

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

79 MAP 2009

COMMONWEALTH OF PENNSYLVANIA,
Appellee
v.
QU'EED BATTS,
Appellant

SUPPLEMENTAL BRIEF FOR APPELLANT

Appeal from the order of the Superior Court (No. 766 EDA 2008) dated April 7, 2009,
affirming the judgment of sentence of Court of Common Pleas of Northampton County
(No. 1215-2006) dated October 22, 2007

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TABLE OF CONTENTS

Table of Authorities ii

I. SUMMARY OF ARGUMENT 1

II. ARGUMENT 2

A. Pennsylvania’s Mandatory Life Without Parole Sentencing Scheme For Juveniles
Convicted Of Murder Is Unconstitutional Under the United States and Pennsylvania
Constitutions 2

 1. In Holding Mandatory Juvenile Life Sentences Without Parole Unconstitutional,
 Miller Reaffirms The Court’s Recognition That Children Are Fundamentally
 Different Than Adults And Categorically Less Deserving Of The Harshest Forms
 Of Punishments 2

 2. Pennsylvania’s Mandatory Life Without Parole Sentencing Scheme For Juvenile
 Offenders Convicted Of Murder Is Unconstitutional Pursuant To *Miller*.... 4

 3. Any Life Without Parole Sentence For Juvenile Offenders Convicted Of Murder
 Is Unconstitutional Pursuant To The Pennsylvania Constitution 6

B. Qu’eed Batts Should Be Sentenced Based On The Most Severe Lesser Included Offense
of Third Degree Murder 7

C. Appellant Is Entitled To An Individualized Resentencing Hearing Based On The Lesser
Included Offense 12

III. CONCLUSION 14

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Atkins v. Virginia</i> , 536 U.S. 304, 122 S. Ct. 2242 (2002).....	11
<i>Carey v. Garrison</i> , 452 F. Supp. 485 (W.D.N.C. 1978)	9
<i>Commonwealth v. Bradley</i> , 449 Pa. 19 (1972).....	9
<i>Commonwealth v. Devon Knox</i> , 2012 Pa. Super. 147 (Pa. Super. Ct. July 16, 2012).....	5
<i>Commonwealth v. Durham</i> , 389 A.2d 108 (Pa. Super. Ct. 1978).....	6
<i>Commonwealth v. Edmunds</i> , 526 Pa. 374 (1991).....	5
<i>Commonwealth v. Edwards</i> , 488 Pa. 139 (1979).....	9
<i>Commonwealth v. Goldhammer</i> , 512 Pa. 587, 517 A.2d 1280 (1986), <i>cert. denied</i> , 480 U.S. 950, 107 S. Ct. 1613, 94 L. Ed. 2d 798 (1987)	8
<i>Commonwealth v. Jovon Knox</i> , 2012 Pa. Super. 148 (Pa. Super. Ct. July 16, 2012).....	5
<i>Commonwealth v. Kocher</i> , 529 Pa. 303 (1992).....	6
<i>Commonwealth v. Story</i> , 497 Pa. 273 (1981).....	8, 9
<i>Commonwealth v. Williams</i> , 504 Pa. 511 (1984).....	6
<i>Commonwealth v. Zettlemyer</i> , 500 Pa. 16, 454 A.2d 937 (1982).....	5
<i>Gardner v. Florida</i> , 430 U.S. 349, 97 S. Ct. 1197, 51 L.Ed.2d 393 (1977).....	2

<i>Graham v. Florida</i> , 560 U.S. ___, 130 S. Ct. 2011 (2010).....	passim
<i>In re G.T.</i> , 597 A.2d 638 (Pa. Super. Ct. 1991).....	6
<i>J.D.B. v. North Carolina</i> , 564 U.S. ___, 131 S. Ct. 2394 (2011).....	2
<i>Miller v. Alabama</i> , 567 U.S. ___, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012).....	passim
<i>Morrissey v. Brewer</i> , 408 U.S. 471, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972).....	2
<i>Pa. Human Relations Comm. v. Mars Cmty. Boys Baseball Ass'n</i> , 488 Pa. 102 (1980).....	8
<i>People v. Bullock</i> , 440 Mich. 15 (Mich. 1992).....	6
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	2, 3, 10, 11
<i>Rutledge v. United States</i> , 517 U.S. 292, 116 S.Ct. 1241, 134 L.Ed.2d 419 (1996).....	9
<i>Spectrum Arena Ltd. P'ship v. Commonwealth</i> , 603 Pa. 180 (2009).....	8
<i>State v. Davis</i> , 227 S.E.2d 97 (N.C. 1976).....	9
<i>State v. Kennedy</i> , 957 So.2d 757 (La. 2007)	10
<i>United States v. Jackson</i> , 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968).....	8

