

**Pa. R.A.P. Rule 555 (a)**  
**CRIMINAL TRIAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA

CP-22-MD-2600044-1968

VS.

SHARON WIGGINS

CHARGE(S): MURDER,  
UNLAWFUL CARRYING OF A  
FIREARM, CONSPIRACY,  
AGGRAVATED ROBBERY

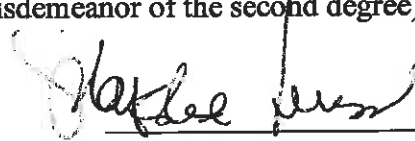
SUPERIOR COURT 639 MDA 2011

**VERIFIED STATEMENT**

I do hereby certify this 6th day of February, 2012, that the following information is true and correct to the best of my knowledge and belief:

1. That on April 8, 2011, the Court of Common Pleas of Dauphin County granted Petitioner's motion to proceed *in forma pauperis*.
2. Present counsel is aware of no substantial change in the defendant's financial condition since such date, which would enable her to pay the fees and costs on this Appeal.
3. The Order referred to in the Notice of Appeal has been reduced to judgment and the date and other information contained in that notice is correct.

I understand that a false statement or answer to any question in this verified statement will subject me to the penalties provided by law (misdemeanor of the second degree).



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THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

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COMMONWEALTH OF PENNSYLVANIA

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M.D. ALLOCATUR DKT. 2012

V.

NO.

SHARON WIGGINS

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PETITION FOR ALLOWANCE OF APPEAL FROM  
THE SUPERIOR TO THE SUPREME COURT

Petition To Allow An Appeal From The January 11, 2012 Judgment Of The Superior Court Of Pennsylvania (No. 639 MDA 2011) Affirming The March 10, 2011 Order of the Dauphin County, Court Of Common Pleas, Criminal Division At No. CP-22-MD 2600044-1968, Dismissing Her Post Conviction Petition.

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February, 2012

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THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

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COMMONWEALTH OF PENNSYLVANIA	:	M.D. ALLOCATUR DKT. 2012
	:	
V.	:	NO.
	:	
SHARON WIGGINS	:	

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PETITION FOR ALLOWANCE OF APPEAL FROM  
THE SUPERIOR TO THE SUPREME COURT

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT:

Sharon Wiggins, by counsel (verified statement attached), Marsha L. Levick, requests the allowance of an appeal in the captioned matter and respectfully represents:

1. This is a Petition for Allowance of Appeal from the yet unpublished Superior Court decision of January 11, 2012. The Superior Court's Opinion and the trial judge's Rule 1925 opinion are attached hereto as Exhibits "A" and "B," respectively.

The issue presented in this Petition concerns the constitutionality of sentencing a juvenile to life imprisonment without the possibility of parole. This Court has already granted review on this precise issue in *Commonwealth v. Batts*, 603 Pa. 65, 981 A.2d 1283 (2009). On November 7, 2011, the United States Supreme Court granted *certiorari* to two cases involving the constitutionality of the sentence of life without parole for a juvenile convicted of capital murder. *See Miller v. Alabama*, \_\_ U.S. \_\_, 2011 WL 5322568 (2011); *Jackson v. Hobbs*, \_\_ U.S. \_\_, 2011 WL 5322575 (2011).<sup>1</sup> This Court should grant the instant petition for allowance of appeal and should consolidate it with three other cases it is holding open pending its decision in *Batts*.

2. The following question is presented by the instant Petition For Allowance Of Appeal:

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<sup>1</sup>On December 6, 2011 this Court issued an Order placing *Commonwealth v. Batts* on hold pending the U.S. Supreme Court's disposition of *Miller* and *Jackson*, *supra*. *See Commonwealth v. Batts*, No. 79 MAP 2009, December 6, 2011 Per Curiam Order at 1.

Is A Sentence Of Life Without Parole When Imposed Upon A Seventeen-Year-Old Child Unconstitutional Under The Constitutions Of Both Pennsylvania And The United States And Under International Law?

3. The facts giving rise to the instant Petition for Allowance of Appeal:

On December 2, 1968, Ms. Wiggins and two male accomplices, Forest Tarver (age seventeen) and Samuel Barlow (age eighteen), entered the Dauphin Deposit Trust Company in Harrisburg, Pennsylvania, and stole, at gunpoint, over \$70,000. During the robbery, a customer grabbed Ms. Wiggins who, in the course of the struggle, shot the customer twice. Mr. Tarver then came and shot the customer again. At the time of the robbery, Ms. Wiggins was seventeen years old, mentally ill, and had a serious drug and alcohol history.

Though Ms. Wiggins was found guilty of first degree murder and sentenced to death on June 5, 1969, a three-judge panel of the Pennsylvania Supreme Court subsequently reduced the sentence to life based on testimony of psychologists and social workers, and based on the age of the defendant.

In 1986, when Ms. Wiggins was thirty-five years old, the Board of Pardons recommended that the Governor commute all of Ms. Wiggins' sentences except her life sentence to "acknowledge the abrupt and remarkable turnabout that took place in this applicant's life in 1981." *See In Re Application of Sharon Wiggins*, Board of Pardons, No. A-9479 (May Session 1986). The Board reported that Ms. Wiggins "has taken advantage of every possible programmatic opportunity at the State Correctional Institute at Muncy." *Id.* The Board suggested commutation of the life sentence might someday be appropriate, recommending "that the life sentence stay in force *until some future time.*" *Id.* (emphasis added).

