

IN THE SUPREME COURT OF PENNSYLVANIA

DOCKET NO. 79 MAP 2009

**COMMONWEALTH OF PENNSYLVANIA,
Appellee**

v.

**QU'EED BATTS,
Appellant**

**SUPPLEMENTAL BRIEF OF APPELLEE
COMMONWEALTH OF PENNSYLVANIA**

**Defendant's Appeal By Allowance From the April 7, 2009 Order of the Superior
Court at 766 EDA 2008, Affirming the October 22, 2007 Judgment of Sentence of
The Court of Common Pleas of Northampton County, Criminal Division at
No. CP-48-CR-0001215-2006**

**HONORABLE JOHN M. MORGANELLI
District Attorney**

**TERENCE P. HOUCK
First Deputy District Attorney**

**KELLY A. LEWIS FALLENSTEIN
Assistant District Attorney
Northampton County Government Center
669 Washington Street
Easton, PA 18042
I.D. No. 201341
Attorney for Appellee
Phone: (610) 559-3020**

TABLE OF CONTENTS
SUPPLEMENTAL BRIEF OF APPELLEE

Table of Citations	ii
Counterstatement of Questions Involved	1
Counterstatement of the Case	2
Summary of the Argument	5
Argument	6
Conclusion	12

TABLE OF CITATIONS

SUPPLEMENTAL BRIEF OF APPELLEE

United States Supreme Court Cases

Graham v. Florida, 560 U.S. ___, 130 S.Ct. 2011, 176 L.Ed.2d. 825 (2010).....6
Miller v. Alabama, 132 S. Ct. 2455 (2012).....6-11
Roper v. Simmons, 543 U.S. 551 (2005)6

Pennsylvania Supreme Court Cases

Commonwealth v. Pyle, 342 A.2d 101 (Pa. 1975)10
Commonwealth v. Sourbeer, 422 A.2d 116 (Pa. 1980)9
Commonwealth v. Williams, 522 A.2d 1058 (Pa. 1987)10
Stilp v. Commonwealth, 905 A.2d 918 (Pa. 2006)7

Pennsylvania Appellate Court Cases

Commonwealth v. Knox, 2012 Pa. Super. LEXIS 1582 (Pa. Super. 2012)10

Statutes

1 Pa.C.S.A. § 19358
18 Pa.C.S.A. § 11027
61 Pa.C.S.A. § 1637(a)7,10
61 Pa.C.S.A. § 61377,8

COUNTERSTATEMENT OF QUESTIONS INVOLVED

1. Is a resentencing hearing the appropriate remedy under Miller v. Alabama for a defendant, who committed first degree murder when he was under the age of eighteen and was sentenced to a mandatory term of life imprisonment without the possibility of parole?

Suggested Answer: YES

2. Is Batts entitled to any relief other than a resentencing hearing following his mandatory sentence of life imprisonment without parole for the murder he committed when he was fourteen years ten months old?

Suggested Answer: NO

COUNTERSTATEMENT OF THE CASE

Procedural History

On or about July 31, 2007, Qu'eed Batts ("Appellant") was tried and convicted of criminal homicide first-degree murder, attempted criminal homicide, and aggravated assault. On October 22, 2007, Appellant was sentenced six to twenty years for the conviction of attempted homicide and to life in prison without parole for first-degree murder and six to twenty years for attempted homicide. The conviction for aggravated assault merged with the conviction for attempted homicide for sentencing purposes.

Appellant was fourteen years ten months old when he committed the first-degree murder and attempted homicide. Appellant filed a pre-trial motion to transfer to the juvenile court division pursuant to 42 Pa.C.S. § 6332. The lower court held a decertification hearing at which time both Appellant and the Commonwealth presented testimony. Appellant called four witnesses to testify, Dr. Allan Tepper, a forensic psychologist, the Appellant's mother, Shaniqua Batts, and two school officials from Phillipsburg Area High School, Phillipsburg, New Jersey. The Commonwealth called four witnesses to testify. The Commonwealth called Dr. Timothy Michals, M.D., a medical practitioner with a specialty in forensic psychiatry; Dr. Steven Samuel, Ph.D, a forensic psychologist; Douglas Russell, Assistant Superintendent at the Pennsylvania State Correctional Institution for Young Adult Offenders in Pine Grove, Pennsylvania; and the victim's Grandmother, Dolores Howell.

