradley, the senior "Bloods" gang member who would later direct him to commit the shootings (N.T. 7/30/2007, 47-53). Bradley was 22 years old, and had two teardrops tattooed on his face, signifying that he had killed two people. *Id.* at 54-55.

Qu'eed was assigned to Bradley shortly before the homicide. *Id.* Bradley explained that he was "the head dude in charge," and that the gang disciplined its members when they disobeyed instructions. *Id.* at 56. Qu'eed understood that he could be killed for a serious infraction. *Id.*

The shootings occurred on Tuesday, February 7, 2006. That evening, Qu'eed was in a car on the South Side of Easton with other "Bloods" members of a similar age and rank. *Id.* at 57, 98-99. Bradley got into the car and was angry, stating that

he wanted to "rob somebody and kill somebody." *Id.* at 59; N.T. 7/27/2007, 167-174.

Bradley told the driver where to drive. (N.T. 7/30/2007, 59). The driver pointed to two people on a porch and said, "These are the guys who robbed me." *Id.* at 59-63. Bradley stated that he was going to kill them. *Id.* at 63-64. He turned around and asked, "Who's going to put work in?" *Id.* at 64. Nobody responded. *Id.* Bradley asked again, "Who's going to put work in?" *Id.* Still nobody responded. *Id.* Bradley then passed a gun and a mask to Qu'eed and stated, "Blood, I just brought you home. You can't put work in for me?" *Id.* at 64-66.

Qu'eed understood this to mean that Bradley wanted Edwards killed and further understood that Bradley would kill him if he disobeyed this order. *Id.* at 65, 67. Qu'eed got out of the car and walked down the street toward the porch. He followed Bradley's direction to put on his glove. *Id.* at 66. He had a mask over his face. (N.T. 7/24/2007, 111).

Qu'eed walked up to the porch and raised the gun. (N.T. 7/30/2007, 68). As Hilario started to run, the defendant shot him once in the back. (N.T. 7/24/2007, 113). Hilario suffered scapula and left rib fractures, but eventually made a full recovery. *Id.* at 127-28. Edwards fell down as he ran. *Id.* Qu'eed approached Edwards and shot him twice in the head at point blank range. (N.T. 7/30/2007, 68).

Qu'eed ran to the car after the shootings. *Id.* He was "shaking" and "scared." *Id.* at 68-69.

Qu'eed later told Dr. Michals, one of the Commonwealth's expert witnesses, that he had done it because it was "expected of him," and because he would have been killed if he did not follow orders. Dr. Michals Report 2014 at 8.[5]

3. The 2014 Expert Opinions On Qu'eed's Adolescent Immaturity And Capacity For Rehabilitation

Qu'eed was re-examined by mental health professionals after the March 2013 remand by this Court. Dr. Frank Dattilio examined him for the defense. Dr. Michals re-examined Batts for the Commonwealth.

To prepare his report, Dr. Dattilio took a complete history from Qu'eed, interviewed his mother, administered psychological tests, and reviewed background materials. Dattilio Report at 3. Dattilio concluded that the most salient aspect of Qu'eed's history was the repeated maternal and paternal rejection he had experienced. *Id.* at 15. This parental neglect made him "extremely vulnerable" to the seduction of gang-related activity. *Id.* at 15. Qu'eed's tumultuous childhood also left him "very regressed" at the time of the shootings. *Id.* at 16.

With respect to chronological age, Dr. Dattilio explained: "Due to the fact that Mr. Batts was 14 years of age at the time of the instant offense, this suggests

[5] The report of Dr. Michals is attached hereto as Exhibit "E".

that his emotional development was significantly lower than that which is found with adults or even individuals who are in their latter teen years." *Id.* at 17. Dr. Dattilio concluded that Batts was still in the process of acquiring the capacities he needed to transition into late adolescence at the time of the shootings. *Id.* In addition, adolescent brain research suggested that Qu'eed would have had difficulty with impulse control. *Id.* at 17-18. Dr. Dattilio opined that Qu'eed was amenable to rehabilitation within the adult system, and believed that a significant change in thinking and behavior was likely as he continued to mature. *Id.* at 19. Dr. Dattilio recommended a modification of sentence to allow for the possibility of parole. *Id.*

In his 2014 report, Dr. Michals did not opine on the defendant's capacity for rehabilitation within the adult system. Instead, he reiterated his previous conclusions that Qu'eed: (1) was not amenable to rehabilitation within the juvenile justice system; (2) had killed Edwards in a purposeful "execution manner"; (3) had no psychiatric disorder; (4) had made a purposeful decision to join the "Bloods," knowing the potential criminal consequences; and (5) had not been coerced into committing the crimes. 2014 Michals Report at 15-18. He did not offer an opinion on the re-sentencing (N.T. 5/02/2014, 41).

4. The Re-sentencing Decision

On May 2, 2014, Judge Koury re-sentenced the defendant to "imprisonment for a term not to exceed his natural life without the possibility of parole." *Id.* at 67. Judge Koury reviewed the defendant's "troubled childhood," reunification with his family, and abrupt departure shortly before the shootings. He noted the defendant's current parental support and close mentoring relationship with his younger brother. *Id.* at 41-42. Judge Koury observed that Qu'eed had completed vocational leadership and violence prevention programs and started his GED program. *Id.* at 42.

Although Qu'eed had no prior criminal record, Judge Koury noted his statements to the evaluators about his school fights, use of marijuana, and sale of crack cocaine after joining the "Bloods." *Id.* at 43. He also noted that Qu'eed had six prison misconducts. *Id.* Judge Koury acknowledged his past exposure to violence—slapped by his mother, physically assaulted by other children, and allegedly sexually assaulted by an older cousin. *Id.* at 44.

Judge Koury described the shootings as "a cold-blooded murder and attempted murder of two defenseless boys he did not know for the purpose of gaining acceptance and perhaps a promotion in the Bloods gang." *Id.* In his view, Qu'eed "did not act on impulse but took time to plan and execute the crime." *Id.*

Judge Koury rejected Qu'eed's claim of duress. He stated that the jury had rejected the claim and the record did not support it, even though three expert witnesses—Dr. Dattilio, Dana Cook, and Dr. Samuel, for the Commonwealth—had credited Qu'eed's fear that he would be killed for refusing to carry out Bradley's order in their reports. *Id.* at 45. Judge Koury did not believe that Bradley had ordered Qu'eed to kill or threatened him with any consequences for refusing. *Id.* In support, Judge Koury pointed to Qu'eed's own description of the events, including his admission that he had felt "nothing" when shooting C.J. Edwards. *Id.* at 45-46.

In weighing Qu'eed's psychosocial development, Judge Koury elected to give "only limited consideration for his youth and immaturity." *Id.* at 47. Judge Koury rejected the notion that he had been involved in "youthful risk-taking behavior." *Id.* Instead, he regarded the shootings as the foreseeable consequence of Qu'eed's "purposeful choice to move out of his parents' home and commit himself to a life in the Bloods gang." *Id.*

Judge Koury refused to view Qu'eed's gang membership as a mitigating factor. Despite the expert witness testimony about Qu'eed's vulnerability to peer pressure, Judge Koury concluded that he had sought out membership in the "Bloods" with the knowledge that he would be required to commit violent acts. He

reasoned, "Where a defendant actively seeks out and welcomes peer pressure, the peer pressure does not diminish his culpability." *Id.* at 49.

Judge Koury also found that Batts had demonstrated a "consistent criminal mentality" in his dealings with the police by: (a) leaving Pennsylvania and hiding in Phillipsburg, New Jersey; (b) concealing his face and giving a false name; (c) lying to the police while being interrogated after his arrest; and (d) confessing once the evidence against him became clear. *Id.* at 49-50.

