IN THE SUPREME COURT OF PENNSYLVANIA

DOCKET NO. 45 MAP 2016

COMMONWEALTH OF PENNSYLVANIA

Appellee

VS.

QU'EED BATTS

Appellant

BRIEF OF APPELLEE

Appeal from Opinion entered September 4, 2015 in the Superior Court of Pennsylvania at No. 1764 EDA 2014, Affirming Judgment of Sentence entered May 2, 2014 in the Court of Common Pleas of Northampton County, Pennsylvania at No.: CP-48-CR-0001215-2006.

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Suggested Answer: No.

COUNTER-STATEMENT OF THE CASE

I. FACTUAL HISTORY

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

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

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

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

7/26/07, at 34-35. However, Petitioner later confessed to shooting Clarence Edwards and Corey Hilario for the purpose of gaining a promotion within the gang. ***See*** N.T., 7/26/07, at 19, 26, 61; Trial Court Opinion, 8/27/14, at 51 (citing N.T., 5/2/14, at 49).

II. PROCEDURAL HISTORY

As a result of the above-described criminal actions, Petitioner was charged with criminal homicide,[1] attempted murder,[2] aggravated assault,[3] and two counts of conspiracy.[4] On March 13, 2006, Petitioner filed a motion to transfer the case to the Juvenile Division. On April 13, 2006, a preliminary hearing was held, and all charges were bound over to the Northampton County Court of Common Pleas. On April 27, 2006, Petitioner was formally arraigned and entered a plea of not guilty. On February 22, 2007, following a hearing, the trial court denied Petitioner's transfer motion.

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

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[1] 18 Pa.C.S.A. § 2501.
[2] ***Id.*** at § 901(a).
[3] ***Id.*** at § 2702(a)(1).
[4] ***Id.*** at § 903(a)(2).

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

On May 7, 2009, Petitioner filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which was granted in part on September 17, 2009. ***Commonwealth v. Batts***, 318 MAL 2009 (Pa. 2009). In a December 6, 2011 order, the Supreme Court placed the matter on hold pending the resolution of two cases pending in the United States Supreme Court, ***Jackson v. Hobbs*** and ***Miller v. Alabama***, 132 S.Ct. 2455 (2012). Following the issuance of the decision in those matters, the Pennsylvania Supreme Court vacated the Superior Court's decision in ***Batts I*** and remanded for resentencing. ***Commonwealth v. Batts***, 66 A.3d 286 (Pa. 2013) ("***Batts II***").

On May 1, 2014, the trial court[5] held a resentencing hearing. The following morning, the trial court imposed sentence. Prior to doing so, the court provided an extensive summary of the factual and procedural background of the case and discussed its general sentencing considerations,

[5] The original trial judge, the Honorable William F. Moran, retired prior to remand. This matter was reassigned to the Honorable Michael J. Koury, Jr. for resentencing.

including the criteria set forth in ***Batts II*** and the factors listed in 18 Pa.C.S.A. § 1102.1. ***See*** N.T., 5/2/14, at 2-7; 13-15, 27-30, 30-32.

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

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

that Petitioner "acted alone" in shooting the victims. ***Id.*** at 44. As to Petitioner's alleged justification of duress, the court explained that the jury did not believe that claim, as evidenced by its verdict, and that Petitioner's "description of the events was inconsistent with his assertion that he acted out of fear." ***Id.*** at 45. The court further stated that Petitioner's description of the murder sounded "like a person who wanted to prove to his fellow gang members that he was capable of committing cold-blooded murder." ***Id.*** at 46.

The court also considered Petitioner's age, emotional maturity, and development at the time of the offenses. The court noted that Petitioner "did not act on impulse," but rather "had time to plan and deliberate," as evidenced by his use of a mask and glove. ***Id.*** at 47. The court concluded that Petitioner "made a calculated decision to shoot two defenseless boys at point blank range." ***Id.*** at 48. In reviewing the factors of familial and peer pressure, the court noted that Petitioner sought out gang membership, despite knowing about the violence inherently involved with gang affiliation. ***See id.*** at 49. The court also reviewed evidence related to Petitioner's ability to deal with the police and assist his attorney, as well as his taking responsibility for his actions and displaying remorse at the resentencing hearing. ***See id.*** at 49-50, 54. The court noted that Petitioner failed to cooperate with police, fled the state, tried to conceal his identity when apprehended, and initially lied about his involvement in the crimes. ***See id.***

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

After this extensive review of the evidence, the court proceeded to carefully weigh the evidence and balance the competing concerns. Weighing against leniency for Petitioner, the court found that Petitioner "executed a cold-blooded murder and attempted murder of two defenseless boys [Petitioner] did not know for the purpose of advancing [his] personal interest in the Bloods gang. It was a premeditated act. It was brutal, unprovoked and senseless." ***Id.*** at 56-57. The court noted that Petitioner was only concerned with being caught by the police, rather than feeling any sympathy for the victims he killed and injured. ***See id.*** at 57. Also weighing against Petitioner was the fact that he acted alone and that there was no justification for his acts. ***See id.*** The court specifically stated that, like the jury, it did not find Petitioner's allegation of duress to be credible. ***Id.*** at 57-58. The court also found that the vulnerability of the victims, Petitioner's

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

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

Petitioner's attempt to be a positive role model for his younger brother weighed in his favor. ***Id.***

Ultimately, the court sentenced Petitioner to a term of life imprisonment without parole.[6] ***Id.*** at 67. Petitioner filed a post-sentence motion, which the court denied on May 13, 2014. Petitioner filed a timely notice of appeal to the Superior Court on June 10, 2014. The Superior Court affirmed judgment of sentence on September 4, 2015, finding that: (1) Petitioner waived his discretionary aspects of sentencing claim by failing to comply with Pennsylvania Rule of Appellate Procedure 2119(f), (2) there was no constitutional or statutory basis to provide Petitioner with the same due process received in a capital sentencing hearing, and (3) Petitioner's sentence was legal. ***See Commonwealth v. Batts***, 1764 EDA 2014 (Pa. Super. 2015) ("***Batts III***").

[6] Petitioner was also sentenced to a concurrent term of ten to twenty years' imprisonment on the attempted murder count.

SUMMARY OF THE ARGUMENT

The Commonwealth argues that it is not necessary for the Pennsylvania Supreme Court to promulgate procedural rules related to the sentencing of juvenile murderers. The establishment of a procedure to sentence juvenile murderers is inherently a legislative matter. This Court has explained that it is within the Legislature's province to establish punishments for offenses and to set forth the factors to be considered in determining appropriate punishments. In the case of juveniles who commit first- and second-degree murder, the Legislature has set forth the possible punishments and the criteria for imposing those punishments in Section 1102.1.

Further, the Commonwealth asserts that none of the rules advanced by Petitioner, including a presumption against life without parole, a requirement of fact-finding and expert testimony, and imposing a beyond a reasonable doubt burden on the Commonwealth, are mandated by the United States Supreme Court's decisions in ***Miller*** or ***Montgomery***. In fact, the ***Montgomery*** Court specifically stated that ***Miller*** did not impose any fact-finding requirements or compel that certain procedures be followed in sentencing juvenile murderers, aside from consideration of a defendant's youth and its attendant characteristics.

Next, the Commonwealth contends that the Superior Court did not err in applying an abuse of discretion standard of review to Petitioner's

sentencing claim. The issue raised below by Petitioner, which related to the evidence considered by the trial court and the weight given to that evidence, was clearly a challenge to the court's discretion. The abuse of discretion standard of review has consistently been applied to similar challenges to juvenile murderers' sentences, and neither the United States Supreme Court, the Pennsylvania Supreme Court, nor the Legislature has indicated any intent to create a distinct review process or a new, heightened standard of review for such claims.

The Commonwealth also argues that Petitioner's resentencing hearing was constitutional, and Petitioner is not entitled to the same procedural due process a capital defendant receives. While some cases have drawn parallels between the death penalty for an adult and life without parole for a juvenile, there is no authority requiring, or even suggesting, the same procedure be utilized in imposing those sentences. The trial court properly resentenced Petitioner in accordance with ***Miller*** and ***Batts II***, which required the trial court to consider a variety of factors prior to imposing sentence, but did not require or imply that capital sentencing procedures, such as use of a jury and a beyond a reasonable doubt standard, should be utilized.

The Commonwealth also contends that Petitioner's rights under ***Alleyne v. United States***, 133 S.Ct. 2151 (2013), were not violated during resentencing. First, there is no fact-finding requirement set forth in ***Miller***

and ***Montgomery***. Second, regardless of the evidence presented, the trial court does not have the authority to increase the possible penalty faced by Petitioner. Thus, his rights under ***Alleyne*** were not implicated.