Both Dr. Michals and Dr. Samuel interviewed and evaluated Appellant weeks prior to the decertification hearing and testified that in their expert opinions that Appellant was not amendable to treatment, supervision or rehabilitation within the

juvenile system. Appellant's pre-trial motion to transfer to juvenile court was denied by the trial court's order dated February 21, 2007.

After Appellant was sentenced, he filed post-sentence motions that included a motion to vacate the conviction and transfer to the juvenile court and a motion for a new trial based on the inflammatory nature of the Commonwealth's closing argument. Appellant's post-sentence motions were denied by the trial court's order dated February 25, 2008. Judgment of sentence was affirmed by the Superior Court on April 7, 2009. Appellant thereafter filed this appeal claiming his sentence of life imprisonment without the possibility of parole amounted to cruel and unusual punishment under the federal constitution. Allowance of appeal was granted, and pending this appeal, the United States Supreme Court held in Miller v. Alabama that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." This supplemental brief addresses what is warranted for resentencing in connection with this particular case.

Factual History

On February 7, 2006 Appellant drove in a vehicle with Vernon Bradley and three other juveniles (R.M., M.S., and D.W.) to the 700 block of Spring Garden Street in Easton, Pennsylvania. Appellant got out of the vehicle wearing a glove and mask and holding a handgun and walked up the front porch steps of the house located at 713 Spring Garden Street. Once on the porch of 713 Spring Garden Street the Appellant fired fatal gunshots into the head of Clarence Edwards and gun shots into the back of Corey Hilario causing serious bodily injury. After firing several gunshots on the porch of 713 Spring Garden Street, Appellant got back into the vehicle and drove off.

Appellant was taken into police custody and read his miranda warnings.

Appellant waived his rights and gave a voluntary statement to the police confessing that he shot both Clarence Edwards in the head and Corry Hilario in the back. Appellant stated he committed the shootings to receive a promotion in status in the Bloods gang.

Appellant told police Vernon Bradley directed him to "put some work in, Blood" and he understood that to mean go fire shots and murder. Appellant stated after he committed the murder he was told by Vernon Bradley that he had been promoted in status from "pup" to "universal sergeant" in the Bloods gang. Appellant expressed little or no remorse during his statement to police.

SUMMARY OF ARGUMENT

The sentence of life in prison without parole is constitutional under both the United States Constitution and the Pennsylvania State Constitution pursuant to Miller v. Alabama, 132 S. Ct. 2455 (2012). However, the trial court is required to conduct a resentencing hearing pursuant to Miller v. Alabama, to allow the court to consider the Appellant's "youth and attendant characteristics" in deciding between imposing a sentence of life in prison without parole or life in prison with the possibility of parole.

Miller v. Alabama, 132 S. Ct. 2455 (2012) does not warrant any new or different construction of the state constitution regarding criminal punishments. Miller v. Alabama is not a proper basis to look to the Pennsylvania state constitution to expand upon its limited holding under the federal constitution. Miller v. Alabama only allows for Appellant to be afforded a resentencing hearing.

ARGUMENT

1. REQUIRING THE TRIAL COURT TO CONDUCT A RESENTENCING HEARING IS THE REMEDY UNDER MILLER v. ALABAMA .

In Miller v. Alabama, 132 S. Ct. 2455 (2012), the United States Supreme Court held state sentencing statutes that mandate sentences of life in prison without parole for defendants under the age of eighteen who have been convicted of murder are unacceptable because they prevent consideration of “a juvenile’s lessened culpability and greater capacity for change” and transgress “our cases’ requirement of individualized sentencing for defendants facing the most serious penalties.” The Court did not hold that murderers under the age of eighteen may not be sentenced to life in prison without parole, but rather, held only that such sentences may not be mandatory.

A sentence to life in prison without parole may be imposed on a defendant who committed murder when he was under the age of eighteen, however, such a sentence is a matter of “individualized sentencing” and is up to the trial court’s sentencing discretion. 132 S. Ct. at 2460. Specifically, Miller focuses on the process by which a life in prison without parole sentence is decided and imposed:

Our decision does not categorically bar a penalty for a class of offenders or type of crime – as, for example, we did in Roper or Graham. Instead, it mandates only that a sentencer follow a certain process- considering an offender’s youth and attendant characteristics –before imposing a particular penalty.

Id. at 2471.