Judge Koury noted the experts' agreement about Qu'eed's demonstrated capacity for change *Id.* at 52-54. However, Judge Koury questioned whether he could be certain that significant change would occur without years of therapy. *Id.* at 53-54. Judge Koury did acknowledge Qu'eed's acceptance of responsibility and expressions of remorse. *Id.* at 54-55. In his view, however, his contrition was offset by the impact of his crimes on the community. *Id.* Judge Koury concluded, "Compassion for Mr. Batts does not diminish the community's need to see that justice is done." *Id.*

Immediately after he had sentenced Qu'eed to life in prison without parole, Judge Koury went on to describe his personal visit to the scene of the crime the night before:

> Following yesterday's hearing, I spoke with my law clerk regarding the sentence that I intended to impose. I told her that I intended to impose a sentence of life without the possibility of parole. She responded, Judge, he was 14 years old. Have mercy. I left the courthouse and, on my way home, I drove past 713 Spring Garden Street. I parked in front of the house. I then imagined the events that occurred on the evening of February 7, 2006. As I sat in front of 713 Spring Garden Street I imagined Qu'eed Batts wearing a mask and one glove, walking up the stairs and then shooting Corey Hilario in the back and Clarence Edwards twice in the head while Qu'eed Batts looked at Clarence's face.
>
> I imagined Dolores Howell later coming outside and seeing her grandson dying on the porch with two gunshots in his head. But there was no need for me to imagine because this, in fact, happened on February 7, 2006.

Id. at 67-68. Judge Koury reimposed a life without parole sentence on May 2, 2014. The defense filed post-sentence motions on May 12, 2014, which Judge Koury denied on May 13, 2014. The defense filed a Notice of Appeal to the Superior Court on June 10, 2014.

VI. SUMMARY OF THE ARGUMENT

In *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012) the U.S. Supreme Court outlawed mandatory life without parole sentences for juveniles and also instructed that its discretionary imposition should be "uncommon." In *Montgomery v. Louisiana,* 136 S. Ct. 718, 734 (2016)(emphasis supplied), the Court ruled *Miller* retroactive and explained that *Miller* "did bar life without parole . . . for all but the rarest of juvenile offenders, *those whose crimes reflect permanent incorrigibility.*" These cases establish "that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Miller*, 132 S. Ct. at 2466.

In *Roper v. Simmons,* 543 U.S. 551, 569-70 (2005), the Court articulated a categorical rule of reduced juvenile culpability based on three adolescent traits: (1) immaturity; (2) vulnerability to peer pressure, especially negative peer pressure; and (3) a unique capacity for rehabilitation given adolescents' less fixed characters. *Graham v. Florida,* 560 U.S. 48 (2010), holds that it is unconstitutional for a judge to impose life without parole based on his subjective determination that a juvenile is "irredeemably depraved." 560 U.S. at 76-77. By comparing juvenile life without parole to the death penalty, *Graham* also makes the death penalty standards of proof and review applicable to this case. *Miller*, 132 S. Ct. at 2467.

The Court's concern with distinguishing the typical juvenile from the rare permanently incorrigible juvenile requires three safeguards: (1) a presumption against juvenile life without parole; (2) a "beyond a reasonable doubt" standard of proof; and (3) a requirement for competent expert testimony that a juvenile is permanently incorrigible. Otherwise, there is no shield against the impermissible danger expressed in *Roper* "that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course." *Roper*, 543 U.S. at 573.

This record illustrates that danger. Judge Koury exhibited an intensive focus on the facts of this crime, even personally visiting the crime scene to reimagine the events and the victim's death. This preoccupation caused him to reject legitimate mitigating arguments based on duress, peer pressure, and immaturity.

By virtue of the U.S. Supreme Court's comparison of juvenile life without parole to the death penalty, juvenile life without parole sentences must have comparable legal procedures and standards of proof. Otherwise, a juvenile facing life without parole will have less constitutional protection than an adult facing capital punishment. There were no procedural safeguards in place during Qu'eed's resentencing hearing. This Court must therefore reverse, establish procedural

protections, and remand the matter for a new sentencing hearing as the Constitution requires.

VII. ARGUMENT

A. *Miller* And *Montgomery* Establish A Presumption Against Imposing Life Without Parole Sentences On Juveniles

Together, the United States Supreme Court's decisions in *Miller v. Alabama,* 132 S. Ct. 2455 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) establish a strong presumption against juvenile life without parole sentences. These decisions create a presumption against juvenile life without parole, establish that the prosecution has the burden to prove "beyond a reasonable doubt" that juvenile life without parole would be a constitutional and proportionate sentence, and that juvenile life without parole cannot be imposed absent a finding, based on competent expert testimony, that a juvenile offender is irreparably corrupt, irretrievably depraved, or permanently incorrigible. *See Montgomery,* 136 S. Ct. at 733, 734. Because Qu'eed did not receive the presumption established by *Miller*, his life without parole sentence must be vacated.

1. *Miller* Establishes A Presumption Against Imposing Life Without Parole Sentences On Juveniles

Miller establishes a presumption against imposing life without parole sentences on juveniles. The Court declared that "given all we have said in *Roper*, *Graham*, and [*Miller*] about children's diminished culpability and heightened capacity for change, *we think appropriate occasions for sentencing juveniles to this*

harshest possible penalty will be uncommon." *Miller*, 132 S. Ct. at 2469 (emphasis added). *See also Commonwealth v. Batts*, 66 A.3d 286, 291 (Pa. 2013) (noting that *Miller* "stated that the occasion for [juvenile life without parole] would be 'uncommon' and, in any event, must first 'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'"). *Miller* further noted that the "juvenile offender whose crime reflects irreparable corruption" will be "rare." *Miller,* 132 S. Ct. at 2469 (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005); *Graham v. Florida*, 560 U.S. 48 68 (2010)). *See also id* at 2458 (a juvenile's "actions are less likely to be 'evidence of irretrievabl[e] deprav[ity]') (quoting *Roper,* 543 U.S. at 570); *id.* at 2465 ("Deciding that a 'juvenile offender forever will be a danger to society' would require 'mak[ing] a judgement that [he] is incorrigible'—but 'incorrigibility is inconsistent with youth.'" (quoting *Graham,* 560 U.S. at 72-73). As the Supreme Court of South Dakota noted: "[I]t is possible to sentence a *homicide* juvenile offender to a life sentence after individualized sentencing has taken place, but the [United States Supreme] Court thought *such sentences would be the exception, not the rule.*" *State v. Springer*, 856 N.W.2d 460, 465 n.5 (S.D. 2014) (second emphasis added).

Three state supreme courts have held that *Miller* dictates this presumption against juvenile life without parole.[6] The Connecticut Supreme Court found:

> [I]n *Miller*, the court expressed its confidence that, once the sentencing authority considers the mitigating factors of the offender's youth and its attendant circumstances, "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *This language suggests that the mitigating factors of youth establish, in effect, a presumption against imposing a life sentence without parole on a juvenile offender that must be overcome by evidence of unusual circumstances.*

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[6] Massachusetts has gone further, banning juvenile life without parole sentences altogether. Relying on United States Supreme Court precedent, the Massachusetts Supreme Judicial Court held that even the discretionary imposition of juvenile life without parole sentences violates the state constitution. *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 1 N.E.3d 270, 284-85 (Mass. 2013). The Court held:

> Given current scientific research on adolescent brain development, and the myriad significant ways that this development impacts a juvenile's personality and behavior, a conclusive showing of traits such as an "irretrievably depraved character," can never be made, with integrity, by the Commonwealth at an individualized hearing to determine whether a sentence of life without parole should be imposed on a juvenile homicide offender. Simply put, because the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved. Therefore, it follows that the judge cannot ascertain, with any reasonable degree of certainty, whether imposition of this most severe punishment is warranted.

Id. at 283-84 (footnote and citations omitted).