Finally, the Commonwealth does not believe it is appropriate for this Court to revisit its decision in ***Batts II***, as urged by amicus and Petitioner. This was not an issue raised in the petition for allowance of appeal filed by Petitioner and, as such, is not properly before this Court.

ARGUMENT

I. INTRODUCTION

Prior to June 25, 2012, a juvenile convicted of first-degree murder was sentenced to a mandatory term of life imprisonment without parole. ***See*** 18 Pa.C.S.A. § 1102. However, on June 25, 2012, the United States Supreme Court in ***Miller*** held "that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" ***Miller***, 132 S.Ct. at 2460. In reaching this conclusion, the Court relied on precedent which "establish[ed] that children are constitutionally different from adults for purposes of sentencing" based on children's "diminished culpability and greater prospects for reform[.]" ***Id.*** at 2464 (citing ***Roper***, 543 U.S. 551 and ***Graham v. Florida***, 560 U.S. 48 (2010)). The Court pointed to three main differences between juvenile and adult offenders: a child's lack of maturity and underdeveloped sense of responsibility, a child's vulnerability to outside pressures and influences, and the fact that a child's character is "less fixed" and not as "well formed" as an adult's. ***Id.*** (citations omitted). The Court emphasized that "youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole." ***Id.*** at 2465.

As a result of these concerns, the Court found that mandatory sentencing schemes, such as Pennsylvania's, were constitutionally deficient

because they "prevent the sentencer from taking account of" the defendant's age and attendant characteristics. ***Id.*** at 2466. The Court found that, because life imprisonment without parole is the most severe punishment that can be imposed on a juvenile offender, an individualized sentencing proceeding, where the sentencer can take into consideration the defendant's youth, personal characteristics, and background, is required. ***Id.*** at 2467-68. The Court concluded that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." ***Id.*** at 2469.

However, the Court did not issue a categorical ban on sentencing a juvenile murderer to life imprisonment without parole. The Court specifically stated that its "decision does not categorically bar a penalty for a class of offenders[.]" ***Id.*** at 2471. Rather, it dictated that "a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." ***Id.*** The Court did note that such a sentence should be "uncommon" and stated that, before imposing such a sentence, a sentencer must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." ***Id.*** at 2469 (footnote omitted).

Less than a month after ***Miller***, the Pennsylvania Superior Court issued two opinions in the cases of twin brothers who were convicted of second-degree murder and sentenced to a mandatory term of life

imprisonment without parole. The Superior Court vacated the sentences of the brothers and remanded for resentencing, providing the following guidance:

> We emphasize that our disposition does not mean that it is unconstitutional for a juvenile actually to spend the rest of his life in prison, only that the mandatory nature of the sentence, determined at the outset, is unconstitutional. Therefore, although ***Miller*** did not delineate specifically what factors a sentencing court must consider, at a minimum it should consider a juvenile's age at the time of the offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation.

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

The next development in the Commonwealth related to the sentencing of juvenile murderers was the enactment of Section 1102.1. This statute, enacted on October 25, 2012, sets forth the possible punishments for a juvenile who is convicted of first- or second-degree murder after June 24, 2012. For a juvenile such as Petitioner, who was convicted of first-degree murder and was fourteen years old at the time of his offense, the statute sets forth a mandatory minimum term of imprisonment of twenty-five years.

18 Pa.C.S.A. § 1102.1(a)(2). Section 1102.1 specifically permits a juvenile murderer, regardless of their age at the time of the offense, to be sentenced to a term of life imprisonment without parole following an individualized sentencing hearing. ***Id.*** at § 1102.1(a). The statute also lists specific factors a court must consider in determining an appropriate sentence. The factors are:

> (1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.
> (2) The impact of the offense on the community.
> (3) The threat to the safety of the public or any individual posed by the defendant.
> (4) The nature and circumstances of the offense committed by the defendant.
> (5) The degree of the defendant's culpability.
> (6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.
> (7) Age-related characteristics of the defendant, including:
>
> (i) Age.
> (ii) Mental capacity.
> (iii) Maturity.
> (iv) The degree of criminal sophistication exhibited by the defendant.
> (v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.
> (vi) Probation or institutional reports.
> (vii) Other relevant factors.

Id. at 1102.1(d).

The Commonwealth acknowledges that Section 1102.1 specifically applies to juveniles who are convicted of first- or second-degree murder

after June 24, 2012. Because Petitioner was convicted of first-degree murder on July 31, 2007, the statute is not directly applicable to him. However, the Commonwealth believes it can provide guidance to the Court in this matter because it is an expression of the legislative intent following the ***Miller*** decision as to permissible punishments and the procedure to be followed when sentencing juvenile murderers.

At the time ***Miller*** was decided, Petitioner's case was pending on direct appeal before this Court. In its decision following the issuance of ***Miller***, the Court recognized the need for an individualized sentencing hearing, but rejected Petitioner's contention that he should be sentenced as if he had been convicted of third-degree murder. This Court explained:

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

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

Significantly, in the arena of evolving federal constitutional standards, we have expressed a reluctance to "go further than what is affirmatively commanded by the High Court" without "a common law history or a policy directive from our Legislature." ***Commonwealth v. Sanchez***, 614 Pa. 1, ----, 36 A.3d 24, 66 (Pa.2011), cert. denied, --- U.S. ----, 133 S.Ct. 122, 184 L.Ed.2d 58 (2012). Moreover, barring application of the entire statutory scheme as applied to juveniles convicted of first-degree murder, based solely on the policy discussion in ***Miller*** (short of its affirmative holding), would contradict the "strong presumption that legislative enactments do not violate the constitution." ***Commonwealth v. Chase***, 599 Pa. 80, 89, 960 A.2d 108, 112 (2008); ***see also*** 1 Pa.C.S. § 1922(3) (presumption that the General Assembly does not intend to violate the federal or state constitutions when it enacts legislation).

In addition, Appellant's argument that he should be sentenced as if he had been convicted of the lesser offense of third-degree murder finds little support in the authorities upon which he relies, as such caselaw is simply inapplicable to the present circumstances. In ***Story***, for example, this Court imposed a life sentence because the effectuation of a death sentence would violate the defendant's equal protection and due process rights. ***See*** [***Commonwealth v.***] ***Story***, 497 Pa. [273,] 281, 440 A.2d [488,] 492 [(Pa. 1981)] ("Because appellant was tried, convicted, and sentenced to death under an unconstitutional statute, he must be treated the same as all those persons whose death penalties have been set aside."). Notably, the life sentence imposed in ***Story***, like the death

penalty that was vacated, was a legislatively sanctioned punishment for first-degree murder and not a lesser offense. ***See id.*** at 277, 440 A.2d at 490. ***Rutledge*** is similarly distinguishable, as that case involved the vacation of one conviction and sentence where the defendant had been convicted of two separate crimes, one of which was determined to be a lesser-included offense. ***See Rutledge*** [***v. United States***], 517 U.S. [292,] 307, 116 S.Ct. [1241,] 1250 [(1996)]. Here, by contrast, Appellant's conviction for first-degree murder has not been vacated; rather, we are tasked with determining an appropriate scheme for resentencing for that offense, consistent with ***Miller***.

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

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

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

Batts, 66 A.3d at 295-97. Ultimately, the ***Batts II*** Court remanded the matter for resentencing in accordance with ***Miller***. ***Id.*** at 299.

In a concurring opinion, Justice Baer recommended that, upon resentencing Petitioner, the trial court seek guidance from Section 1102.1.

Batts, 66 A.3d at 300 (Baer, J., concurring). While acknowledging that the statute did not apply to Petitioner because it was enacted after his conviction, Justice Baer explained that the statute represented the Legislature's view on appropriate juvenile sentencing procedures, provided individualized characteristics to evaluate in determining an appropriate sentence, and adherence to the intent of the statute would promote consistency in juvenile homicide sentencing. ***Id.***

Most recently, the United States Supreme Court addressed its holding in ***Miller*** in ***Montgomery v. Louisiana***, 136 S.Ct. 718 (2016). In the period that elapsed following ***Miller***, there was disagreement among the States as to which juvenile murderers would benefit from the holding of ***Miller***. Many states, including Pennsylvania, applied the rule set forth in ***Miller*** only to those defendants whose judgments of sentence were not yet final at the time of the ***Miller*** decision. ***See Commonwealth v. Cunningham***, 622 Pa. 543 (Pa. 2013). Others held that the ***Miller*** rule applied retroactively. On January 25, 2016,[7] the United States Supreme Court resolved this disparity in ***Montgomery***, holding that ***Miller*** set forth a new substantive rule of constitutional law that was to be applied retroactively.[8] ***Montgomery***, 136 S.Ct. at 732.