STATUTES

18 PA. CONS. STAT. § 1102(a) & (b)	4, 8
42 PA. CONS. STAT. ANN. § 6302	4
42 PA. CONS. STAT. ANN. § 6322	4
61 PA. CONS. STAT. ANN. § 6137	4, 8

CONSTITUTIONAL PROVISIONS

U.S. CONST., Amend. VI2
U.S. CONST., Amend. VIII.....7
U.S. CONST., Amend. XIV2
MICH. CONST., Art. I, § 166
PA. CONST., Art.I, § 13.....5, 6, 7

OTHER AUTHORITIES

David A. Brink, *Immaturity, Normative Competence, and Juvenile Transfer: How (not) to Punish Minors for Major Crimes*, 82 Tex. L. Rev. 1555, 1557-58 (2004)10
Barry C. Feld, *Competence, Culpability and Punishment: Implications of Atkins for Executing and Sentencing Adolescents*, 32 Hofstra L. Rev. 463, 500-501 (2003).....10
Franklin E. Zimring, *Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility*, in *Youth On Trial: A Developmental Perspective On Juvenile Justice* 271 (Thomas Grisso & Robert G. Schwartz eds., 2000)10

I. SUMMARY OF ARGUMENT

In *Miller v. Alabama*, 567 U.S.____, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012) the United States Supreme Court held that the mandatory imposition of sentences of life without the possibility of parole on juvenile offenders convicted of murder is unconstitutional. Under current Pennsylvania law, any juvenile convicted of first or second degree murder must be sentenced to life without parole. This statutory scheme is now unconstitutional. Appellant Qu'eed Batts' sentence must be vacated and a new constitutional sentence imposed.

In the absence of any action by the legislature,¹ this Court must look to existing statutes to determine what constitutional sentence may be imposed on juveniles convicted of homicide. In Pennsylvania, the only constitutional statutory sentence available is the sentence for lesser included offenses. Therefore, this Court should hold that the appropriate remedy for juveniles convicted of first degree murder is to impose the current statutory sentence for the lesser included offense of third degree murder. Adopting this remedy is consistent with this Court's precedent as well as the United States and Pennsylvania Constitutions.

¹ Of course, the General Assembly may choose to enact a new constitutional sentencing scheme for juvenile offenders convicted of homicide offenses that takes into account the holding in *Miller*. At this time, the likelihood of legislative action to address the infirmities of Pennsylvania's sentencing scheme is purely speculative, as well as whether any legislation would apply retroactively to Appellant.

II. ARGUMENT

A. Pennsylvania's Mandatory Life Without Parole Sentencing Scheme For Juveniles Convicted Of Murder Is Unconstitutional Under the United States and Pennsylvania Constitutions

In *Miller v. Alabama*, 567 U.S. ____, 132 S. Ct. 2455, 2469 (2012), the United States Supreme Court held “that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.” Acknowledging the unique status of juveniles and reaffirming its recent holdings in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. ____, 130 S. Ct. 2011 (2010), and *J.D.B. v. North Carolina*, 564 U.S. ____, 131 S. Ct. 2394 (2011), the Court in *Miller* held that “children are constitutionally different from adults for purposes of sentencing,” *Id.* at 2464, and therefore the “imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” *Id.* at 2466. In addition, due process has been violated by imposition of a sentence resulting from the instant unconstitutional sentencing scheme. U.S. CONST., AMEND. VI, XIV; *Gardner v. Florida*, 430 U.S. 349, 358, 97 S. Ct. 1197, 1205, 51 L.Ed.2d 393 (1977); *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).