State v. Riley, 110 A.3d 1205, 1214 (Conn. 2015) (emphasis added), *cert. denied*, 136 S. Ct. 1361 (2016). Similarly, the Missouri Supreme Court held that the state bears the burden of demonstrating, beyond a reasonable doubt, that life without parole is an appropriate sentence. *See State v. Hart*, 404 S.W.3d 232, 241 (Mo. 2013) (*en banc*) ("[A] juvenile offender cannot be sentenced to life without parole for first-degree murder unless the state persuades the sentencer beyond a reasonable doubt that this sentence is just and appropriate under all the circumstances."). The Iowa Supreme Court also found that *Miller* established a presumption against juvenile life without parole:

> [T]he court must start with the Supreme Court's pronouncement that sentencing a juvenile to life in prison without the possibility of parole should be rare and uncommon. Thus, *the presumption for any sentencing judge is that the judge should sentence juveniles to life in prison with the possibility of parole for murder* unless the other factors require a different sentence.

State v. Seats, 865 N.W.2d 545, 555 (Iowa 2015) (emphasis added) (citations omitted). Notably, since its decision in *Seats*, the Iowa Supreme Court has expanded its decision and held that juvenile life without parole sentences are *always* unconstitutional pursuant to their state constitution. The Iowa Supreme Court found:

> [T]he enterprise of identifying which juvenile offenders are irretrievable at the time of trial is simply too speculative and likely impossible given what we now know about the timeline of brain development and related prospects for self-regulation and rehabilitation. . . . But a district court at the time of trial cannot apply the *Miller* factors in any principled way to identify with assurance those very few adolescent offenders that might later be proven to be irretrievably depraved. In short, we are asking the sentencer to do the impossible, namely, to determine whether the offender is "irretrievably corrupt" at a time when even trained professionals with years of clinical experience would not attempt to make such a determination. No structural or procedural approach, including a provision of a death-penalty-type legal defense, will cure this fundamental problem.

State v. Sweet, No. 14-0455, 2016 WL 3023726, at *26-27 (Iowa May 27, 2016).

Miller establishes a presumption against juvenile life without parole sentences. As a result, the appropriate imposition of such sentences will be "rare."

2. *Montgomery* Clarifies And Expands *Miller*'s Presumption Against Imposing Life Without Parole Sentences On Juveniles

On January 25, 2016—after Qu'eed Batts was resentenced to life without parole and while his appeal was pending—the United States Supreme Court in *Montgomery* expanded its analysis of the predicate factors that must be found before a life without parole sentence cold be imposed on a juvenile. *Montgomery* explained that the Court's 2012 decision in *Miller* "did bar life without parole . . . for all but the rarest of juvenile offenders, *those whose crimes reflect permanent*

incorrigibility." *Montgomery*, 136 S. Ct. at 734 (emphasis added). The Court held "that *Miller* drew a line between children whose crimes reflect transient immaturity and *those rare children whose crimes reflect irreparable corruption*," *id.* (emphasis added), noting that a life without parole sentence "could [only] be a proportionate sentence for the latter kind of juvenile offender." *Id.*

Montgomery establishes that a life without parole sentence for a youth whose crime demonstrates "transient immaturity" is unconstitutional. *Id.* Under the Eighth Amendment, juvenile offenders can only receive a life without parole sentence if their crimes reflect "permanent incorrigibility," "irreparable corruption" or "irretrievable depravity." *Id.* at 733, 734.

Though *Montgomery* was decided earlier this year, at least one state supreme court has already recognized that *Montgomery* clarified *Miller's* standard in juvenile sentencing cases. The Georgia Supreme Court noted that "[t]he *Montgomery* majority explains . . . that by *uncommon*, *Miller* meant *exceptionally rare*, and that determining whether a juvenile falls into that exclusive realm turns not on the sentencing court's consideration of his age and the qualities that accompany youth along with all of the other circumstances of the given case, but rather on a specific determination that he is *irreparably corrupt*." *Veal v. State*, 784 S.E.2d 403, 411 (Ga. 2016). The Georgia Supreme Court continued that "[t]he

Supreme Court has now made it clear that life without parole sentences may be constitutionally imposed only on the worst-of-the-worst juvenile murderers, much like the Supreme Court has long directed that the death penalty may be imposed only on the worst-of-the-worst adult murderers." *Id.* at 412.

This Court should hold that a judicial determination of irreparable corruption and the related predicate characteristics must be based on expert testimony, not a lay evaluation of the individual's character or prospects for rehabilitation. As the Supreme Court found in *Graham*, "[i]t is difficult *even for expert psychologists* to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Graham v. Florida*, 560 U.S. 48, 68 (2010) (quoting *Roper*, 543 U.S. at 573) (emphasis added). *See also* Brief for the American Psychological Association et al. as *Amici Curiae* in Support of Petitioners at 25, *Miller v. Alabama*, 132 S. Ct. 2455 (2012), (Nos. 10-9646, 10-9647) [hereinafter "APA *Miller Amicus*"] ("[T]here is no reliable way to determine that a juvenile's offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile—even one convicted of an extremely serious offense—should be sentenced to life in prison, without any opportunity to demonstrate change or reform."). Notably, the difficulty in making this assessment

has led at least two state supreme courts to ban juvenile life without parole entirely. *See Diatchenko*, 1 N.E.3d at 283-84; *Sweet*, 2016 WL 3023726, at *26-27.

3. Qu'eed Batts Must Be Resentenced Because The Court Failed To Apply A Presumption Against Juvenile Life Without Parole Or Find That His Crime Reflected Irreparable Corruption, Permanent Incorrigibility or Irretrievable Depravity

At Qu'eed Batts' resentencing hearing, the court made no finding that Qu'eed was irreparably corrupt, permanently incorrigible, or irretrievably depraved, as *Miller* and *Montgomery* require. Although Judge Koury did consider characteristics associated with Qu'eed's age and development, this was not enough. In *Veal*, the Georgia Supreme Court held that merely considering a defendant's age and associated characteristics is not sufficient:

> In this case, the trial court appears generally to have considered Appellant's age and perhaps some of its associated characteristics, along with the overall brutality of the crimes for which he was convicted, in sentencing him to serve life without parole for the murder of [the victim] . . . *The trial court did not, however, make any sort of distinct determination on the record that Appellant is irreparably corrupt or permanently incorrigible, as necessary to put him in the narrow class of juvenile murderers for whom an LWOP sentence is proportional under the Eighth Amendment* as interpreted in *Miller* as refined by *Montgomery*.

784 S.E.2d at 412 (emphasis added). Similarly, because the sentencing judge merely considered Qu'eed's age, age-related characteristics and the facts of the

case—and made no finding that he was irreparably corrupt or permanently incorrigible (N.T. 5/2/14, 41-68)—his life without parole sentence must be vacated.

In fact, there is ample evidence on the record that Qu'eed was NOT irreparably corrupt. The sentencing court found that "[a]lthough the evaluators agree that Mr. Batts has demonstrated some capacity for change in recent years, the court cannot be confident that significant change will occur without years of therapy." Opinion of Koury, J. at 54. See also *id.* at 58-59 ("Although you may ultimately prove to be amenable to treatment, the experts have indicated that any rehabilitation will require years of psychotherapy. Thus, this factor weighs in favor of an extended period of incarceration.").

Miller, however, does not require "confidence" that rehabilitation would occur, merely the "possibility" of rehabilitation, and *Montgomery* explicitly requires a finding of *irreparable* corruption before juvenile life without parole can be imposed. Here the sentencing judge improperly placed the burden of proof on Qu'eed to prove he could be rehabilitated when the burden must be on the Commonwealth to establish he cannot. The evaluators' conclusion that Mr. Batts, still only 23 years old at the time of his resentencing, had already demonstrated some capacity for change—even without therapy—demonstrates his potential for

rehabilitation and a lack of irreparable corruption. Even the sentencing court recognized that Qu'eed had demonstrated remorse and insight into the issues that led him to commit his crimes. *See* Opinion of Koury, J. at 55, 59.