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[7] The decision was revised two days later.

[8] Because Petitioner's case was on direct appeal at the time ***Miller*** was decided, he would receive the benefit of the ***Miller*** decision regardless of the Court's retroactivity determination.

Montgomery reiterated the ***Miller*** Court's holding that a "sentencing judge take into account 'how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" ***Id.*** at 733 (quoting ***Miller***, 132 S.Ct. at 2469). The Court also stated that life without parole would be an unconstitutional sentence for juvenile murderers "whose crimes reflect the transient immaturity of youth." ***Id.*** at 734. However, the ***Montgomery*** Court reaffirmed that life without parole is still a possible sentence in appropriate cases. ***Id.*** at 733. Further, the Court also explicitly stated that ***Miller*** did not require a trial court to make any particular findings of fact prior to sentencing a juvenile murderer, nor did it mandate a certain procedure to be followed. ***Id.*** at 735.

II. THE PENNSYLVANIA SUPREME COURT SHOULD NOT ENACT PROCEDURAL RULES RELATED TO THE SENTENCING OF JUVENILE MURDERERS.

A. The Creation of a Procedure to Sentence Juvenile Murderers is Inherently a Legislative Matter, as Evidenced by Section 1102.1

Petitioner requests that numerous procedures be put into place during the sentencing of juvenile murderers, including a presumption against life without parole, a requirement of expert testimony to prove incorrigibility, and a beyond a reasonable doubt burden placed on the Commonwealth. The Commonwealth contends that the establishment of procedures for sentencing juvenile murderers is inherently a legislative matter. The Pennsylvania Legislature has already taken steps to delineate the appropriate procedure, as evidenced by Section 1102.1.

The Commonwealth recognizes that, under the Pennsylvania Constitution, the Supreme Court has the authority "to prescribe general rules governing practice, procedure and the conduct of all courts." PA. CONST., art. V, § 10(c); ***see Commonwealth v. McMullen***, 961 A.2d 842 (Pa. 2008). However, the Legislature has the authority to determine the appropriate punishment for criminal conduct and is permitted to set forth the criteria for imposing that punishment. ***See Commonwealth v. DeHart***, 516 A.2d 656, 671 (Pa. 1986).

In the case of juvenile murderers, the Pennsylvania Legislature acted promptly in response to ***Miller*** and enacted Section 1102.1, which sets forth the possible punishments for a juvenile murderer and the procedure to follow in determining the appropriate sentence. ***See*** 18 Pa.C.S.A. § 1102.1. As discussed below, it was well within the Legislature's authority to enact such a statute. For the Supreme Court to now override that statutory enactment and promulgate its own procedural rules relating to the sentencing of juvenile murderers, it would have to find that Section 1102.1 was an unconstitutional usurpation of the Supreme Court's authority.[9]

Review of the constitutionality of a statute is purely a legal question. As such, the Court's standard of review is *de novo* and the scope of review is plenary. ***McMullen***, 961 A.2d at 846. "A statute will only be found unconstitutional if it 'clearly, palpably, and plainly' violates the Constitution. There is a strong presumption legislative enactments are constitutional. The party seeking to have a statute held unconstitutional carries a heavy burden of persuasion." ***Id.*** (citations omitted); ***see*** 18 Pa.C.S.A. § 1922(3); ***Batts***, 66 A.3d at 296.

In ***DeHart***, the appellant challenged the constitutionality of the death penalty sentencing statute, alleging that the Legislature usurped the

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[9] The Superior Court has held that Section 1102.1 is constitutional. ***See Commonwealth v. Brooker***, 103 A.3d 325, 333-43 (Pa. Super. 2014), *petition for allowance of appeal denied* 118 A.3d 1101 (Pa. 2015); ***Commonwealth v. Lawrence***, 99 A.3d 116, 118-22 (Pa. Super. 2014), *petition for allowance of appeal denied* 114 A.3d 416 (Pa. 2015).

Supreme Court's authority in enacting procedures governing capital sentencing. ***Id.*** at 670. This Court disagreed, explaining as follows:

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

Id. at 671.

Similarly, in ***Commonwealth v. Means***, 773 A.2d 143 (Pa. 2001), this Court considered a challenge to 42 Pa.C.S.A. § 9711(a)(2), relating to the admission of victim impact testimony in the penalty phase of a capital case. The defendant claimed that this statutory provision infringed upon the Supreme Court's constitutional rule-making authority. ***Means***, 773 A.2d at 157 n.8. The Court explained that "[t]he courts regulate the admissibility of evidence to only that information relevant and material to the deliberations of the jury. The current legislation falls within the purview of the General Assembly and does not hinder the function or authority of the court." ***Id.***; ***see Commonwealth v. Harris***, 817 A.2d 1033, 1052-53 (Pa. 2002)

(adopting ***Means*** to hold that victim impact provision of death penalty statute did not usurp Court's rule-making authority); ***Commonwealth v. Moore***, 633 A.2d 1119, 1130 (Pa. 1993) (finding that death penalty statute did not violate Article V of the Pennsylvania Constitution).

In the instant matter, the Commonwealth asserts that this Court's decision in ***DeHart*** is controlling. Just as the Legislature is permitted to determine that the death penalty is a permissible punishment in first-degree murder cases, it has the authority to enact legislation, specifically Section 1102.1, which establishes the permissible range of punishments imposable on a juvenile murderer. ***See DeHart***, 516 A.2d at 671. Like the death penalty statute at issue in ***DeHart***, Section 1102.1 sets forth the "statutory scheme so that a determination can be made as to whether" life imprisonment without parole should be imposed. ***Id.*** Section 1102.1 reflects "the legislature's judgment as to what specific factors relating to the nature of the crime and the character and record of the accused should be considered in making that determination." ***Id.*** Just as this Court has determined that the death penalty sentencing statute "is clearly an appropriate exercise of the legislative function," so is Section 1102.1.[10] ***Id.***;

[10] The Commonwealth notes the tension between Petitioner's arguments. He requests the same procedural due process afforded to a capital defendant, however he fails to acknowledge that that procedure was established through a statute enacted by the Legislature. Here, the Legislature has also enacted a statute evincing its judgment as to the appropriate procedure for sentencing a juvenile murderer. Rather than accept that procedure like he

cf. Commonwealth v. Sanchez, 36 A.3d 24 (Pa. 2011) (exercising the Court's rule-making authority to enact a procedure to determine mental retardation in capital cases when the Legislature failed to enact legislation for nine years).

Moreover, the procedures outlined in Section 1102.1, as well as this Court's specific instruction of factors to consider in ***Batts II***, serve to limit and channel the discretion of the trial court in imposing sentence. These directives, as well as ***Miller*** and ***Montgomery***, prevent the arbitrary and capricious imposition of life without parole, as Petitioner fears, because they constrain the discretion of the trial court when sentencing a juvenile murderer. ***See DeHart***, 576 A.2d at 671.

In ***Batts II***, this Court explained that "in the arena of evolving federal constitutional standards, [it has] expressed a reluctance to 'go further than what is affirmatively commanded by the High Court' without 'a common law history or a policy directive from our Legislature.'" ***Batts***, 66 A.3d at 296 (citing ***Sanchez***, 36 A.3d at 66). In this matter, ***Miller***'s holding—that mandatory life without parole sentences for juveniles were unconstitutional—was very narrow and included no procedural directives. ***See id.*** The Legislature acted quickly to address the ***Miller*** decision and has now set forth the procedure it deems appropriate for sentencing juvenile murderers. The determination as to what is a permissible punishment for a crime and

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accepts the capital sentencing process, Petitioner requests this Court to enact different procedures.

the factors that must be considered in implementing that punishment is inherently a legislative matter, and, because the Legislature has acted, as evidenced by Section 1102.1, the procedural rules requested by Petitioner are not necessary.[11]

B. The Procedures Requested by Petitioner are Not Required by ***Miller*** or ***Montgomery***.

In the question accepted for review in this matter, Petitioner set forth three requirements that he believes should be implemented in sentencing juvenile murders. Petitioner claims that ***Miller*** and ***Montgomery*** "establish a strong presumption against juvenile life without parole sentences," "establish that the prosecution has the burden to prove beyond a reasonable doubt" that life without parole is warranted, 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." Petitioner's Brief, at 21 (quotation marks omitted). This is simply untrue. Neither ***Miller*** nor ***Montgomery*** require any of these procedures as claimed by Petitioner. Nor are these requirements necessary to ensure that juvenile murderers are sentenced appropriately.