1. In Holding Mandatory Juvenile Life Sentences Without Parole Unconstitutional, *Miller* Reaffirms The Court’s Recognition That Children Are Fundamentally Different Than Adults And Categorically Less Deserving Of The Harshest Forms Of Punishments

Justice Kagan, writing for the majority in *Miller*, was explicit in articulating the Court’s rationale for its holding: the mandatory imposition of sentences of life without parole “prevents those meting out punishment from considering a juvenile’s ‘lessened culpability’ and greater ‘capacity for change,’ *Graham v. Florida*, 130 S. Ct. 2011, 2026–27, 2029–30 (2010), and runs afoul of our cases’ requirement of individualized sentencing for defendants facing the most

serious penalties.” *Miller* at 2460. The Court grounded its holding “not only on common sense...but on science and social science as well,” *id.* at 2464, that shows fundamental differences between juveniles and adults.² The Court reiterated its holdings in *Roper* and *Graham* that these research findings established that “children are constitutionally different from adults for purposes of sentencing.” *Id.* The Court noted “that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’” *Id.* at 2464-65 (quoting *Graham*, 130 S. Ct., at 2027, *Roper*, 543 U.S., at 570)). Importantly, the Court specifically found that none of what *Graham* “said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific.” *Id.* at 2465. Accordingly, the Court emphasized “that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.*

Miller held that mandatory life without parole sentencing schemes imposed on juvenile offenders convicted of murder are unconstitutional. *See id.*, at 2469 (“We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.”). The Court found that “[s]uch mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” *Id.* at 2467. The Court wrote:

² This research is discussed at length in Appellant’s August 27, 2010 Brief filed in this case, as well as the August 27, 2010 *Amicus Curiae* Brief filed by the Defender Association of Philadelphia and Juvenile Law Center. In *Graham*, the Court recognized that “youth is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuosity [,] and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient.” *Miller*, at 2467 (internal citations and quotation marks omitted).

Under these schemes, every juvenile will get the same sentence as every other – the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile (including these two 14-year-olds) will receive the same sentence as the vast majority of adults committing similar homicide offenses – but really, as *Graham* noted, a *greater* sentence than those adults will serve.

Id. at 2467-68. Relying on *Graham*, *Roper*, and the Court’s individualized sentencing decisions, the Court found “that in imposing a State’s harshest penalties, a sentencer misses too much if he treats every child as an adult.” *Id.* at 2468. Mandatory life without parole sentences are unconstitutional as applied to juveniles because “[b]y making youth (and all that accompanies it) irrelevant to imposition of the harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.” *Id.* at 2469.

2. Pennsylvania’s Mandatory Life Without Parole Sentencing Scheme For Juvenile Offenders Convicted Of Murder Is Unconstitutional Pursuant To *Miller*

Pennsylvania’s sentencing scheme, which currently mandates that any juvenile offender convicted of first or second degree murder must be sentenced to life without the possibility of parole, is unconstitutional pursuant to *Miller*.³ In Pennsylvania, any person charged with murder, no matter how young, is automatically prosecuted in adult criminal court. 42 PA. CONS. STAT. ANN. § 6302 (excluding the “crime of murder” from the definition of delinquent acts that are handled in juvenile court). Then, once convicted of first (or second) degree homicide, a judge must impose a life without the possibility of parole sentence. *See* 18 PA. CONS. STAT. ANN. (a) & (b); 61 PA. CONS. STAT. ANN. § 6137.

³ Though *Miller* renders the sentencing scheme for juvenile offenders convicted of either first or second degree murder unconstitutional, Appellant Batts was convicted of first degree murder. Therefore, the remedy discussed in this Brief will address only juvenile offenders convicted of first degree murder.

When a juvenile offender in Pennsylvania is convicted of murder, the sentencer is denied any opportunity to consider factors related to the juvenile’s overall level of culpability, as mandated by *Miller*.⁴ *Miller* sets forth specific factors that the sentencer, at a minimum, should consider: (1) the juvenile’s “chronological age” and related “immaturity, impetuosity, and failure to appreciate risks and consequences;” (2) the juvenile’s “family and home environment that surrounds him;” (3) “the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;” (4) the “incompetencies associated with youth” in dealing with law enforcement and a criminal justice system designed for adults; and (5) “the possibility of rehabilitation.” *Id.* at 2468. Accordingly, Pennsylvania’s mandatory sentencing scheme for first degree murder, as applied to juvenile offenders, is unconstitutional and sentences imposed pursuant to this scheme must be vacated.⁵