B. This Court Must Establish Guidelines To Ensure That Life Without Parole Sentences Are Not Imposed In A Manner That Is Unconstitutionally Arbitrary And Capricious

Because *Miller* and *Graham* explicitly view life without parole "for juveniles as akin to the death penalty," *Miller*, 132 S. Ct. at 2466, this Court must look to death penalty jurisprudence to determine when juvenile life without parole sentences can constitutionally be imposed. United States Supreme Court Eighth Amendment precedent establishes that "the penalty of death may not be imposed under sentencing procedures that create a substantial risk that the punishment will be inflicted in an arbitrary and capricious manner." *Godfrey v. Georgia*, 446 U.S. 420, 427 (1980) (plurality opinion).

In *Godfrey*, the state of Georgia permitted the imposition of the death penalty when there was a finding that the homicide was "outrageously or wantonly vile, horrible and inhuman." *Id.* at 428. The United States Supreme Court held that this finding was insufficient to warrant the death penalty because "[a] person of ordinary sensibility could fairly characterize almost every murder as 'outrageously or wantonly vile, horrible and inhuman.'" *Id.* at 428-29. *See also Maynard v.*

Cartwright, 486 U.S. 356, 363-64 (1988) (holding as overbroad Oklahoma's aggravating factor that a murder was "especially heinous, atrocious, or cruel" because "an ordinary person could honestly believe that every unjustified, intentional taking of human life is 'especially heinous'") (internal citations omitted). Because every murder could be considered "outrageously or wantonly vile, horrible and inhuman," *see Godfrey*, 446 U.S. at 428-29, or "especially heinous, atrocious, or cruel," *see Cartwright*, 486 U.S. at 364, the Supreme Court requires more specific criteria in order to ensure that the harshest available sentence is only imposed in the most egregious and extreme cases.

The facts of *Godfrey* are significant. Godfrey had previously threatened his wife with a knife, after which his wife left the home and filed for divorce. *Godfrey*, 446 U.S. at 424. When his wife refused to reconcile, the defendant:

> got out his shotgun and walked with it down the hill from his home to the trailer where his mother-in-law lived. Peering through a window, he observed his wife, his mother-in-law, and his 11-year-old daughter playing a card game. He pointed the shotgun at his wife through the window and pulled the trigger. The charge from the gun struck his wife in the forehead and killed her instantly. He proceeded into the trailer, striking and injuring his fleeing daughter with the barrel of the gun. He then fired the gun at his mother-in-law, striking her in the head and killing her instantly.

Id. at 425. He later informed police that he had "been thinking about [the crime] for eight years" and that he would "do it again." *Id.* at 426.

By several key objective measures—including the level of planning, degree of premeditation, number of victims, and history of violence—Godfrey's actions are more "vile" than those of Qu'eed. However, even under these more extreme facts, the Court held that Godfrey's "crimes cannot be said to have reflected a consciousness materially more 'depraved' than that of any other person guilty of murder." *Id.* at 433. *See also Cartwright*, 486 U.S. at 363 (noting that *Godfrey* "plainly rejected the submission that a particular set of facts surrounding a murder, however shocking they might be, were enough in themselves, and without some narrowing principle to apply to those facts, to warrant the imposition of the death penalty").

This Court has noted that, in death penalty cases, "[i]t is the responsibility of the courts to 'channel the sentencer's discretion by clear and objective standards that provide specific and detailed guidance, and that make rationally reviewable the process for imposing a sentence of death.'" *Commonwealth v. Nelson*, 523 A.2d 728, 737 (Pa. 1987) (quoting *Godfrey,* 446 U.S. at 428). Similarly, in juvenile life without parole cases, this Court must provide specific and detailed guidance to ensure that juvenile life without parole sentences are not imposed arbitrarily and

capriciously based on the subjective assessment of the sentencer. Significantly, as discussed above, the United States Supreme Court has provided one narrowing principle—a requirement of a finding, based on expert testimony, that the "crime reflects irreparable corruption." *See Montgomery*, 136 S. Ct. at 734. Even in Qu'eed's case, in which the sentencing court considered 23 separate sentencing factors, the court's ultimate determination to impose life without parole rested on the court's subjective "balancing" of these factors. *See* Opinion of Koury, J. at 57-61. A different sentencing court could balance the same factors differently and impose a different sentence. Therefore, more guidance is needed in order to channel the sentencer's discretion with clear and objective standards.

Establishing standards is essential to ensuring that juvenile life without parole is imposed only within the constraints of the Eighth Amendment. The United States Supreme Court has found that "[i]t is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion." *Godfrey,* 446 U.S. at 433 (quoting *Gardner v. Florida*, 430 U.S. 349, 358 (1977) (plurality opinion)). Because there were no objective criteria for demonstrating either that Qu'eed's offense was more severe or egregious than any other first degree homicide offense or expert testimony demonstrating his irreparable corruption,

neither Qu'eed nor the community can be confident that the imposition of the harshest available penalty was based on "reason rather than caprice or emotion." *See id.*[7] Therefore, this Court must vacate Qu'eed's life without parole sentence.

C. This Court Must Impose Procedures And Guidelines To Ensure That Sentencers Consider How A Youth's Age And Development Counsel Against Juvenile Life Without Parole Sentences

As argued above, the Court must impose standards to ensure that juvenile life without parole sentences are not imposed arbitrarily and capriciously. These standards cannot merely mirror the Commonwealth's death penalty jurisprudence, however. *Miller* imposes the additional requirement that the sentencer "take into

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[7] Indeed, some of the statements made by the court at sentencing suggest that the decision to impose life without parole was likely based on emotion rather than reason. For example, as the court imposed Qu'eed's life without parole sentence, Judge Koury recalled his impromptu visit to the scene of the crime the previous night:

> As I sat in front of [the scene of the murder] I imagined Qu'eed Batts wearing a mask and one glove, walking up the stairs and then shooting Corey Hilario in the back and Clarence Edwards twice in the head while Qu'eed Batts looked at Clarence's face. I imagined Delores Howell later coming outside and seeing her grandson dying on the porch with two gunshots in his head. But there was no need for me to imagine because this, in fact, happened.

See Opinion of Koury, J. at 63. As the United States Supreme Court noted, even an *appearance* that a decision to impose the harshest available sentence was based on emotion or caprice is problematic. *See Godfrey,* 446 U.S. at 433.

account how children are different, *and how those differences counsel against irrevocably sentencing them to a lifetime in prison.*" 132 S. Ct. at 2469 (emphasis added). The sentencing court must not allow the nature of the homicide offense to overpower mitigating evidence based on the juvenile offender's young age and development. Indeed, in light of the established research on adolescent development that has been adopted by the Supreme Court, the sentencing court must presume that a juvenile offender is immature, impulsive, and an unsophisticated decision-maker, and that these characteristics counsel against imposing the harshest available punishment. This Court has ample authority under the Pennsylvania Constitution to establish standards for these sentencing determinations. Pa. Const. art. V, § 10.

1. In Determining A Proportionate Sentence For A Juvenile Homicide Offender, The Facts Of The Homicide Must Not Overpower Evidence Of Mitigation Based On Youth

United States Supreme Court jurisprudence requires sentencers to separate the nature of the crime from the culpability of the offender. In the context of the juvenile death penalty, the Supreme Court found that "[a]n unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true

depravity should require a sentence less severe than death." *Roper v. Simmons*, 543 U.S. 551, 573 (2005). This same "unacceptable likelihood" exists in juvenile life without parole cases; if the violent nature of the crime is permitted to overpower evidence of mitigation based on the juvenile's youth, juvenile life without parole will not be "uncommon," *see Miller*, 132 S. Ct. at 2469, since every homicide is a violent offense. Therefore, even were this Court to establish objective criteria reserving juvenile life without parole for the "worst of the worst" offenses and offenders, as required by Supreme Court death penalty jurisprudence, the sentencer must still look beyond the facts of the offense and consider how the youth's age and development *counsel against* a life without parole sentence. *See id.* Juvenile life without parole, if imposed at all, should only be imposed in the few exceptional cases in which both the circumstances of the offense *and* the particular characteristics of the juvenile offender prove irreparable corruption.