[11] In his concurring opinion in ***Batts II***, Justice Baer implicitly endorsed Section 1102.1, where he recommended that courts rely on it in resentencing juvenile murderers, like Petitioner, who were convicted before its enactment. ***See Batts***, 66 A.3d at 300 (Baer, J., concurring).

The ***Miller*** Court specifically stated that it was not barring a penalty for a class of offenders or a type of crime, but, rather, it "mandate[d] only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." ***Miller***, 132 S.Ct. at 2471. Thus, by its explicit terms, ***Miller*** does not require any of the procedures that Petitioner is alleging are "established" by this decision. ***Miller***'s only mandate is that a sentencing authority take a juvenile murderer's youth and its attendant characteristics into account before making its determination as to the appropriate sentence. ***See id.***; ***see also Cunningham***, 622 Pa. at 575-76 (explaining that "the ***Miller*** holding does not address the procedural aspect of 'how' the determination is made, but rather defines 'what' the substantive limits of that determination must be." (Baer, J., dissenting)). It is clear ***Miller*** did not require any particular procedural process in sentencing juvenile murders. The Commonwealth will address each requirement requested by Petitioner.

i. PRESUMPTION AGAINST LIFE WITHOUT PAROLE

While the majority in ***Miller*** noted that it will be "uncommon" for a juvenile murderer to receive a sentence of life imprisonment without parole, it does not command that any presumption against this sentence be enacted. ***Miller***, 132 S.Ct. at 2469. In explaining the holding of ***Miller***, the ***Montgomery*** Court stated that "***Miller*** requires that before sentencing a juvenile to life without parole, the sentencing judge take into account 'how

children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" ***Montgomery***, 136 S.Ct. at 733; ***see id.*** at 735 (explaining that the procedure prescribed by ***Miller*** is a hearing where youth is considered as a sentencing factor). As in ***Miller***, the Court stated only that a juvenile murderer's youth must be considered; it did not require that a sentencing authority start with a presumption against or in favor of a particular sentence.

In a recent decision by the Court of Appeals of North Carolina, that Court held that ***Miller*** and ***Montgomery*** do not require a presumption against life imprisonment without parole. ***State v. James***, 786 S.E.2d 73 (N.C. App. 2016). In ***James***, the defendant argued that the state statute related to sentencing of a juvenile murder unconstitutionally contained a presumption in favor of life without parole because the statute placed the burden on the defendant to present mitigating factors that supported a sentence of life with parole instead of life without parole. ***James***, 786 S.E.2d at 79. The North Carolina Court held that the statute did contain a presumption in favor of life without parole, but that it was constitutional. ***Id.*** at 79-81. The Court found that the statute was consistent with the dictates of ***Miller*** because it provided defendants with an opportunity to present mitigating evidence in support of a sentence offering parole. ***Id.***[12]

[12] Section 1102.1, as well as the remand directive in ***Batts II***, does not go as far as the North Carolina statute. The Pennsylvania sentencing scheme

Neither ***Miller*** nor ***Montgomery*** set forth a requirement that courts start with a presumption of life with parole when sentencing a juvenile murderer.

ii. BEYOND A REASONABLE DOUBT BURDEN OF PROOF

Further, ***Miller*** and ***Montgomery*** certainly did not require that any burden, let alone beyond a reasonable doubt, be placed on the Commonwealth during sentencing proceedings. As stated earlier, the United States Supreme Court required only that a juvenile murderer's age be taken into account when determining an appropriate sentence. ***See Miller***, 132 S.Ct. at 2471. It did not require that the Commonwealth prove any certain factor or series of factors before a sentence of life imprisonment without parole could be imposed

In fact, to the extent that a burden is suggested by these cases, ***Montgomery*** suggests that the burden should fall on the juvenile murderer to prove that he is not an appropriate candidate for life imprisonment without parole. In determining that ***Miller*** set forth a substantive rule, the ***Montgomery*** Court explained that this was a situation where "a substantive change in the law must be attended by a procedure that **enables a prisoner to show** that he falls within the category of persons whom the law may no longer punish." ***Montgomery***, 136 S.Ct. at 735 (emphasis added). The Court further explained that "when the Constitution prohibits a particular form of punishment for a class of persons [as it did in ***Miller***], **an affected**

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does not contain a presumption in favor of any particular sentence, but rather requires a trial court to balance all relevant factors.

prisoner receives a procedure through which he can show that he belongs to the protected class." ***Id.*** (emphasis added). The Court explained a third time that "**prisoners . . . must be given the opportunity to show** their crime did not reflect irreparable corruption[.]" ***Id.*** at 736 (emphasis added). Thus, if any burden is to be assigned, the ***Montgomery*** Court indicates that it is most appropriately placed on the juvenile murderer to demonstrate at the time of sentencing that his age and character justify a sentence allowing for the possibility of parole.

Moreover, a finding that the burden rests on the juvenile murderer to present mitigating evidence would be consistent with laws from other states. As discussed ***supra***, a North Carolina Court recently upheld the state's statutory presumption in favor of life imprisonment without parole and placement of the burden on the defendant to present mitigating evidence to receive a lesser sentence. ***James***, 786 S.E.2d at 79-81; ***see*** N.C.G.S.A. § 15A-1340.19B(c) (setting forth a list of mitigating circumstances the defendant may present to the court). Other states, while not explicitly setting forth a presumption in favor of a certain sentence, also place the burden on the defendant to present mitigating evidence. ***See, e.g.***, Neb.Rev.St. § 28-105.02(2) (requiring the court to consider mitigating factors presented by the defendant). Neither ***Miller*** nor ***Montgomery*** require that a beyond a reasonable doubt burden be placed on the Commonwealth.

iii. FACT-FINDING AND EXPERT TESTIMONY

Petitioner's argument related to expert testimony is two-fold. First, Petitioner believes that there is a requirement that a sentencing authority make a factual determination that a juvenile murderer is incorrigible before sentencing him or her to life imprisonment without parole. Second, Petitioner argues that this decision must be made with the aid of expert testimony. The Commonwealth contends that no fact-finding is required by ***Miller*** or ***Montgomery***, and, as such, no expert testimony is required during a sentencing hearing.

The United States Supreme Court did not require that any specific factual determination be made before sentencing a juvenile murderer to life imprisonment without parole. Rather, ***Miller*** only requires that a sentencing authority take a juvenile murderer's youth into account in determining sentence. ***Miller***, 132 S.Ct. at 2471; ***see People v. Skinner***, 877 N.W.2d 482, 488 (Mich. 2015) (stating that ***Miller*** "set forth a framework for imposing [a life without parole] sentence when a juvenile's homicide offense reflects irreparable corruption" and explaining that "the Supreme Court provided factors to be used during sentencing that serve as a guidepost for determining whether a juvenile's homicide offense reflects irreparable corruption"). Nowhere in ***Miller*** or ***Montgomery*** did the United States Supreme Court require explicit findings of fact related to any particular factor.

In fact, ***Montgomery*** specifically stated that ***Miller*** did not require any fact-finding. ***Montgomery***, 136 S.Ct. at 735. In ***Montgomery***, the respondent argued that ***Miller*** did not require a sentencing authority to make a determination as to incorrigibility. The ***Montgomery*** Court confirmed this assertion, explaining that:

> That this factfinding is not required, however, speaks only to the degree of procedure ***Miller*** mandated in order to implement its substantive guarantee. When a new substantive rule of constitutional law is established, this Court is careful to limit the scope of any attendant procedural requirement to avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems.

Montgomery, 136 S.Ct. at 735 (citing ***Ford v. Wainwright***, 477 U.S. 399, 416-17 (1986)).[13] Thus, it is clear that neither ***Miller*** nor ***Montgomery*** establish any specific fact-finding requirement or any particular means of accomplishing that, such as through expert testimony.[14]

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[13] The reasoning in ***Montgomery*** also supports the Commonwealth's assertion that Section 1102.1 is constitutional. It is the Legislature's province to enact substantive law. ***See McMullen***, 961 A.2d at 847. Section 1102.1 implements the substantive rule of ***Miller*** because it sets forth the permissible punishments for a juvenile convicted of first- or second-degree murder. As the Supreme Court explained in ***Montgomery***, "[t]here are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish." ***Montgomery***, 136 S.Ct. at 735. The sentencing procedures contained in Section 1102.1 are the procedural elements necessary to effectuate the substantive law enacted by the Legislature.