⁴ The fact that juveniles charged with murder can be decertified from the adult system and sent back to juvenile court, *see* 42 PA. CONS. STAT. ANN. § 6322, does not alter the mandatory nature of the sentencing scheme. *Miller* rejected the argument that the availability of transfer somehow renders discretionary an otherwise mandatory life without parole sentence. *See Miller, Id.* at 2474. The Court noted that, at the transfer stage, the decisionmaker has only partial information about the child and the circumstances of the offense. *Id.* More importantly, the question at transfer hearings differs dramatically from the issue at post-trial sentencing. *Id.* The Court clearly held that “the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court – and so cannot satisfy the Eighth Amendment.” *Id.* at 2475.

⁵ Since the United States Supreme Court issued *Miller*, the Pennsylvania Superior Court has already held in two cases that Pennsylvania’s mandatory life without parole sentence for juveniles convicted of second degree murder is unconstitutional. *See Commonwealth v. Devon Knox*, 2012 Pa. Super. 147 (Pa. Super. Ct. July 16, 2012); *Commonwealth v. Jovon Knox*, 2012 Pa. Super. 148 (Pa. Super. Ct. July 16, 2012). In both cases, the Superior Court vacated the unconstitutional sentence and remanded for resentencing.

3. Any Life Without Parole Sentence For Juvenile Offenders Convicted Of Murder Is Unconstitutional Pursuant To The Pennsylvania Constitution

With respect to juvenile sentences, Article I, Section 13 of the Pennsylvania Constitution should be interpreted more broadly than the Eighth Amendment of the United States Constitution.⁶ This was discussed at length in the Amicus Brief of the Defender Association and the Juvenile Law Center at pages 34-38. It will not be repeated here.⁷ While *Miller* left open the possibility that a discretionary life without parole sentence may be permissibly imposed on a juvenile offender, the broader protections of Article I, Section 13 mean that such a sentence would be unconstitutional pursuant to the Pennsylvania Constitution for offenders 14 years or younger at the time of their crime. Indeed, it should be emphasized that Pennsylvania has a longstanding historical commitment to providing special protections for minors against the full weight of criminal punishment. This Court has recognized the special status of adolescents, and has mandated that a court determining the voluntariness of a youth's confession must consider

⁶ Although Pennsylvania courts have, in the context of the death penalty, held that Pennsylvania's ban on cruel punishments is coextensive with the Eighth Amendment, *See Commonwealth v. Zettlemoyer*, 500 Pa. 16, 72-74, 454 A.2d 937, 967 (1982), the courts have not examined the issue in the context of life without parole sentences imposed on juvenile offenders, nor have those cases considered the jurisprudence of *Roper*, *Graham* and *Miller* which all establish that there is a constitutional difference between defendants below age 18 and above age 18 regarding sentencing. Significantly, *Zettlemoyer* was also decided before *Commonwealth v. Edmunds*, 526 Pa. 374 (1991), which established the method to determine whether the Pennsylvania Constitution is broader than the federal Constitution.

⁷ A comparison to Michigan is probative. The Michigan Constitution bars "cruel *or* unusual punishment." Mich. Const. Art. I, § 16 (emphasis added). The Michigan Supreme Court has interpreted this provision more broadly than the U.S. Constitution's ban on cruel *and* unusual punishment. *See People v. Bullock*, 440 Mich. 15, 31 n.11 (Mich. 1992) ("While the historical record is not sufficiently complete to inform us of the precise rationale behind the original adoption of the present language by the Constitutional Convention of 1850, it seems self-evident that any adjectival phrase in the form 'A *or* B' necessarily encompasses a broader sweep than a phrase in the form 'A *and* B.' The set of punishments which are *either* 'cruel' *or* 'unusual' would seem necessarily broader than the set of punishments which are both 'cruel' *and* 'unusual.'") (emphasis in original).

the youth's age, experience, comprehension, and the presence or absence of an interested adult. *Commonwealth v. Williams*, 504 Pa. 511, 521 (1984).⁸

In light of the text of the Pennsylvania Constitution, the Commonwealth's historic recognition of the special status of juveniles, recent knowledge about adolescent development, and Pennsylvania's policies, juvenile life without parole sentences are unconstitutionally "cruel" under the Pennsylvania Constitution.