In Qu'eed's case, the sentencing court attached too much weight to the nature of the offense and resulting harm to the victims and the community. Of the nine factors that the sentencing court found weighed against leniency in Qu'eed's case, six involved the circumstances of the offense or the impact on the victims[8]:

[8] The other three factors were Qu'eed's lack of cooperation with the authorities, the uncertainty of his amenability to treatment and the related need to protect the public. Opinion of Koury, J. at 58.

> First is the nature and circumstances of your crimes. You executed a *cold-blooded murder* and attempted murder of *two defenseless boys* you did not know for the purpose of advancing your personal interests in the Bloods gang. It was a premeditated act. *It was brutal, unprovoked, and senseless. . . .*
>
> Second is the extent of your participation in the crimes. Although Bradley invited you to commit these crimes, *you agreed to do the job, and you acted alone. . . .*
>
> Third is *your lack of any justification for the crimes. . .*
>
> Fourth is *the particular vulnerability of your victims. [The victims] were teenagers. They were unarmed, unprepared, and unsuspecting. . . .*
>
> Sixth is *the impact that your crimes have had on the victims and the community.* You attacked multiple victims. [One victim] was seriously injured by the bullet you fired into his back, and because of the placement of the bullet, it remains in his body to this day. [The other victim] was killed. He was his mother's only child, and she has now lost him forever. Edwards's grandmother, who had raised him since he was six years old, walked out the front door and saw her grandson lying on the porch with two bullet wounds to his head. She was not even allowed to touch him in his final moments.
>
> Seventh is the need to avoid minimizing the seriousness of your crimes. *Compassion for you does not diminish the needs of the victims and the community to see that justice is done.*

Opinion of Koury, J. at 57-58 (emphasis added). These factors led the sentencing court to impose life without parole—but most of these same factors would be

present in any first-degree homicide. Because the sentencing court assigned too much weight to the crime itself, and too little weight to the mitigating attributes of youth, Qu'eed's sentence should be vacated, and this Court should require the sentencing court to treat youth as a mitigating factor.

2. *Miller* Establishes A Presumption Of Immaturity For All Juvenile Offenders

Miller, together with *Roper*, *Graham*, and *Montgomery*, establish that "children are constitutionally different from adults for purposes of sentencing." *Miller*, 132 S. Ct. at 2464. *Miller* emphasized that "children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." *Id.* (citation and quotation marks omitted). *Miller* noted that these findings about children's distinct attributes are not crime-specific. *Id.* at 2465. "Those features are evident *in the same way, and to the same degree*," no matter the crime, even in homicide offenses. *Id.* (emphasis added).

Given the Supreme Court's jurisprudence establishing that juveniles as a class are developmentally less mature than adults, a sentencer must presume that a juvenile homicide offender lacks the maturity, impulse-control and decision-making skills of an adult. Indeed, it would be the unusual juvenile – and the truly exceptional 14-year-old – whose participation in criminal conduct is not closely correlated with

his immaturity, impulsiveness, and underdeveloped decision-making skills. Therefore, absent persuasive expert testimony establishing that a particular juvenile's maturity and sophistication were more advanced than a typically-developing juvenile to the point of adult equivalency, a sentencer must presume that the juvenile offender lacks adult maturity, impulse control, and critical decision-making skills, and treat this lack of maturity as disfavoring the imposition of a life without parole sentence.[9] This Court should require such a presumption of immaturity in the sentencing of a juvenile convicted of first or second degree murder. Because Qu'eed did not benefit from a presumption of immaturity, his sentenced should be vacated.

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[9] The risk of inaccurately assessing maturity and culpability based on implicit biases confirms the importance of the presumption of immaturity for all juvenile defendants. A recent study found that "Black boys were more likely to be seen as older and more responsible for their actions relative to White boys." Phillip Goff, *et al.*, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psychol. 526, 539 (2014). https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf (last visited June 30, 2016). Specifically, "Black boys are seen as more culpable for their actions (i.e., less innocent) within a criminal justice context than are their peers of other races." *Id.* at 540. Therefore, the presumption of immaturity should only be rebutted by expert evidence, rather than the independent assessment of sentencers or lay witnesses who may hold these implicit biases.

D. An "Abuse Of Discretion" Standard Is Insufficient To Ensure That Sentencers Comply With *Miller* And *Montgomery*

As the Georgia Supreme Court recently recognized, *Miller* and *Montgomery* vastly restrict a sentencing court's discretion to impose juvenile life parole sentences. *See Veal v. State*, 784 S.E.2d. 403, 411 (Ga. 2016) ("The *Montgomery* majority's characterization of *Miller* also undermines this Court's cases indicating that trial courts have significant discretion in deciding whether juvenile murderers should serve life sentences with or without the possibility of parole."). Because juvenile life without parole sentences must be "rare," "uncommon," and reserved only for "irreparably corrupt" young offenders, appellate courts must have the ability to carefully scrutinize a sentencing court's decision to impose juvenile life without parole.

Qu'eed Batts contends that the sentencing court's findings justifying the imposition of a juvenile life without parole sentence were contrary to law. At a minimum, the sentence should have been subjected to more scrutiny by the Superior Court than an abuse of discretion standard provides. Absent such scrutiny, the imposition of juvenile life without parole will be arbitrary and capricious; different judges and different counties may balance the same factors differently yet survive a challenge on appeal because of the highly deferential nature of an abuse

of discretion standard. To prevent disparities in sentencings among judges or across counties, appellate courts must scrutinize—without judicial deference—the sentencer's findings to ensure that the sentencer has properly considered how a youth's characteristics mitigate against imposing a life without parole sentence.[10]

1. An Appellate Court Must Conduct A *De Novo* Review To Determine If Qu'eed's Conduct Was A Product Of "Transient Immaturity."

In *Miller*, the United States Supreme Court held that a factfinder must consider the offender's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." 132 S. Ct. at 2468. The fact that Qu'eed was only fourteen at the time of the offense strongly mitigates against imposing a life without parole sentence. In *Miller*, the United States Supreme Court suggested that 14-year-olds are not only less culpable than adults, but also less culpable than older adolescents. *See id.* at 2467-68 ("Under [mandatory life without parole] schemes, every juvenile will receive the same sentence as every other—the *17–year–old and the 14–year–old*. . . . In meting out the death penalty, the elision of all these differences would be strictly forbidden. And . . . *Graham* indicates that a similar rule should apply when a

[10] Pennsylvania law, for example, provides a different level of scrutiny in death penalty cases. The "sentence of death shall be subject to automatic review by the Supreme Court of Pennsylvania." 42 Pa.C.S.A. § 9711(h)(1). The statute also sets out specific provisions for the review of capital sentences.

juvenile confronts a sentence of life (and death) in prison.") (emphasis added); *id.* at 2469 n. 8 (noting the dissents' "repeated references to 17-year-olds who have committed the 'most heinous' offenses, *and their comparison of those defendants to the 14-year-olds here*") (emphasis added). The Pennsylvania Legislature, in adopting new juvenile sentencing legislation after the *Miller* decision, also drew a line between older and younger offenders, settling lower minimum sentences for juveniles who committed their crimes at age 14 or younger. *See* 18 Pa.C.S.A. § 1102.1(a) & (c).

In spite of Qu'eed's young age, the sentencing court found that his "behavior was not the product of [the] youthful characteristics [that can impair the judgment of teenaged offenders]." Opinion of Koury, J. at 49. The sentencing court instead found:

> Mr. Batts did not act on impulse. He was not caught up in youthful risk-taking behavior and lacked the ability to foresee how it might get out of control. Mr. Batts made *a purposeful choice* to move out of his parents' home and commit himself to life in the Bloods gang. He *knew from prior experiences* and observation that the Bloods gang was a violent criminal organization and that he would be asked to commit violent criminal acts.

Id. at 49-50 (emphasis added).