[14] Petitioner relies heavily on the Court's comment that life without parole is only appropriate in rare or uncommon circumstances. The Court has similarly stated that the death penalty is a rare punishment that is reserved for the worst-of-the-worst. ***See Furman v. Georgia***, 408 U.S. 238, 299 (1972) (Brennan, J., concurring); ***Graham***, 560 U.S. at 89 (Roberts, C.J.,

The Commonwealth notes the deference that the United States Supreme Court exhibited toward the States in establishing the appropriate procedures for sentencing juvenile murderers. In Pennsylvania, the Legislature has already acted to establish the procedure it believes to be appropriate, through Section 1102.1.[15] While Petitioner may not like the process set forth in Section 1102.1, he cannot simply invent requirements from a Court that made it painstakingly clear that it would not mandate specific procedures or require particular factual determinations be made.

Several other states have also reached the conclusion that ***Miller*** did not set forth a requirement that a sentencing authority make any specific findings of fact. For example, the Second Circuit Court of Appeal of Louisiana stated that "***Miller*** does not require proof of an additional element of 'irretrievable depravity' or 'irrevocable corruption.'" ***State v. Fletcher***, 149 So.3d 934, 943 (La. App. 2014). Rather, the Court read ***Miller*** in the same manner as the ***Montgomery*** Court subsequently would, explaining that ***Miller*** "merely mandates a hearing at which youth-related mitigating factors can be presented to the sentencer and considered in making a determination of whether the life sentence imposed upon a juvenile killer should be with or without parole eligibility." ***Id.*** Similarly, the Court of

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concurring). However, there is no authority requiring that expert testimony be presented or a determination be made that an adult defendant is the worst-of-the-worst or irreparably corrupt.

[15] Again, the Commonwealth acknowledges that this statute does not apply to Petitioner. However, consideration of Section 1102.1 is highly relevant to resolving Petitioner's claims in this appeal.

Appeals of Washington found that "***Miller*** . . . did not announce a constitutional command that a sentencing court find 'irreparable corruption' before imposing a sentence." ***State v. Ramos***, 357 P.3d 680, 690 (Wash. App. 2015).[16]

Seeing as no specific factual finding of incorrigibility (or any other factor) is required, the Court certainly did not mandate a specific manner for reaching that determination such as, as Petitioner argues, requiring expert testimony. While the ***Miller*** Court did reference its earlier decisions that noted it is a "rare juvenile offender whose crime reflects irreparable corruption," it never set forth a requirement that any determination be made, with or without expert assistance, as to irreparable corruption, irretrievable depravity, or permanent incorrigibility, as Petitioner alleges. ***Id.*** at 2469 (citing ***Roper***, 543 U.S. at 573 and ***Graham***, 560 U.S. at 68-69).

Moreover, requiring expert testimony related to a juvenile murderer's incorrigibility is inappropriate because it places undue emphasis on one factor. In ***Miller***, the Court set forth a variety of factors a trial court must consider prior to sentencing, including the defendant's age, the defendant's family and home environment, the circumstances of the homicide offense, the defendant's extent of participation in the homicide, and peer pressure.

[16] The Supreme Court of Washington granted a petition for review in this matter on March 30, 2016. ***State v. Ramos***, 367 P.3d 1083 (Wash. 2016) (Table).

Miller, 132 S.Ct. at 2468. The Pennsylvania Supreme Court echoed this view in ***Batts II***, where it remanded the matter for resentencing after consideration of the ***Knox*** factors. ***Batts***, 66 A.3d at 297. The Legislature also adopted this approach in Section 1102.1. ***See*** 18 Pa.C.S.A. § 1102.1(d). Thus, it is clear that the possibility of rehabilitation is not the sole factor to be considered in determining an appropriate sentence. Rather, it is one of numerous relevant factors that a trial court must take into account.

A California court was recently faced with a similar argument that ***Miller*** required a factual finding of incorrigibility. ***People v. Palafox***, 179 Cal.Rptr.3d 789 (5th Dist. 2014). On appeal, a juvenile murderer sentenced to life without parole argued that his sentence was inappropriate because the trial court did not exclude the possibility that he may be rehabilitated at some point. ***Id.*** at 805. The Court denied the defendant's claim, explaining as follows:

> The trial court here did not find defendant had a significant chance of rehabilitation; it simply refused to rule out the possibility. Because no one can see into the future or predict it with any accuracy, presumably there is always the possibility of rehabilitation--however remote--where a juvenile is concerned. That is the point of ***Miller***. Despite this, ***Miller*** did not say the possibility of rehabilitation overrides all other relevant factors. If the potential for rehabilitation were dispositive--or even the preeminent factor--we do not believe the high court would simply have listed the possibility of rehabilitation as one of several factors applicable to an individualized determination whether to impose LWOP on a juvenile offender. (***See Miller***, ***supra***, 567 U.S. at p. ----, 132 S.Ct. at p. 2468.) Rather, the court would have held LWOP categorically unconstitutional for

> juvenile offenders, or at least would have explicitly said such a sentence cannot constitutionally stand in face of a potential for rehabilitation.
>
> That the court expressed belief appropriate occasions for sentencing juveniles to LWOP would be rare because of the difficulty distinguishing "between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption' " (***Miller***, ***supra***, 567 U.S. at p. ----, 132 S.Ct. at p. 2469) does not change this. ***Miller*** made clear that a sentencer has the ability to make such a judgment in homicide cases (***ibid.***): The decision "mandates only that a sentencer follow a certain process--considering an offender's youth and attendant characteristics--before imposing a particular penalty." (***Id.*** at p. ----, 132 S.Ct. at p. 2471, italics added].)

Id. The Commonwealth agrees with this reasoning. The United States Supreme Court, the Pennsylvania Supreme Court, the Pennsylvania Superior Court, and the Pennsylvania Legislature have all stated that a trial court must consider a series of relevant factors in making a sentencing decision. They have not required any specific factual determination to be made, nor have they mandated that any factor be supported by expert testimony.

III. THE SUPERIOR COURT PROPERLY APPLIED AN ABUSE OF DISCRETION STANDARD IN REVIEWING PETITIONER'S SENTENCING CLAIM.

Petitioner argues that the Superior Court acted inappropriately in applying an abuse of discretion standard to review Petitioner's sentencing claim. Petitioner's Brief, at 40. Petitioner alleges that if a more stringent standard is not employed, the imposition of life imprisonment without parole will be "arbitrary and capricious" because different courts may balance the competing factors differently. ***Id.*** Petitioner also urges this Court to conduct a *de novo* review of several factors, including whether Petitioner's actions in brutally murdering and attempting to murder two teenagers were the product of transient immunity, whether Petitioner's family and home environment diminished his culpability, whether peer pressure and duress were mitigating factors, whether Petitioner demonstrated sophisticated criminal behavior, and whether uncertainty about his amenability to treatment weighs against leniency.[17] ***Id.*** at 41-57. The Commonwealth contends that the Superior Court applied the proper standard of review.

The Supreme Court has long recognized that "[o]ne of the most important functions performed by a trial judge is the fashioning of the sanction to be imposed for those who are convicted of violating our laws."

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[17] While Petitioner requests *de novo* review of many of the factors considered by the trial court, he limits his request to factors he believes should weigh in his favor. He does not seek *de novo* review of factors such as the impact on the victims and their families, the nature of the offenses, or the threat posed by Petitioner. Petitioner does not even suggest a general *de novo* review of all factors.

Commonwealth v. Jones, 565 A.2d 732, 734 (Pa. 1989); ***see Graham***, 560 U.S. at 96 ("Our system depends upon sentencing judges applying their reasoned judgment to each case that comes before them.") (Roberts, CJ., concurring). Acknowledging that a trial court must balance numerous competing concerns in reaching a sentence, this Court has explained that "men can obviously differ and thus the law has seized upon the wise decision to give great deference to the trial judge's decision in this area." ***Jones***, 565 A.2d at 734 (citation and footnote omitted). This discretion is based in part on "the perception that the trial court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it." ***Commonwealth v. Mouzon***, 812 A.2d 617, 620 (Pa. 2002) (citing ***Commonwealth v. Ward***, 568 A.2d 1242, 1243 (Pa. 1990)).