The Court in *Miller* did not resolve – because it did not need to reach the issue – whether a categorical ban on life without parole for juveniles, or at least for those 14 and under at the time of their offense, is required by the Eighth Amendment. To the extent this remains an open question under the United States Constitution, this Court should clarify that, at a minimum, this ban is required pursuant to the Pennsylvania Constitution. Because, with respect to juvenile sentences, Article I, Section 13 of the Pennsylvania Constitution should be interpreted more broadly than the Eighth Amendment of the United States Constitution, juvenile life without parole sentences are never constitutional in the Commonwealth. This is especially true given the young age of the Appellant at the time of his offense.

B. Qu'eed Batts Should Be Sentenced Based On The Most Severe Lesser Included Offense of Third Degree Murder

Because *Miller* struck down the only statutory sentence which may be imposed upon juveniles convicted of first degree murder – mandatory life without the possibility of parole –

⁸ The Commonwealth traditionally recognized "the common law presumption of incapacity, in the case of a child between the ages of seven and fourteen." *Commonwealth v. Durham*, 389 A.2d 108, 110 (Pa. Super. Ct. 1978). The Superior Court has rejected this defense in *juvenile* court because of the special nature of those proceedings. *See In re G.T.*, 597 A.2d 638, 642 (Pa. Super. Ct. 1991). *See also Commonwealth v. Kocher*, 529 Pa. 303, 311 (1992), involving the prosecution of a nine year old for murder, where this Court referred to the common law presumption that children under the age of 14 are incapable of forming the requisite criminal intent to commit a crime. While this common law presumption was replaced by the Juvenile Act, its existence for decades demonstrates that Pennsylvania's common law was especially protective of minors.

Pennsylvania currently provides no constitutional sentence for this class of offenders. While the legislature may at some point craft an alternative, constitutional sentence for juvenile offenders in response to *Miller*, this Court must, in the interim, look to existing statutes to determine a constitutional sentence.

Presently, the only available constitutional sentencing option is to resentence these juvenile offenders based on the most severe lesser included offense. Therefore, juvenile offenders convicted of first degree murder⁹ should be resented in accordance with the sentencing scheme for the lesser included offense of third degree murder, which carries a maximum term of 40 years. *See* 18 Pa. PA. CONS. STAT. ANN. § 1102. Moreover, at the resentencing on third degree murder, the judge can also resentence on all non-merged cases. *Commonwealth v. Goldhammer*, 512 Pa. 587, 517 A.2d 1280 (1986), *cert. denied*, 480 U.S. 950, 107 S. Ct. 1613, 94 L. Ed. 2d 798 (1987).

Precedent supports resentencing juveniles convicted of first degree murder to the sentence for the next most severe lesser included offense. First, and most fundamentally, no other constitutional statutory sentencing option is currently available.¹⁰ It is axiomatic that the role of the court is not to legislate, even where legislation leaves gaps or leads to inconsistency. *See, e.g., Spectrum Arena Ltd. P'ship v. Commonwealth*, 603 Pa. 180, 197-198 (2009) (“It is not within this Court’s power to alter this [legislative] scheme and the impact of any inconsistency is more properly addressed directly by the legislature.”); *Pa. Human Relations Comm. v. Mars Cmty. Boys Baseball Ass’n*, 488 Pa. 102, 106 (1980) (“It is clear that ‘we may not, under the

⁹ Because Appellant was convicted of first degree murder, this Brief does not address the appropriate sentence for a juvenile convicted of second degree murder.

¹⁰ For example, the legislature has not established a sentence of life *with* the possibility of parole. *See* 61 Pa. C. S. A. § 6137. If the legislature wishes to reconsider that determination of a mandatory life without the possibility of parole sentence in light of *Miller*, they could do so, but, until they do, life with parole is not a sentencing option.

rubric of statutory interpretation, add to legislation matter conspicuously absent therefrom.””) (internal citation omitted); *United States v. Jackson*, 390 U.S. 570, 88 S. Ct. 1209, 20 L.Ed.2d 138 (1968) (finding unconstitutional the capital sentencing provision of the federal kidnapping statute but left devising a new procedure to the legislature). The role of this Court is not to devise a new, alternative sentencing scheme; instead it must interpret the statutes in place to determine a constitutional sentence.