The sentencing court's determination that Qu'eed made a "purposeful choice" to move out of his parents' home and a "purposeful choice" to join a gang—meaning he fully understood and appreciated the consequences of leaving home at the age of fourteen or the possibility that, within days of moving out of his home, he would be expected to commit a murder—simply does not comport with adolescent development research, nor with the facts of this case.[11] In its *amicus* brief in *Miller*, the American Psychological Association noted:

> [J]uveniles differ from adults in their ability to foresee and take into account the consequences of their behavior. By definition, adolescents have less life experience on which to draw, making it less likely that they will fully apprehend the potential negative consequences of their actions. Moreover, adolescents are less able than adults to envision and plan for the future, a capacity still developing during adolescence.

APA *Miller Amicus* at 12(internal citations omitted). *See also Miller*, 132 S. Ct. at 2468 (describing the "failure to appreciate risks and consequences" as one of the "hallmark features" of adolescence).

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[11] Qu'eed testified at trial that not everyone who joined a gang was expected to kill someone. Qu'eed testified that, prior to joining the gang, "I knew that some people got killed when they were gang bangers, but I knew a lot of dudes in gangs, and *I knew a lot of dudes in gangs that never had to kill anybody.*" (N.T. 7/30/07, 45) (emphasis added). Therefore, it is wrong to conclude that Qu'eed knew that he would be expected to kill someone if he joined a gang.

Adolescents, particularly young adolescents, are less able than adults to make rational, future-oriented decisions.

> Studies of general cognitive capability show an increase from pre-adolescence until about age 16, when gains begin to plateau. By contrast, social and emotional maturity continue to develop throughout adolescence. Thus, older adolescents (aged 16-17) often have logical reasoning skills that approximate those of adults, but nonetheless lack the adult capacities to exercise self-restraint, to weigh risk and reward appropriately, and to envision the future that are just as critical to mature judgment, especially in emotionally charged settings. Younger adolescents are thus doubly disadvantaged, because they typically lack not only those social and emotional skills but basic cognitive capabilities as well.

APA *Miller Amicus* at 14. At age 14, Qu'eed was "doubly disadvantaged" because he lacked the social and emotional maturity *and* the cognitive skills necessary to appropriately weigh risks and accurately assess future consequences. Therefore, what the sentencing court declared a "purposeful choice" to leave home and join a gang is better understood as an impulsive, emotional decision typical of a young adolescent who is not carefully considering all the potentially negative long-term consequences of his actions.[12] Qu'eed's age, attendant immaturity and impetuosity

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[12] Qu'eed's decision to leave home and join a gang is further contextualized by his traumatic childhood, lack of secure attachments with adults, and desire for a sense of family and belonging. *See* Opinion of Koury, J. at 52 ("Mr. Batts. . . never formed a stable bond with an adult caregiver. As a result, he has had a lifelong desire to belong to a supportive and caring family. Some of the evaluators opined

continue...

suggest that Qu'eed is less culpable than an adult making a similar decision. *See Roper*, 543 U.S. at 570 ("The susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.'") (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). Because the ultimate decision to impose juvenile life without parole may depend on discretionary findings of a trial court judge, appellate courts must have the ability to carefully review these findings without judicial deference to ensure that sentencers actually considers how a youth's characteristics "counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 132 S. Ct. at 2469.

2. An Appellate Court Must Conduct A *De Novo* Review To Determine If Qu'eed's Family And Home Environment Diminished His Culpability

Miller also requires that a sentencer must "tak[e] into account the family and home environment that surrounds [the juvenile]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional." 132 S. Ct. at 2468.

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[12]...continue
that this desire left Mr. Batts particularly vulnerable to recruitment by the Bloods gang.").

The sentencing court acknowledged Qu'eed's "troubled childhood," including "his difficulties in forming attachments to trusted adults." Opinion of Koury, J. at 44. As the court noted, this troubled childhood included being born to teen parents; his father's incarceration throughout his childhood; his multiple placements with relatives and in foster care; and his exposure to bullying, violence, and sexual abuse. Opinion of Koury, J. at 28-36. Significantly, Qu'eed's mother was only 13 when Qu'eed was born, and, at the age of five, *Id.* at 29. Qu'eed entered the foster care system after he was left alone outside. *Id.* at 29-30. Qu'eed was placed in a number of foster homes. *Id* at 30. Qu'eed "found these events traumatic" and "hoped if he misbehaved, he might be removed from foster care and sent back to live with his mother." *Id.* Qu'eed reported that, when he was nine, he was forcibly anally raped by his 15-year-old cousin. *Id.* at 31. When he was around 10, Qu'eed "was exposed to older children who forced him and other younger children to fight with each other, and the older children placed bets on who would win." *Id.* at 33.

The sentencing judge held that Qu'eed's childhood experiences "*do not diminish your culpability.*" *Id.* at 59 (emphasis added). This is legally incorrect. The finding that Qu'eed's troubled and traumatic childhood does not diminish Qu'eed's culpability directly contradicts United States Supreme Court

jurisprudence and therefore must be carefully reviewed—and rejected—by appellate courts. One of the characteristics that makes children less culpable than adults is that "children 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Miller*, 132 S. Ct. at 2464 (quoting *Roper*, 543 U.S. at 569). *See also id.* at 2468 ("All these circumstances go to [the juvenile's] culpability for the offense. . . . *And so too does [the juvenile's] family background.*") (emphasis added); *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) ("[W]hen the defendant was 16 years old at the time of the offense *there can be no doubt that evidence of a turbulent family history*, of beatings by a harsh father, and of severe emotional disturbance *is particularly relevant [mitigating evidence].*") (emphasis added). United States Supreme Court jurisprudence therefore establishes that a troubled childhood is a mitigating factor that diminishes a juvenile's culpability, and the sentencing court's contrary finding must be subject to *de novo* review.

3. An Appellate Court Must Conduct A *De Novo* Review To Determine If Peer Pressure And Duress Were Mitigating Factors

The third *Miller* factor requires that a sentencing court consider "the circumstances of the homicide offense, including the extent of [the juvenile's] participation in the conduct and the way familial and peer pressures may have affected him." 132 S. Ct. at 2468.

a. An Appellate Court Must Conduct A *De Novo* Review To Determine If Peer Pressure Was A Mitigating Factor

The sentencing court found that peer pressure was not a mitigating factor in this case. The court noted:

> Mr. Batts sought out and embraced gang membership with full knowledge that the other gang members would expect him to commit acts of violence. He then agreed to commit an execution-style killing in order to move up in the ranks of the gang hierarchy. Where a defendant actively seeks out and welcomes peer pressure, the peer pressure does not diminish his culpability. The court will not treat gang membership as a mitigating factor in this case.

Opinion of Koury, J. at 51. The sentencing court's determination that peer pressure was not a mitigating factor here is inconsistent with adolescent development research. Indeed, the court's statement that Qu'eed actively sought out and welcomed peer pressure, and therefore forfeited his claim to reduced culpability,

illustrates just how flawed the court's understanding of adolescent development was.

Peer pressure to join a gang and pressure from gang members to commit crimes is precisely the sort of pressures to which juveniles are particularly susceptible. As the Court noted in *Roper:*

> [J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. . . . This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. *See* Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003) ("[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting").

543 U.S. at 569 (citations omitted). "Research has shown that susceptibility to peer pressure to engage in antisocial behavior increases between childhood and early adolescence, peaks at around age 14,"—Qu'eed's age at the time of the offense—"and then declines slowly during the late adolescent years." APA *Miller Amicus* at 16.

Peer pressure on adolescents can be both direct and indirect, *id.* at 18, leading juveniles to take risks that adults might not.

> In some contexts, adolescents might make choices in response to direct peer pressure, as when they are coerced to take risks that they might otherwise avoid. More indirectly, adolescents' desire for peer approval, and consequent fear of rejection, affect their choices even without direct coercion. The increased salience of peers in adolescence likely makes approval-seeking especially important in group situations.