Pennsylvania has an indeterminate, discretionary, statutory sentencing scheme. ***See Commonwealth v. Yuhasz***, 923 A.2d 1111, 1114-17 (Pa. 2007). In Pennsylvania, in a non-capital case, once a trial court has acted on its discretion and imposed a sentence, there are two avenues for reviewing that determination. A defendant may claim either that his sentence is illegal or that the trial court abused its discretion. 42 Pa.C.S.A. § 9781(a)-(b). The only other possible avenue for review of a sentence in Pennsylvania is the automatic review process following the imposition of a

sentence of death. ***See*** 42 Pa.C.S.A. § 9711(h). This form of review is not available to Petitioner, as he did not receive the death penalty.[18]

In ***Batts II***, this Court recognized the need for individualized sentencing of juvenile murderers following ***Miller*** and endorsed the Superior Court's directive in the ***Knox*** cases to remand matters, such as Petitioner's, for a resentencing hearing, at which time the trial court would consider numerous factors, including the defendant's youth and its attendant characteristics. ***Batts***, 66 A.2d at 295-97; ***Knox***, 50 A.3d at 745; ***Knox***, 50 A.3d at 768. In his concurring opinion, Justice Baer provided further guidance, recommending that trial courts refer to the factors listed in Section 1102.1 when resentencing juvenile murderers pursuant to ***Miller***. ***Batts***, 66 A.3d at 300 (Baer, J,. concurring).

Based on this Court's remand directive in ***Batts***, which included directions for the trial court to resentence Petitioner and set forth a list of factors for the trial court to consider, as well as the concurrence's suggestion of seeking guidance from Section 1102.1, it is evident that the Court envisioned that the sentence would be imposed by the trial court, which would review the relevant factors and use its discretion to impose an appropriate sentence. Nowhere in ***Batts II*** (or in ***Miller*** or ***Montgomery***) did this Court direct the trial court to apply capital sentencing procedures

[18] This Court never indicated an intent to form an automatic review procedure for juvenile murders and the Legislature clearly did not deem it necessary, based on the provisions of Section 1102.1.

when resentencing juvenile murderers, nor did this Court instruct that any heightened standard of review be created for reviewing subsequent appellate issues.[19]

Before the Superior Court, Petitioner claimed that there was insufficient evidence supporting the trial court's sentence, the court placed too much emphasis on certain factors, and the trial court failed to properly consider certain mitigating factors. This Court has explained that a challenge to the legality of the sentence occurs where a trial court's authority to use discretion is affected or where the sentence is "patently inconsistent with the sentencing parameters set forth by the General Assembly." ***Commonwealth v. Foster***, 17 A.3d 332, 342 (Pa. 2011) (citations omitted). Here, the trial court's discretion was not curtailed in any way, nor was the sentence inconsistent with the parameters set forth by this Court in ***Batts II***, by the Superior Court in ***Knox***, by the mandate of ***Miller***, or by Section 1102.1. Thus, Petitioner's claim below was clearly a challenge to the discretionary aspects of sentence, and the Superior Court properly reviewed it as such.

Furthermore, ***Batts*** is not an isolated case. Numerous other cases of juvenile murderers have advanced through the appellate process since ***Miller***. Both in cases where Section 1102.1 applies and cases where Section

[19] The Legislature also did not require trial courts to follow capital sentencing procedures or appellate courts to apply a heightened standard of review when it enacted Section 1102.1.

1102.1 does not apply because the conviction predates its enactment, the sentences have been reviewed by the Superior Court under an abuse of discretion standard of review. ***See Commonwealth v. Canady***, 2016 WL 29992396 (Pa. Super. 2016) (unpublished memorandum) (reviewing sentencing challenge from defendant convicted prior to enactment of Section 1102.1 under abuse of discretion standard); ***Commonwealth v. Hooks***, 2016 WL 2910005 (Pa. Super. 2016) (unpublished memorandum) (same); ***Commonwealth v. Hawkins***, 2015 WL 7188475 (Pa. Super. 2015) (unpublished memorandum), *petition for allowance of appeal denied*, 193 WAL 2015 (Pa. 2015) (same); ***Commonwealth v. Brown***, 2015 WL 5935556 (Pa. Super. 2015) (unpublished memorandum), *petition for allowance of appeal denied*, 396 WAL 2015 (Pa. 2015) (same); ***Commonwealth v. Seagraves***, 103 A.3d 839 (Pa. Super. 2014), *petition for allowance of appeal denied*, 908 MAL 2014 (Pa. 2015) (same); ***see also Commonwealth v. Flamer***, 2016 WL 2798907 (Pa. Super. 2016) (unpublished memorandum) (reviewing challenge to sentence imposed under Section 1102.1 under abuse of discretion standard and finding claim waived where defendant failed to comply with Rule 2119(f)); ***Commonwealth v. Clark***, 2015 WL 6828057 (Pa. Super. 2015) (unpublished memorandum), *petition for allowance of appeal denied*, 635 MAL 2015 (Pa. 2016) (reviewing challenge to sentence imposed under Section 1102.1 under abuse of discretion standard); ***Commonwealth v.***

Brown, 2015 WL 6167466 (Pa. Super. 2015) (unpublished memorandum) (same); ***Commonwealth v. Gordine***, 2014 WL 10786956 (Pa. Super. 2014) (unpublished memorandum), *petition for allowance of appeal denied*, 22 EAL 2015 (Pa. 2015) (same); ***Commonwealth v. Smith***, 2014 WL 10575374 (Pa. Super. 2014) (unpublished memorandum), *petition for allowance of appeal denied*, 527 EAL 2014 (Pa. 2015) (same).[20] Thus, over the last several years, since cases subject to resentencing under ***Miller*** have entered the appellate process, the Superior Court has consistently and appropriately applied an abuse of discretion standard of review.

The Superior Court did not err in applying an abuse of discretion standard when reviewing Petitioner's sentencing claim. Given the well-established precedent in Pennsylvania separating sentencing claims into challenges either to the legality of sentence or the discretionary aspects of sentence, the abuse of discretion standard applied by the Superior Court was the only possible applicable standard of review.[21] As such, the Superior

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[20] It is noteworthy that the Supreme Court has denied the petitions for allowance of appeal in each of the cases where it was sought. Surely if the Superior Court was repeatedly applying an inappropriate standard of review, the Court would have stepped in years ago to correct such an error.

[21] Pennsylvania's practice of applying an abuse of discretion standard of review to sentencing claims by juvenile murderers is consistent with the practices of other states. ***See, e.g.***, ***Conley v. State***, 972 N.E.2d 864, 880 (Ind. 2012); ***State v. Williams***, 178 So.3d 1069, 1074 (La. 2d Cir. 2015); ***James***, 786 S.E.2d at 84; ***State v. Cardeilhac***, 876 N.W.2d 876, 886-90 (Neb. 2016).

Court did not err in applying this standard when it evaluated Petitioner's sentencing claim.[22]

[22] This Court's review should go no further than determining whether the appropriate standard was applied. It is well-established that the Supreme Court is without jurisdiction to review the Superior Court's decision any further. ***See*** 42 Pa.C.S.A. § 9781(f) ("No appeal of the discretionary aspects of the sentence shall be permitted beyond the appellate court that has initial jurisdiction for such appeals."); ***Commonwealth v. Infante***, 888 A.2d 783, 790 (Pa. 2005) (explaining that "this Court is generally without jurisdiction to review the discretionary aspects of a sentence"). Moreover, this Court has consistently recognized and enforced the preservation requirements of Rule 2119(f). ***See Mouzon***, 812 A.2d at 621-22; ***Commonwealth v. Saranchak***, 675 A.2d 268, 277 (Pa. 1996). The fact that Petitioner is a juvenile or the fact that Petitioner is a murderer does not excuse compliance with well-established procedural rules.

IV. PETITIONER'S RESENTENCING PROCEEDING WAS CONSTITUTIONAL.

A. Petitioner is Not Entitled to the Same Procedural Due Process as Received by a Capital Defendant.

Petitioner contends that his resentencing proceeding was unconstitutional because it was conducted with fewer procedural safeguards than an adult facing the death penalty would receive. Petitioner's Brief, at 57. Petitioner asserts that a juvenile convicted of first-degree murder is entitled to the same procedural due process as a capital defendant. ***Id.*** at 61. The Commonwealth argues that Petitioner is not entitled to the same procedure as a defendant in a capital case and that no constitutional violation took place during the resentencing proceeding.