Second, relying on the most severe lesser included sentence is consistent with this Court’s approach in analogous cases. In *Commonwealth v. Story*, 497 Pa. 273, 275 (1981), Story was sentenced to death pursuant to a statute which *mandated* the imposition of the death penalty where at least one of nine specified aggravating circumstance existed and none of three specified mitigating factors existed. When this mandatory death penalty statute was struck down as unconstitutional, this Court imposed life imprisonment, the next most severe punishment prescribed under Pennsylvania law. *Id.* at 282. In *Commonwealth v. Bradley*, 449 Pa. 19, 23-24 (1972), the defendant was similarly sentenced to death pursuant to a statute that was subsequently deemed unconstitutional. This Court vacated the death sentence and imposed the next most severe constitutionally available sentence: life imprisonment. 449 Pa. 19, 23-24 (1972). *See also Commonwealth v. Edwards*, 488 Pa. 139, 141 (1979) (same).¹¹

There is also precedent from the United States Supreme Court. In *Rutledge v. United States*, 517 U.S. 292, 116 S.Ct. 1241, 134 L.Ed.2d 419 (1996) the defendant was found guilty of

¹¹ Other states have adopted a similar approach to resentencing based on a lesser included offense when a sentence is deemed unconstitutional. *See State v. Davis*, 227 S.E.2d 97 (N.C. 1976) (finding that “common sense and rudimentary justice demanded” that the maximum permissible sentence of life imprisonment be imposed upon persons convicted of first degree murder or rape committed between the date of the Supreme Court decision relating to the effect on the statute allowing imposition of death sentence resulting from United States Supreme Court decision in *Furman v. Georgia* and date of enactment of statute which rewrote death sentencing provisions); *Carey v. Garrison*, 452 F. Supp. 485 (W.D.N.C. 1978) (commuting an unconstitutional sentence down to the next harshest constitutional sentence made available by statute).

both engaging in a criminal enterprise and conspiracy. The Supreme Court found that the conspiracy was a lesser included offense of the engaging in a criminal enterprise which required the vacation of that conviction and imposition of sentence only on the criminal enterprise conviction. The *Rutledge* Court opined that where a greater offense must be reversed, the courts may enter judgment on the lesser included offense. *Rutledge* cited numerous decisions with approval that authorized the reduction to a lesser included offense when judgment of sentence could not be imposed upon the greater offense. *Id.* at 305-307.

Finally, resentencing based on the lesser included offense is in line with United States Supreme Court precedent in *Roper*, *Graham* and now *Miller* that juveniles are categorically less culpable than adults who commit similar offenses. *See, e.g., Miller* at 2464 (noting that “juveniles have diminished culpability and greater prospects for reform”). In other words, juveniles who commit first degree murder are categorically less culpable than adults who commit first degree murder.¹² Therefore, it is logical to base these juveniles’ sentences on the third

¹² The notion that youthful offenders should be held to a lesser degree of culpability for the same crime committed by an adult is well established in academic literature. As one expert notes, “In the context of homicide gradations, [] criminal law arrays actors’ culpability and blameworthiness along a continuum from a premeditated killer for hire at one end to the minimally responsible actor barely capable of discerning right from wrong at the other end, even though each caused the same harm. ... Youthfulness affects the actor’s abilities to reason instrumentally and freely to choose behavior, and locates an offender closer to the diminished responsibility end of the continuum than to the fully autonomous free-willed actor.” Barry C. Feld, *Competence, Culpability and Punishment: Implications of Atkins for Executing and Sentencing Adolescents*, 32 Hofstra L. Rev. 463, 500-501 (2003). Feld further argues, “criminally responsible young offenders deserve less severe penalties than do mature offenders. Every other area of law recognizes that young people have limited judgment, are less competent decision-makers because of their immaturity, and require greater protection than do adults. Applying the same principle of diminished responsibility in the criminal law requires...shorter sentences for youths than for adults convicted of the same offenses.” *Id.* at 498-499. *See also* David A. Brink, *Immaturity, Normative Competence, and Juvenile Transfer: How (not) to Punish Minors for Major Crimes*, 82 Tex. L. Rev. 1555, 1557-58 (2004) (arguing that youths’ diminished moral competence means they should be punished proportionately less severely than adults and that punishment serves neither rehabilitative nor deterrent goals for youth who