Therefore, Miller does not prohibit a sentence of life in prison without parole for a murderer who was under the age of eighteen, but requires the sentencing process to permit the consideration of “[the] offender’s youth and attendant characteristics.” The Court expressly limited its holding in this regard. Id. at 2469. (“Because that holding is

sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger."'). A sentence of life in prison without parole simply requires a discretionary decision based on individualized consideration.

The holding in Miller minimally impacts the applicable Pennsylvania statutory sentencing scheme. 18 Pa.C.S. § 1102 states that a person convicted of murder of the first or second degree is to be sentenced to "a term of life imprisonment." This statute requires a life term but does not address parole or eligibility for parole, and is therefore unaffected by Miller.¹

The only Pennsylvania statutory provision affected by Miller is 61 Pa.C.S. § 1637(a), which denies the state parole board authority to release on parole an inmate "serving life imprisonment."² Miller renders only a portion of § 1637 unconstitutional, and that portion is severable. Stilp v. Commonwealth, 905 A.2d 918, 948-949 (Pa. 2006) (presumption of severability applied where statute did not contain a non-severability

¹ 18 Pa.C.S. § 1102. Sentence for murder, murder of unborn child and murder of law enforcement officer.

- (a) First degree.
- (1) A person who has been convicted of a murder of the first degree or of murder of a law enforcement officer of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with 42 Pa.C.S. § 9711 (relating to sentencing procedure for murder of the first degree).
 - (2) The sentence for a person who has been convicted of first degree murder of an unborn child shall be the same as the sentence for murder of the first degree, except that the death penalty shall not be imposed. This paragraph shall not affect the determination of an aggravating circumstance under 42 Pa.C.S. § 9711(d)(17) for the killing of a pregnant woman.
- (b) Second degree. —A person who has been convicted of murder of the second degree, of second degree murder of an unborn child or of second degree murder of a law enforcement officer shall be sentenced to a term of life imprisonment.

² 61 Pa.C.S. § 6137(a) General criteria for parole.

- (1) The board may parole subject to consideration of guidelines established under 42 Pa.C.S. § 2154.5 (relating to adoption of guidelines for parole) and may release on parole any inmate to whom the power to parole is granted to the board by this chapter, except an inmate condemned to death or serving life imprisonment, whenever in its opinion [...]

provision and a portion thereof was unconstitutional); 1 Pa.C.S. § 1925 (presumption of severability).³ Following the holding in Miller, the part of § 6137(a) that prohibits parole eligibility to inmates serving a term of life imprisonment must be disregarded in cases in which the offender was under eighteen at the time of the crime, with the balance of the provision remaining undisturbed.

The remaining unaltered statutory sentencing provisions require a trial court to comply with Miller by sentencing a defendant under the age of eighteen when he committed first or second degree murder to a sentence of life in prison. The trial court has discretion as to whether to impose a sentence to life in prison without parole, or a sentence of life in prison with the possibility of parole. The court is entitled to impose a sentence of life in prison without parole, and it follows that the court is also entitled to impose a sentence permitting parole, and it may also defer parole eligibility, in its discretion, by a term of years.⁴

In light of Miller and Pennsylvania sentencing jurisprudence this Court should remand for a resentencing hearing. The trial court should be instructed to consider the

³ 1 Pa.C.S. § 1925. Constitutional construction of statutes.

The provisions of every statute shall be severable. If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

⁴ 42 Pa.C.S. § 9756(b)(1), which requires "a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed," is inapplicable because a life term, which remains mandatory under 18 Pa.C.S. § 1102, states no period of years that can be halved. Commonwealth v. Manning, 435 A.2d 1207, 1212 & n.5 (Pa. 1981) (finding "meritless" claim that mandatory life term was "illegal" because it did not include a half-term of years); See 1 Pa.C.S. § 1922 (presumption that General Assembly "does not intend a result that is absurd, impossible of execution or unreasonable"). Nothing in Miller alters this settled law. On the contrary, since Miller expressly permits (provided individualized consideration is afforded) a sentence of life without any possibility of parole at all, *a fortiori*, it also permits anything less, including a sentence that defers parole eligibility for any term of years.

Appellant's individual characteristics as well as "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." After conducting a sentencing hearing considering the Appellant's individual characteristics the court in its discretion may sentence the Appellant to either life in prison without parole, or life in prison with the eligibility of parole after a specified term of years that Appellant must serve in order to be eligible for parole. Requiring this resentencing hearing is the appropriate remedy under Miller.