Petitioner urges the Superior Court to "promulgate safeguards," however the Commonwealth is strongly opposed to this suggestion. ***Id.*** As discussed ***supra***, the Legislature has already taken steps to enact what it believes to be the proper procedure by which to determine an appropriate sentence for a juvenile murderer by enacting Section 1102.1.[23] While Section 1102.1 does not apply to Petitioner because of when he committed murder, it does represent the Legislature's position as to the appropriate manner for sentencing a juvenile murderer following the ***Miller*** decision. The Legislature believes, as evidenced by Section 1102.1, that a juvenile murderer should be sentenced by the trial court after consideration of

[23] The Commonwealth incorporates its earlier discussion related to the Legislature's enactment of Section 1102.1 into this argument.

delineated factors. ***See*** 18 Pa.C.S.A. § 1102.1(d). Clearly, the Legislature did not believe that it was necessary to empanel a jury, to place a beyond a reasonable doubt burden on the Commonwealth, or to require the Pennsylvania Supreme Court to automatically review each sentence. ***See id.*** at § 1102.1. Further, this Court did not indicate that capital sentencing procedures were necessary when it remanded this matter in ***Batts II.***

Petitioner contends that his sentencing proceeding was unconstitutional specifically because the matter was assigned to the sentencing court "without any input from the defense," because "the Commonwealth denied that it had any burden of proof," and because the sentencing court, in its Rule 1925(a) Opinion, stated that the appropriate standard of review for Petitioner's sentencing claim was an abuse of discretion. ***See id.*** at 60-61. Petitioner asserts that he was entitled to a sentencing jury, with the Commonwealth bearing the burden of proof. ***Id.*** at 61. Petitioner also contends that he is entitled to automatic review by the Pennsylvania Supreme Court. ***Id.*** Petitioner states that, because these procedures were absent, the Superior Court must vacate Petitioner's sentence and "must promulgate safeguards to ensure that juvenile life without parole will be 'uncommon' in Pennsylvania." ***Id.***

This argument is without merit.[24] First, while it is true that defense counsel did not have input into what judge would preside over the resentencing hearing, this fact does not entitle Petitioner to relief. When a judge retires, accepts a new position, or leaves the bench for another reason, it is routinely the President Judge of the Court of Common Pleas who reassigns any matters previously handled by the now-absent judge. The Commonwealth also had no input as to which judge received the reassignment in this matter. There was no error in the court following its regularly established procedure for reassignment. Further, even if the Commonwealth agreed that death penalty procedures were to apply in this case (which it does not), there still appears to be no authority supporting Petitioner's assertion that defense counsel should have a say into which judge hears matters on remand.

Second, the Commonwealth contends that Petitioner is not entitled to the same procedural process as a capital defendant. While cases such as ***Graham*** have drawn parallels between a juvenile being sentenced to life without parole and an adult receiving the death penalty, ***see Graham***, 560 U.S. at 69-70, there is no authority requiring that the same procedural steps be followed in both circumstances. ***See Miller***, 132 S.Ct. at 2468; ***Batts***, 66 A.3d at 297-97.

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[24] The Commonwealth incorporates its earlier discussions regarding fact-finding and a beyond a reasonable doubt burden into this argument.

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

Neither this Court nor the United States Supreme Court has ever held that a juvenile facing life imprisonment is entitled to the same procedural due process as an adult facing death. In fact, the United States Supreme Court has repeatedly noted that "death is different." ***Wainwright***, 477 U.S. at 411; ***see Gregg v. Georgia***, 428 U.S. 153, 188 (1976) (explaining that the uniqueness of the death penalty requires certain procedures); ***see also***

Graham, 560 U.S at 69 (quoting ***Gregg***'s statement that "a death sentence is 'unique in its severity and irrevocability'").

The North Carolina Court of Appeals recently rejected a similar claim, wherein a juvenile murderer asserted that he was entitled to the same sentencing procedures as a capital defendant. ***See James***, 786 S.E.2d at 82; ***State v. Lovette***, 758 S.E.2d 399 (N.C. App. 2014). Explaining that its capital sentencing statutes were not applicable to the sentencing proceedings of juvenile murderers, the Court stated that "[a]lthough there is some common constitutional ground between adult capital sentencing and sentencing a juvenile to life imprisonment without parole, these similarities do not mean the United States Supreme Court has directed or even encouraged the states to treat cases such as this under an adult capital sentencing scheme." ***James*** 786 S.E.2d at 82 (citing ***Lovette***, 758 S.E.2d at 406)).

Similarly, numerous states provide that a juvenile murderer will be sentenced by a judge, not a jury, as is required in capital proceedings. ***See, e.g.***, ***James***, 786 S.E.2d at 82 (finding juvenile murderer's right to jury not violated during sentencing proceeding); ***Williams***, 178 So.3d at 1074 (explaining that sentencing statute required trial court to conduct an evidentiary hearing); A.R.S. § 13-752(A) (stating that the court is to determine whether a juvenile murderer receives a sentence of life or natural life); F.S.A. § 921.1401 (requiring court to conduct separate hearing and

consider specific factors to determine appropriate sentence for juvenile murderer); I.C.A. § 902.1(2)(b)(2) (listing factors trial court should consider in determining appropriate sentence for juvenile murderer); N.C.G.S.A. § 15A-1340.19B (vesting sentencing discretion in trial court); Neb.Rev.St. § 28-105.02(2) (stating that court shall consider mitigating factors submitted by defendant); Wash.Rev.Code Ann. § 10.95.030(3) (stating that court must consider ***Miller*** factors in making sentencing decision).

These laws are consistent with the Court's directive in ***Miller*** that "a judge or jury" must consider the defendant's youth before imposing a life without parole sentence. ***Miller***, 132 S.Ct. at 2474-75; ***see id.*** at 2489 (stating that "the Court apparently permits a trial judge to make an individualized decision that a particular minor convicted of murder should be sentenced to life without parole") (Alito, J., dissenting). The ***Montgomery*** Court also appeared to envision a sentencing hearing presided over by the trial court, as the majority's decision made several references to a sentencing judge rather than a jury. ***Montgomery***, 136 S.Ct. at 733, 735 (noting that the "sentencing judge" must take into account how children are different and explaining that "***Miller*** did not require trial courts to make a finding of fact regarding a child's incorrigibility").

In the instant matter, the sentencing court adhered to the dictates of ***Miller***, ***Knox***, and ***Batts II*** in resentencing Petitioner. While the ***Miller*** and ***Montgomery*** Courts make clear that sentencing a juvenile murderer to life

imprisonment without parole will be "uncommon" and "rare," the decisions in each case also explicitly stated that life imprisonment without parole is still a valid sentencing alternative for a trial court.

Petitioner fails to acknowledge the possibility that the judicial system functioned as intended in this matter. Petitioner made a knowing decision to leave his family home and join a gang, despite knowing what that lifestyle entailed. ***See*** Trial Court Opinion, 8/27/14, at 34-36, 49-50. Although not being the only juvenile in the car, he was the one who volunteered to take a glove, mask, and handgun and approach two teenagers minding their own business on the porch of their home. ***See*** N.T., 7/24/07, at 110-13; N.T., 7/30/07, at 65-66. Petitioner then attempted to kill one teenager by shooting him in the back as he tried to run away. N.T., 7/30/07, at 113. The other, Petitioner cold-bloodedly executed while standing over him and staring directly into his face. N.T., 7/30/06, at 136-40. Petitioner engaged in these acts for the selfish reason of advancing in rank within his gang. Trial Court Opinion, 8/27/14, at 51 (citing N.T., 5/2/14, at 49). After killing one victim and injuring the other, Petitioner fled the state and lied to police in an attempt to avoid arrest. N.T., 7/25/07, at 57-58; N.T. 7/30/07, at 72.

After a thorough and reasoned evaluation of all the relevant factors, the trial court made a determination that Petitioner was the rare juvenile who deserved a life without parole sentence. There were no constitutional errors in the resentencing procedure followed by the court after remand

because there is no authority supporting Petitioner's position that was he entitled to the same procedural due process as a capital defendant.

B. ***Alleyne*** Issue

Petitioner argues that, because a factual finding of irreparable corruption is required before a sentence of life imprisonment without parole can be imposed, his rights under ***Alleyne*** were violated. The Commonwealth contends that this claim is without merit because no factual determination is required and because no determination made by the trial court could result in an increase in the possible penalty faced by Petitioner.

In ***Apprendi v. New Jersey***, 530 U.S. 466 (2000), the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." ***Apprendi***, 530 U.S. at 490. However, the Court clarified that it is not "impermissible for judges to exercise discretion—taking into consideration various factors relating both to offense and offender—in imposing a judgment within the range prescribed by statute." ***Id.*** at 481 (emphasis omitted).

The Court extended its holding in ***Apprendi*** in several subsequent cases, holding that aggravating factors justifying the death penalty must be found by a jury and that a judge is not permitted to engage in fact-finding where the result is to expose the defendant to an elevated maximum

sentence. ***See Cunningham v. California***, 549 U.S. 270, 274-75 (2007); ***Ring v. Arizona***, 536 U.S. 584, 609 (2002); ***see also Blakely v. Washington***, 542 U.S. 296, 303-05 (2004). More recently, in ***Alleyne***, the Court held that "[a]ny fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt." ***Alleyne***, 133 S.Ct. at 2155.