degree murder statute since the legislature has deemed a 40-year maximum sentence the appropriate sentence for less culpable *adult* murderers. This approach also resolves the United States Supreme Court's concern in *Graham* and *Miller* that juveniles sentenced to life, because of their young age, serve longer sentences than adult murderers who receive the same sentence. *See, e.g., Graham v. Florida*, 130 S. Ct. at 2028 ("Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender."). A 40-year maximum sentence acknowledges that, though a youth may be deserving of a harsh sentence, it should be less harsh than the sentence for an adult who commits the same serious crime.

tend to outgrow their deviance, and noting, "It is in part because the normative competence of juveniles is diminished that we think that juvenile crime should be conceived and punished differently than adult crime and that juveniles should be tried and sentenced differently."); Franklin E. Zimring, *Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility*, in *Youth On Trial: A Developmental Perspective On Juvenile Justice* 271 (Thomas Grisso & Robert G. Schwartz eds., 2000) ("[T]he criminal law needs to make sense as a language of moral desert, punishing only those who deserve condemnation, punishing the guilty only to the extent of their individual moral desert, and punishing the range of variously guilty offenders it apprehends in an order that reflects their relative blameworthiness."). Further, in the case of *State v. Kennedy*, 957 So.2d 757, 784, 2005-1981, n.31 (La. 2007) (reversed on other grounds), the Louisiana Supreme Court likened youth to mental retardation in terms of reduced culpability and diminished capacity. "Intellectual deficits and adaptive disorders of the former, and a lack of maturity and a fully developed sense of responsibility of the latter, tend to diminish the moral culpability of the mentally retarded and juvenile offender, with important societal consequences. Retribution 'is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity[,] *Roper*, 543 U.S. at 571, 125 S.Ct. at 1196, or by reason of the 'diminished capacities to understand and process information' of the mentally retarded. *Atkins v. Virginia*, 536 U.S. 304, 318-319, 122 S. Ct. 2242, 2251 (2002). For the same reasons, the mentally retarded and the juvenile offender 'will be less susceptible to deterrence.' *Roper*, 543 U.S. at 571, 125 S. Ct. at 1196; *see Atkins*, 536 U.S. at 320, 122 S. Ct. at 2251 ('[I]t is the same cognitive and behavioral impairments that make these defendants less morally culpable ... that also make it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information.')."

Appellant submits that this resentencing approach is the only constitutional scheme that is currently available under Pennsylvania law. If the legislature favors an alternate approach, they can pass alternate legislation. In the interim, however, this Court has no choice but to look to current law to determine the appropriate, constitutional sentence. The proper remedy for juveniles convicted of first degree murders they committed as juveniles is to be sentenced for third degree murder, the most severe lesser included offense.

C. Appellant Is Entitled To An Individualized Resentencing Hearing Based On The Lesser Included Offense

Appellant Batts is entitled to a resentencing hearing in which the trial court must impose a sentence pursuant to the Commonwealth's third degree murder statute (carrying a penalty of up to 40 years). In determining an appropriate, individualized sentence, the trial court should consider any mitigating evidence, based on the factors set forth in *Miller* including, at a minimum:

- Appellant's young age and developmental attributes, including immaturity, impetuosity, and failure to appreciate risks and consequences;
- His family and home environment;
- The circumstances of the offense, including the extent of his participation and the way familial and peer pressures may have affected his or her behavior;
- His lack of sophistication in dealing with a criminal justice system that is designed for adults; and
- His potential for rehabilitation.

Id. at 2468.

Therefore, this Court should vacate Qu'eed Batts' sentence, and remand with instructions that the trial court should resentence him in accordance with the sentencing scheme currently

imposed for third degree murder and any nonmerged offenses, carefully considering the factors outlined above in determining the appropriate sentence.

III. CONCLUSION

This Honorable Court should hold Qu'eed Batts' life without parole sentence unconstitutional, vacate the sentence, and remand the instant matter for resentencing for third degree murder and any nonmerged offenses.

Respectfully submitted,

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