Id. (internal quotation and citation omitted). Notably, "mere awareness that peers were watching encouraged risky behavior among juveniles, but not adults." *Id.* at 17. There was no evidence introduced at the sentencing hearing below that negated the desire for peer approval as influencing Qu'eed's decision to both join the gang and commit the homicide. This developmentally normative desire for peer approval must not be confused with actively seeking out and welcoming peer pressure—the trial court's characterization of Qu'eed—which grossly misreads the science and the facts.

Additionally, that Qu'eed's participation in the homicide, at least to some extent, may have been motived by a desire to gain status within the gang is consistent with adolescent development. Adolescents are "more likely than adults to engage in antisocial behavior in order to conform to peer expectations or achieve respect and status among their peers." *Id.* at 18. *See also* Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*,

18 Future of Children: Juvenile Justice Report 15, 23 (2008) ("In some high-crime neighborhoods, peer pressure to commit crimes is so powerful that only exceptional youths escape. As [other researchers] have explained, in such settings, resisting this pressure can result in loss of status, ostracism, and even vulnerability to physical assault."). Therefore, to the extent that Qu'eed may have been motivated by a desire to gain peer approval of other gang members, that motivation is consistent with an adolescent's diminished ability to analyze risk and increased susceptibility to peer pressure, and therefore must be treated as a mitigating factor.

b. This Court Should Conduct A *De Novo* Review To Determine That, Even When Duress Is Not An Affirmative Defense, It May Be Considered A Mitigating Factor

Qu'eed's testimony suggests that he acted under extreme duress or under the substantial domination of another person when he committed the homicide. Prior to the murder, Vernon Bradley, an older and senior member of the Bloods, told Qu'eed that the teardrops on Mr. Bradley's face indicated that Mr. Bradley had killed people, and that he also intended to kill C.J. Edwards (the victim of the homicide) (N.T. 7/30/07, 55). Mr. Bradley also informed 14-year-old Qu'eed that gang members could get killed if they did not follow orders. *Id.* at 56:13-18.

On the night of the murder, Qu'eed was in a car with Mr. Bradley and three other gang members. Opinion of Koury, J. at 36. When they saw C.J. Edwards and

another boy on the front porch of the house, "Bradley asked whether anyone in the car was willing to 'put in some work,' which Mr. Batts interpreted as a directive to kill [the boys]." *Id.* Mr. Bradley handed Qu'eed a mask and a gun, and Qu'eed got out of the car and shot and killed C.J. Edwards and injured the other boy. (N.T. 7/30/07, 66-68). In recalling the night of the murder, Qu'eed testified that, as he walked up to the boys, he "did not really have a clear mind" and that he thought if he did not kill the boys, Mr. Bradley would kill him. *Id.* at 67. Qu'eed testified that after the murder he was shaking and scared. *Id. at* 69.

Qu'eed's assistant vice principal's testimony at trial supports Qu'eed's assertion that he feared for his own life at the time of the crime. Prior to the murder, the assistant principal, Janice Trent, asked Qu'eed about his gang involvement. Ms. Trent testified:

> [W]e were talking about the gang activity, I asked him. I said, "Do you want out?" And he said Yes. And I said, "well, what can we do as a school community to help you?" And he told me, he said there's no way out. The only way out is to die.

(N.T. 7/27/07, 49). Ms. Trent testified that Qu'eed was crying during this conversation. *Id.* at 50.

The sentencing court rejected Qu'eed's argument that he acted under duress and therefore deserved a lesser sentence. Opinion of Koury, J. at 48. First, the

sentencing court found it persuasive that the jury rejected a duress defense at trial. *See* Opinion of Koury, J. at 48, 103-05. However, Pennsylvania death penalty law specifically establishes that duress can be a mitigating factor even when it is not sufficient to constitute an affirmative defense. *See* 42 Pa.C.S.A. § 9711(e)(5) (including as a mitigating factor that "[t]he defendant acted under extreme duress, *although not such duress as to constitute a defense to prosecution under 18 Pa.C.S.A § 309 (relating to duress),* or acted under the substantial domination of another person") (emphasis added). The fact that the jury rejected Qu'eed's affirmative defense of duress should have no impact on whether duress was a mitigating factor.

Moreover, the same factors that make an adolescent more susceptible to peer pressure make him more susceptible to duress. Because of teens' impulsivity, "it may take less of a threat to provoke an aggressive response from a juvenile. And, because adolescents are less likely than adults to think through the future consequences of their actions, the same level of duress may have a more disruptive impact on juveniles' decision making than on that of adults." Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychol. 1009, 1014 (2003). Qu'eed, by virtue of his age and development, was

less able to foresee the consequences of his actions and extricate himself from the situation once it became clear that he was expected to commit a murder.

Qu'eed's actions—both in joining a gang and committing a murder at the behest of a gang leader—demonstrate that he was particularly susceptible to peer influence and pressure. This vulnerability contextualizes Qu'eed conduct; actions that may signify irreparable corruption and criminality if taken by a 30-year-old must be viewed and considered differently when taken by a 14-year-old. *See Roper*, 543 U.S. at 570 ("Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.").

4. An Appellate Court Must Conduct A *De Novo* Review To Determine If Qu'eed Demonstrated Sophisticated Criminal Behavior

Miller finds that courts must consider a youth's incompetencies in dealing with a criminal justice system designed for adults. 132 S. Ct. at 2468. This includes the fact that a juvenile "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Id.*

Though Qu'eed was 14 at the time of his crime and arrest, the sentencing court found that Qu'eed "demonstrated sophisticated criminal behavior when he evaded police, fled to another state, concealed his whereabouts by hiding with fellow gang members, falsified his identity, and lied to investigators about the circumstances of his crimes." Opinion of Koury, J. at 51.[13] Contrary to these findings, Qu'eed's interactions with the police did not exhibit sophisticated criminal behavior and *de novo* review by the appellate court should have so found.

Children are particularly susceptible to police interrogations. *See J.D.B. v. North Carolina*, 564 U.S. 261, 272-73 (2011) ("'[N]o matter how sophisticated,' a juvenile subject of police interrogation 'cannot be compared' to an adult subject") (quoting *Gallegos v. Colorado,* 370 U.S. 49, 54 (1962)). Importantly, there is no indication that Qu'eed invoked his right to counsel or his right to remain silent, as one would expect from a sophisticated criminal, before he ultimately confessed to the police. The willingness to talk to the police without an attorney is directly tied to age and adolescent development. *See* Laurence Steinberg, *Adolescent*

[13] Qu'eed's behavior was hardly "sophisticated" as the sentencing judge suggested. Qu'eed's "falsified his identity" by telling police a fake name when they came to apprehend him. *Id.* at 37. Though Qu'eed's technically "fled to another state," it is notable that Easton, Pennsylvania (where the murder occurred) borders New Jersey, and Qu'eed "fled" to Phillipsburg, New Jersey, which was across the river from Easton and the town where, prior to the murder, Qu'eed had been attending high school. *Id.* at 35.

Development and Juvenile Justice, 5 Am. Rev. Clin. Psychol. 47, 64 (2009) ("Significant age differences were found in responses to police interrogation . . . [Y]ouths . . . were much more likely to recommend waiving constitutional rights during an interrogation than were adults, with 55% of 11- to 13-year-olds, 40% of 14- to 15-year-olds, and 30% of 16- to 17-year-olds choosing to 'talk and admit' involvement in an alleged offense (rather than 'remaining silent'), but only 15% of the young adults making this choice."). Qu'eed's uncounseled confession likely influenced the course of his criminal case, including his ability to plea bargain and his attorney's overall trial strategy. Qu'eed's lack of criminal sophistication should therefore have been treated as a mitigating factor.