In the instant matter, there is no ***Alleyne*** violation as alleged by Petitioner issue because the trial court did not engage in any fact-finding.[25] Neither Section 1102.1 nor this Court's remand directive in ***Batts II*** required the trial court to make any specific factual findings before imposing sentence. ***See*** Pa.C.S.A. § 1102.1(d); ***Batts***, 66 A.3d at 297. Rather, what is required is a balancing of the various factors set forth in ***Miller*** and ***Knox*** to determine an appropriate sentence. Once the court has weighed the competing factors, it has the discretion to impose a sentence within the statutory range, including a sentence at the top of the permissible range based on its assessments of the evidence presented. ***See Commonwealth v. Washington***, 37 EAP 2015, *14-*15 (Pa. 2016) ("It remains lawful and, indeed, routine for judges to increase sentences, in the discretionary sentencing regime, based on facts that they find by a preponderance of the evidence."). This is similar to any sentence imposed in the Commonwealth, where the trial court is permitted to impose a discretionary sentence within a

[25] The Commonwealth incorporates its earlier discussion regarding the requirement of fact-finding into this section of its argument.

prescribed range after considering the Sentencing Guidelines and balancing various factors. ***See*** 42 Pa.C.S.A. § 9721(b); ***see also United States v. Booker***, 543 U.S. 220, 233 (2005) ("We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range."). While the court was tasked with balancing competing factors, it was not required to make, and did not make, any specific factual determinations prior to sentencing Petitioner.

Moreover, regardless of any determination made by the trial court, ***Alleyne*** is not implicated because there is no finding the trial court could make that would result in an increased penalty. Life imprisonment without parole is the maximum sentence set forth by the Legislature and this Court in ***Batts II*** for Petitioner's first-degree murder conviction. While this Court required the trial court to balance various factors in determining the appropriate sentence for Petitioner, there is no scenario, regardless of the evidence presented during the resentencing hearing, which would allow the trial court to enhance the maximum penalty set by the Legislature. What the trial court is required to do, and what it did in this matter, is what ***Apprendi*** specifically recognized was permissible—it considered various relevant factors in exercising its discretion to determine an appropriate sentence within the range prescribed by statute. ***See Apprendi***, 530 U.S. at 481; ***see also Booker***, 543 U.S. at 233.

In exercising that discretion, ***Miller*** and ***Montgomery*** require that the juvenile murderer be given the opportunity to show that he does not deserve the maximum sentence authorized by law because his actions "reflect the transient immaturity of youth." ***Montgomery***, 136 S.Ct. at 734. After considering all the evidence presented, if a trial court believes that a juvenile murderer's actions were a result of transient immaturity, the court should impose a sentence allowing the defendant the possibility of parole. If, on the other hand, the evidence indicates that the defendant is one of the few "rare" and "uncommon" offenders whose actions were not the product of transient immaturity, then the trial court has the option to impose a sentence of life imprisonment without parole.[26]

The determination as to whether a juvenile murderer's actions reflect transient immaturity, required by the ***Montgomery*** Court, is a fact-intensive inquiry, as evidenced by the numerous factors outlined in ***Miller***, ***Batts II***, and Section 1102.1 to be taken into consideration. A comprehensive consideration and analysis of many factors about the offender, the crime, and the impact on the community and the victim is required. These considerations will often require credibility determinations to be made where a trial court hears conflicting evidence from the parties. This type of

[26] However, the United States Supreme Court did not set forth a mandatory sentencing scheme in ***Miller*** or ***Montgomery***. Even a juvenile whose actions are not the product of transient immaturity may receive a lesser sentence than life without parole if, after considering all relevant factors, the trial court deems it appropriate.

assessment is best left to trial courts, which are in the position to hear such evidence first-hand, which routinely judge witness's credibility, and which regularly exercise their discretion in determining the appropriate sentence for criminal offenders.

An analogous issue was recently addressed by the Court of Appeals of North Carolina. The statute at issue in North Carolina is very similar to Section 1102.1 in the Commonwealth. Section 15A-1340.19B in North Carolina provides two options for juveniles who are convicted of Pennsylvania's equivalent of first-degree murder: life imprisonment with or without parole. N.C.G.S.A. § 15A-1340.19B(a)(2). The appropriate sentence is determined by the trial court following an evidentiary hearing. ***Id.*** at § 15A-1340.19B(b). During the hearing, the defendant has the right to present evidence of mitigating circumstances, including factors such as his age, immaturity, intellectual capacity, and likelihood of benefiting from rehabilitation. ***Id.*** at § 15-1340.19B(c). In ***James***, the defendant argued that he was entitled to a sentencing jury because certain facts were required to be found before he could be sentenced to life in prison without parole. ***James***, 786 S.E.2d at 82. The Court denied this claim, holding that state statute did not require a finding of aggravating factors. ***Id.*** Rather, the court was required to consider mitigating circumstances to determine whether a sentence less than life without parole was appropriate. ***Id.***; ***see Fletcher***, 149 So.3d at 943 (finding that ***Miller*** does not require proof of

any additional elements to impose life without parole so ***Apprendi*** is not implicated); ***People v. Perkins***, 2016 WL 228364 (Mich. App. 2016) (reasoning that ***Apprendi*** line of cases not implicated because life without parole sentence was within statutory maximum, juveniles were not exposed to an increased penalty, and trial court did not engage in fact-finding).

In the instant matter, the trial court did not engage in any fact-finding to increase the possible penalty faced by Petitioner. Rather, it engaged in a thorough assessment of all evidence presented, considered each factor set forth in ***Miller*** and ***Knox***, as directed by this Court in ***Batts II***, and balanced those factors, as well as the factors listed in Section 1102.1, to reach an appropriate sentencing determination. ***See*** N.T., 5/2/16, at 13-66; Trial Court Opinion, 8/27/14, at 57-61 (citing N.T., 5/2/14, at 56-65). In reaching its sentencing decision, the trial court made a discretionary determination that Petitioner was not part of the class that cannot constitutionally receive life imprisonment without parole because his crimes did not reflect a transient immaturity. Trial Court Opinion, 8/27/14, at 62 (citing N.T., 5/2/14, at 65); ***see Montgomery***, 136 S.Ct. at 734. However, this determination did not lead to an enhancement in the possible penalty faced by Petitioner. Petitioner was sentenced to a sentence within the statutory range, thus, his rights under ***Alleyne*** were not implicated or violated.

C. Request To Revisit ***Batts II***

Petitioner also advances an argument, through the *amicus curie* brief of the Pennsylvania Association of Criminal Defense Lawyers, that this Court should revisit its decision in ***Batts II***. Petitioner's Brief, at 62. The Commonwealth contends that this Court properly resolved this issue in its 2013 Opinion, and the claim should not be revisited at this time. Moreover, this claim is not properly before the Court because it was not raised in Petitioner's petition for allowance of appeal. ***See*** Pa.R.A.P. 1115(a)(3) ("Only the questions set forth in the petition, or fairly comprised therein, will ordinarily be considered by the court in the event an appeal is allowed."); ***Commonwealth v. Barnes***, 924 A.2d 1202, 1203 (Pa. 2007) (finding issue not properly before the Court where it was not included in the petition for allowance of appeal).

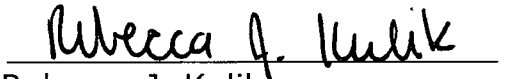
CONCLUSION

For the foregoing reasons, it is respectfully submitted that this appeal be denied, and the Superior Court's decision affirming judgment of sentence be affirmed.

Respectfully submitted,

JOHN M. MORGANELLI
DISTRICT ATTORNEY

By:



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COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPREME COURT OF PENNSYLVANIA
VS.	:	
	:	NO. 45 MAP 2015
QU'EED BATTS	:	

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

I HEREBY CERTIFY THAT THE FOREGOING BRIEF IS IN COMPLIANCE WITH THE REQUIREMENTS OF PENNSYLVANIA RULE OF APPELLATE PROCEDURE 2135(a)(1). THE FOREGOING BRIEF IS 13,945 WORDS. THE BRIEF DOES NOT EXCEED THE 14,000 WORD LIMITATION SET FORTH IN RULE 2135(a)(1).

Date: July 28, 2016

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COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPREME COURT OF PENNSYLVANIA
VS.	:	
	:	NO. 45 MAP 2016
QU'EED BATTS	:	

PROOF OF SERVICE

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

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