

IN THE
SUPERIOR COURT OF PENNSYLVANIA

1772 WDA 2016

COMMONWEALTH OF PENNSYLVANIA

APPELLEE,

v.

RICHARD L. OLDS,

APPELLANT.

REPLY BRIEF OF APPELLANT

On Appeal from the November 21, 2016 Resentencing in the
Court of Common Pleas, Allegheny County, Docket CP-02-CR-0006857-1979.

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STATEMENT OF THE CASE

This matter comes before this Court following a timely filed appeal. Appellant Richard Olds filed his principal brief October 23, 2017. The Commonwealth received an extension of time and timely filed its appellee's brief on December 7, 2017. Appellant now timely files this reply brief. Appellant relies upon the Statement of the Case in his original brief.

SUMMARY OF THE ARGUMENT

Absent statutory or court authority, the trial court sentenced Mr. Olds to what it believed to be a mandatory maximum term of life and did not consider the distinct constitutional claims associated with a second-degree murder conviction. The Commonwealth follows the same logic with no comment as to the constitutional claims, and rather relies on this Court's decision in *Commonwealth v. Seskey* to argue that the questions posed by Mr. Olds are settled law. The Pennsylvania Supreme Court's analysis, however, is limited to first-degree murder and the *Seskey* Court improperly expanded the Supreme Court's analysis to second-degree convictions. There exists no established law mandating a life maximum for second-degree murder and such a mandatory sentence is unconstitutional. Therefore, Mr. Olds' case should be remanded for resentencing to a maximum term of years.

ARGUMENT

I. THE COMMONWEALTH IMPROPERLY RELIES ON DICTA AND A MISQUOTATION IN *COMMONWEALTH V. SESKEY*

The trial court mistakenly believed it was required to impose on Mr. Olds a sentence with a maximum of life, and that any sentence with a maximum term of years was an illegal sentence. However, as was addressed in Mr. Olds' principal brief, there is no statute or case law requiring such a sentence, and the mandatory nature of a life maximum contravenes Eighth Amendment jurisprudence in this area. Nevertheless, the Commonwealth's brief does not address any of Mr. Olds' constitutional challenges to the mandatory imposition of a life maximum. Rather, the Commonwealth focuses exclusively on misinterpreted case law to urge this Court to ignore the central issues posed by Mr. Olds: whether a life maximum is required for second-degree murder and whether such a requirement would be constitutional.

In its brief, the Commonwealth improperly argues that the issue Mr. Olds presents is a matter of settled law and that this Court is bound by *Commonwealth v. Seskey*, 170 A.3d 1105 (Pa. Super. 2017). The Commonwealth reasons that “[t]his Court in *Sesky* [*sic*], made clear that its rationale and holding applied to juveniles convicted of **both** first and second degree murder.” (Appellee’s Br. 12 (alteration in original) (citations omitted).) It relies on *Seskey*’s statement that a second-degree murder analysis is equivalent to a first-degree murder analysis and ignores the

underlying and controlling precedent of *Commonwealth v. Batts*, 66 A.3d 286 (Pa. 2013) [hereinafter “*Batts I*”] and *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter “*Batts II*”]. (Appellee’s Br. 12-17.) The Commonwealth rests its argument on dicta in *Seskey* and disregards the Pennsylvania Supreme Court’s holding and reasoning.

The issue presented in the instant case is the constitutionality of Mr. Olds’ maximum life sentence for second-degree murder. The Pennsylvania Supreme Court confined its decisions in *Batts I* and *Batts II* to first-degree murder and explicitly did not extend its holding to sentences for second-degree murder. Justice Saylor noted in *Batts I*:

[D]espite the broad framing of the questions at hand, Appellant has confined his arguments to the context of first-degree murder; hence, the issues identified by Justice Breyer in his *Miller* concurrence . . . are not implicated in the present matter.

Batts I, 66 A.3d at 293-94 (citation omitted). The remainder of the Court’s analysis of the case is limited to sentencing in first-degree murder cases, without a single mention of second-degree murder. Similarly, the Court’s analysis in *Batts II* references only first-degree murder. *See generally*, 163 A.3d 410. Although the Court mentions that the sentencing statute at issue was modified for “first- and second-degree murder after June 24, 2012,” it does not make any specific findings as to the applicability of the constitutional claims in second-degree murder cases. *Id.* at 419. The *Batts II* Court stated:

We therefore held **that juveniles convicted of first-degree murder** prior to *Miller* could . . . be subjected to a sentence of life in prison without the possibility of parole. *See Batts I*, 66 A.3d at 296. **For those defendants for whom the sentencing court determines a life-without-parole sentence is inappropriate**, “it is our determination here that they are subject to a mandatory maximum sentence of life imprisonment as required by [s]ection 1102(a)”

Batts II, 163 A.3d at 421 (emphasis added) (quoting *Batts I*, 66 A.3d at 297). It is clear that “those defendants” are “juveniles convicted of first-degree murder.” *Id.*

Notwithstanding, the Superior Court, in *Commonwealth v. Seskey*, improperly broadened the holding in *Batts II* to include second-degree murder without support and without recognizing the unique constitutional concerns implicated. The *Seskey* Court stated:

Most importantly for our disposition of this case, our Supreme Court reaffirmed its holding in *Batts I* that: “For those defendants [convicted of first or second-degree murder prior to June 25, 2012] for whom the sentencing court determines a [LWOP] sentence is inappropriate, it is our determination here that they are subject to a **mandatory maximum sentence of life imprisonment** as required by section 1102(a)”

Seskey, 170 A.3d at 1108 (alterations in original) (quoting *Batts II*, 163 A.3d at 421).

The *Seskey* Court takes language directly from *Batts II* and changes the meaning. Rather than referring to “those defendants” who the Supreme Court defined as juveniles convicted of first-degree murder, the *Seskey* Court included bracketed language to change the meaning of “those defendants” to individuals “convicted of

first or second-degree murder” despite the Supreme Court’s explicit reference to 1102(a), which is the controlling statute for first-degree murder, not second.

Although *Seskey* was indeed a case involving a first-degree murder, the Court conflated its analysis with second-degree murder sentencing, which the Pennsylvania Supreme Court explicitly avoided in both *Batts* decisions. *Seskey*’s dicta regarding second-degree murder sentences is not controlling. *Batts I* and *II*’s exclusion of second-degree murder from its analysis demonstrates the Supreme Court’s intended narrow holding to apply only to first-degree murder sentences.

The issue before this Court is the constitutionality of Mr. Olds’ sentence for second-degree murder. There is currently no binding authority directly relevant to this issue, and this Court is addressing the question as a matter of first impression. Despite the *Seskey*’s Court’s attempt to extend *Batts I* and *II*, the unconstitutional nature of a mandatory maximum in second-degree cases remains.

CONCLUSION

For the foregoing reasons, this Honorable Court should vacate Mr. Olds’ unconstitutional life maximum and remand the instant matter for resentencing to impose a term-of-years maximum.

Respectfully submitted,

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DATED: December 20, 2017

CERTIFICATE OF COMPLIANCE

I hereby certify this 20th day of December, 2017, that the foregoing Reply Brief of Appellant contains 1,113 words and complies with the word count limits as set forth in Pa.R.A.P. 2135.

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