2. APPELLANT IS NOT ENTITLED TO RELIEF OTHER THAN A RESENTENCING HEARING PURSUANT TO MILLER v. ALABAMA.

The Pennsylvania Supreme Court has held that a life sentence for a juvenile is not unconstitutional. In Commonwealth v. Sourbeer, 422 A.2d 116 (Pa. 1980), the Pennsylvania Supreme Court held that life imprisonment for first-degree murder is not cruel and unusual punishment, even where the defendant was fourteen years old⁵. The Supreme Court specifically found that the sentence was "not an excessive and unnecessary punishment disproportionate to the crime and does not shock the moral conscience of the community . . . [and] lack[s] the ponderous finality of the death penalty." Id. at 123-24.

Appellant argues that this Court should impose "a categorical ban on life without parole for juveniles" under the state constitution as an expansion of Miller (Appellant's supplemental brief, 7). This argument must be rejected because Pennsylvania law has no tradition of special treatment for juveniles, but rather a longstanding tradition of treating

⁵The juvenile offender in Commonwealth v. Soubeer was fourteen years and eleven months old at the time he committed the act of first-degree murder and his sentence to life in prison without parole was upheld and not found to be cruel and unusual punishment. 422 A.2d at 123. Appellant was fourteen years ten months at the time he committed first-degree murder and his sentence to life in prison without parole is not cruel and unusual punishment.

murder as a special category of violence that cannot be categorically excused or mitigated by youthful impetuosity. See Commonwealth v. Williams, 522 A.2d 1058, 1063 (Pa. 1987) (“[T]here is no constitutional guarantee of special treatment for juvenile offenders”); Commonwealth v. Pyle, 342 A.2d 101, 104 (Pa. 1975) (“Where murder is charged, treatment as a ‘youthful offender’ still does not arise as a matter of right”).

Appellant also argues that Miller effectively negates his first degree murder conviction and requires that he be resentenced only “for the lesser included offense of third degree murder” (Appellant’s supplemental brief, 1). This argument must be rejected because the statutory penalty of life in prison for first and second degree murder is unaffected by Miller. The decision in Miller focuses on the processes that mandate life sentences with no possibility of parole without regard to the individual characteristics of the youthful offender. The only Pennsylvania statute partially negated by Miller is the severable portion of 61 Pa.C.S. § 1637(a), which prevents parole of an inmate who was under eighteen at the time of the offense and is “serving life imprisonment.” That specific language must now be disregarded as unconstitutional in these cases, but all the remaining provisions are sound. Miller does not prevent resentencing Appellant in accordance with those provisions, i.e., to life imprisonment with, or without, the possibility of parole, following individualized consideration and in the trial court’s discretion. ⁶ Miller did not somehow effectively negate Appellant’s conviction for first degree murder or require him to be resentenced instead for some other lesser offense.

⁶ The Superior Court recently reached this same conclusion when applying Miller and remanding for resentencing in Commonwealth v. Knox, 2012 Pa. Super. LEXIS 1582, *27, *32 (Pa. Super. Ct. 2012) (July 16, 2012) (“[T]here is no single particular statute in Pennsylvania which directs that juveniles must be sentenced to a term of life in prison without parole ... 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”).

Appellant committed a heinous execution style first-degree murder by fatally shooting one victim in the head and shooting another victim in the back causing serious bodily injury. Appellant's age of sixteen at the time of conviction and his age of fourteen at the time he committed these violent offenses does not entitle him to different relief under the state constitution. If Appellant is sentenced to life imprisonment without parole after an individualized resentencing hearing it would not be excessive or disproportionate to the crime he committed. A life imprisonment sentence for executing one individual does not shock the moral conscience of the community, but rather protects the community from any future harm and violence by the Appellant.

Appellant should receive an individualized resentencing hearing as required by Miller and existing Pennsylvania law, but Appellant is entitled to no further relief.

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests this Court to order an individualized resentencing with the appropriate guidance to the trial court.

Respectfully submitted,

JOHN M. MORGANELLI
District Attorney of Northampton County



TERENCE P. HOUCK
First Deputy District Attorney of Northampton County
I.D. No. 47227



KELLY A. LEWIS FALLENSTEIN
Assistant District Attorney
I.D. No. 201431
Northampton County District Attorney's Office
Easton, PA 18042
(610) 559-3020