5. An Appellate Court Must Conduct A *De Novo* Review To Determine If The Uncertainty of Qu'eed's Amenability To Treatment Weigh Against Leniency

Finally, *Miller* requires that courts consider "the possibility of rehabilitation" before imposing life without parole on a juvenile. 132 S. Ct. at 2468. As to this factor, the sentencing court found that "the uncertainty of [Qu'eed's] amenability to treatment" factored against leniency. Opinion of Koury, J. at 58.[14] As previously

[14] The sentencing court made contradictory statements about how Qu'eed's amenability to treatment factored into his sentencing decision. While stating that amenability to treatment factored against leniency, the sentencing court also stated, "the court does believe that [Qu'eed's] young age weighs in [his] favor in assessing [his] amenability to treatment and rehabilitation and [his] capacity for

continue...

discussed in Section VII.A., *supra,* this finding is contrary to both *Miller* and *Montgomery*. The sentencing court put an improper burden on Qu'eed to establish more certainty that he would rehabilitate even though the presumption should be that a youth is likely to rehabilitate, absent expert testimony that a youth is permanently incorrigible. Again, utilizing a *de novo* review standard would have led an appellate court to conclude a mitigating factor was established by this record.

E. Qu'eed's Resentencing Proceeding Was Unconstitutional Because It Provided Him With Fewer Procedural Safeguards Than An Adult Facing Capital Punishment

In *Graham v. Florida*, the United States Supreme Court observed that juvenile life without parole "share[s] some characteristics with death sentences that are shared by no other sentence." 560 U.S. at 69. In *Miller v. Alabama*, the Court attributed its individualized sentencing requirement to *Graham's* comparison of juvenile life without parole to the death penalty. 132 S. Ct. at 2463. *See also id.* at 2466 (describing life without parole "for juveniles as akin to the death penalty"). The Court explained that this comparison evoked the line of precedent prohibiting mandatory capital punishment and requiring the sentencer to consider the

[14]...continue
change." Opinion of Koury, J. at 59.

defendant's characteristics and the details of the offense before sentencing him to death. *Id.* at 2463-64.

Other procedural rights, such as the right to a jury trial for sentencing purposes, must also be available. Based upon *Montgomery*, before a juvenile could be sentenced to life without parole, certain factual determinations must be made: The juvenile's crime must reflect "permanent incorrigibility" or "irreparable corruption" before a life without parole sentence can be imposed. *See Montgomery*, 136 S. Ct. at 734.

The United States Supreme Court has held that "it is impossible to dispute that facts increasing the legally prescribed floor *aggravate* the punishment" and trigger a jury trial right. *Alleyne v. United States*, 133 S. Ct. 2151, 2161 (2013). Here, because the factual finding that a juvenile is permanently incorrigible or irreparably corrupt is required before a life without parole sentence can be imposed, that factual finding mandates a jury trial right. U.S. Const. amend. VI, XIV.

Moreover, Qu'eed was entitled to at least the same procedural due process afforded an adult facing capital punishment under the Eighth Amendment and Article I, Section 13 of the Pennsylvania Constitution. A review of Pennsylvania's capital sentencing provision illustrates the shortcomings in the resentencing below.

The capital sentencing procedure in Pennsylvania is governed by 42 Pa.C.S. § 9711, which provides in relevant part:

> (b) If the defendant has waived a jury trial or pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose unless waived by the defendant with the consent of the Commonwealth, *in which case the trial judge shall hear the evidence and determine the penalty in the same manner as would a jury as provided in subsection (a).*
>
> (c)(1) Before the jury retires to consider the sentencing verdict, the court shall instruct the jury on the following matters:
>
> > (i) The aggravating circumstances specified in subsection (d) as to which there is some evidence.
> >
> > (ii) The mitigating circumstances specified in subsection (e) as to which there is some evidence.
> >
> > (iii) *Aggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt; mitigating circumstances must be proved by the defendant by a preponderance of the evidence.*
>
> (h) Review of death sentences –
>
> (1) A sentence of death shall be subject to automatic review by the Supreme Court of Pennsylvania pursuant to its rules.
>
> (2) In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate the sentence of death and remand for further proceedings as provided in paragraph (4).
>
> (3) The Supreme Court shall affirm the sentence of death unless it determines that:

(i) the sentence of death was the product of passion, prejudice or any other arbitrary factor; or

(ii) the evidence fails to support the finding of at least one aggravating factor specified in subsection (d).

(4) If the Supreme Court determines that the death penalty must be vacated because none of the aggravating circumstances are supported by sufficient evidence, then it shall remand for the imposition of a life imprisonment sentence. If the Supreme Court determines that the death penalty must be vacated for any other reason, it shall remand for a new sentencing hearing pursuant to subsections (a) through (g).

42 Pa.C.S.A. § 9711 (emphasis added).

In summary, the Pennsylvania General Assembly has provided extensive safeguards for an adult facing capital punishment: (a) the right to be sentenced by a jury; (b) a default sentence of life imprisonment; (c) a "beyond a reasonable doubt" standard for the Commonwealth, and a "beyond a preponderance of the evidence" standard for the defendant; (e) a verdict of death must be unanimous; and (f) automatic review of all death sentences by this Court. *See* 42 Pa.C.S. § 9711(a)-(h).

In contrast, President Judge McFadden assigned this case to Judge Koury for disposition without any input from the defense (N.T. 5/1/14, 35). At the start of the re-sentencing hearing, the Commonwealth denied that it had any burden of proof (N.T. 5/1/14, 38-40). Finally, in his Opinion, Judge Koury asserts that the appellate court should presume that he has properly considered the sentencing factors and

review his discretionary juvenile life without parole sentence for an abuse of discretion. *See* Opinion of Koury, J. at 74-88. None of these are consistent with the procedure outlined by 42 Pa.C.S.A. § 9711 and due process for capital sentences.

This Court must bridge the constitutional gap between the due process afforded a juvenile facing juvenile life without parole and the due process afforded an adult facing capital punishment. In light of 42 Pa.C.S.A. § 9711, a juvenile life without parole proceeding must include: (a) the right to be sentenced by a jury; (b) a burden of proof assumed by against the Commonwealth; (c) the requirement for a unanimous verdict; and (d) automatic review by this Court.

None of these procedures were made available to Qu'eed during his re-sentencing. In addition to vacating the sentence below, this Court must promulgate safeguards to ensure that juvenile life without parole will be "uncommon" in Pennsylvania. *See Miller*, 132 S. Ct. at 2469. The urgency of this issue is compounded by Pennsylvania's dubious status as the state with the highest number of juvenile inmates serving life without parole. *Commonwealth v. Knox*, 50 A.3d 732, 744 n.16. (Pa. Super. Ct. 2012).

F. This Court Should Address The Legality Of The Sentencing Options Available To Qu'eed Batts At Resentencing

The lower court's power to re-sentence Qu'eed is circumscribed by certain constitutional constraints; the court can only impose a sentence lawful at the time Qu'eed was initially convicted. In *Batts I*, this Court rejected the argument that the statutory scheme rendered invalid by *Miller* required resentencing on a lesser included offense (i.e., third degree murder) and related offenses. This Court did not grant review of that question here. However, several recent cases from this Court suggest that *Batts I*'s resolution on this question should be revisited by this Court. *See Commonwealth v. Wolfe*, No. 68 MAP 2015, 2016 WL 3388530 (Pa. June 20, 2016); *Commonwealth v. Hopkins*, 117 A.3d 247 (Pa. 2015). While ordinarily consideration on appeal by this Court should be limited to the questions for which review was granted, extraordinary considerations are present here. Rather than have hundreds of cases be resentenced on an invalid statutory scheme, this Court should address it now. This Court's King Bench powers grant such authority. *See* Pa.R.A.P. 3309; 42 Pa.C.S.A.§ 726. Rather than repeat the arguments presented by the amicus brief filed by the Pennsylvania Association of Criminal Defense Lawyers, counsel adopts the arguments in the amicus brief. The Commonwealth

will not be prejudiced by this as they will have a full opportunity to respond in their brief.

VIII. CONCLUSION

This Honorable Court should vacate Qu'eed Batts' life without parole sentence as unconstitutional and remand the instant matter for resentencing.

Respectfully submitted,

/S/

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