Ms. Wiggins, who is now sixty-one years old, is currently incarcerated at State

Correctional Institution – Muncy.

4. The reasons for granting this Petition for Allowance of Appeal are as follows:

The important issue presented by this petition is whether it is constitutional under the Pennsylvania and/or United States Constitutions to sentence a child to life imprisonment without parole. This Court heard argument on this issue on December 1, 2010, in *Commonwealth v. Batts*, 603 Pa 65, 981 A.2d 1283 (2009). This Court is also holding open three cases to consider in light of its resolution in *Batts*: *Commonwealth v. Cunningham*, 447 EAL 2009, *Commonwealth v. Romanelli*, 138 EAL 2010, *Commonwealth v. Batzig*, 131 EAL 2010. Moreover, the United States Supreme Court has granted review of two cases challenging juvenile life without parole sentences, in *Miller v. Alabama*, \_\_ U.S. \_\_, 2011 WL 5322568 (2011), and *Jackson v. Hobbs*, \_\_ U.S. \_\_, 2011 WL 5322575 (2011). See note 1, *supra*.

The United States Supreme Court's decision in *Graham v. Florida*, 560 U.S. \_\_\_, 130 S. Ct. 2011, 176 L.Ed. 2d 825 (2010) demonstrates the unconstitutionality of sentencing a child to life imprisonment without parole. Following the Court's earlier decision in *Roper v. Simmons*, 543 U.S. 551 (2005) which had held it unconstitutional to execute a child, *Graham* held that it was unconstitutional to sentence a child to life imprisonment without parole. The Supreme Court found that based upon recent developments in our understanding of children's psychological and physiological maturation, it was improper to impose such harsh adult punishments on children. For this reason, *Graham* struck down as unconstitutional the imposition of the adult punishment of life imprisonment without parole on children. Most recently in *J.D.B. v. North Carolina*, \_\_ U.S. \_\_, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) the Supreme Court held that a juvenile's age was relevant to the *Miranda* custody analysis, again



finding that the traditional adult rules of law do not apply when dealing with children. For the third time in six years, the Court ruled unequivocally that children must be treated differently in our criminal justice system.

Ms. Wiggins was sentenced to life imprisonment in 1969.<sup>2</sup> On July 16, 2010, within sixty days of the United States Supreme Court decision in *Graham* in 2010, Ms. Wiggins, represented by the undersigned counsel, filed her Post-Conviction petition challenging the constitutionality of her life imprisonment sentence in light of *Graham*. Following the denial of that claim by the PCRA Court, Ms. Wiggins timely raised the constitutionality of sentencing a juvenile to life imprisonment without parole on direct appeal.<sup>3</sup>

This Court has already recognized the significance of *Graham*. In *Commonwealth v. Batts*, 603 Pa. 65 (2009), this Court entered the following order:

AND NOW, this 17<sup>th</sup> day of September, 2009, the Petition for Allowance of Appeal is GRANTED, LIMITED TO the issue(s) set forth below. . . .

- (1) Is sentencing a 14-year-old offender to die in prison unconstitutional in light of *Roper v. Simmons*, 543 U.S. 551 (2005)?
  
- (2) Does the mandatory nature of the sentence in this case violate

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<sup>2</sup> On June 25, 1969 Ms. Wiggins was sentenced to death. (Docket Nos. 217, 218, 219, C.D. 1969). Subsequently, a three-judge panel changed the sentence to life imprisonment due to the age of the defendants. On April 2, 1971, after the reduction in sentence, Ms. Wiggins was tried for other charges related to the same underlying offense. She was convicted of aggravated robbery, unlawful carrying of firearms, and conspiracy for which she received a twenty-five year consecutive sentence. In 1985, Ms. Wiggins filed a PCRA petition. On June 13, 1985, the Honorable William W. Lipsitt amended Ms. Wiggins' sentence from life plus a twenty-five year consecutive sentence to life plus a twenty year concurrent sentence and a five year consecutive sentence.

<sup>3</sup> On January 6, 2011, the trial court issued a notice of intention to dismiss the PCRA petition without a hearing. Appellant filed a response on January 25, 2011. On March 10, 2011, the trial court entered an order dismissing Appellant's motion for post-conviction collateral relief without a hearing. On April 4, 2011, Appellant filed this appeal, which was denied on January 11, 2012 by the Superior Court.

[petitioner's] rights under the 8<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution?

This Limited Grant is also RESERVED pending disposition of *Graham v. Florida* and *Sullivan v. Florida*, 129 S. Ct. 2157, 77 USLW 3609 (May 4, 2009).

When *Graham* was decided in May, 2010, this Court established a briefing schedule in *Batts*. This Court subsequently issued an order placing *Batts* on hold pending the United States Supreme Court's disposition of *Jackson v. Hobbs* and *Miller v. Alabama*. This case presents an issue relevant to *Graham* but beyond the grant of review in *Batts*. As in *Batts*, life imprisonment without parole was challenged on federal constitutional grounds. Here, however, it was also challenged on state constitutional and international law grounds. Consideration of the claim on these additional grounds is yet another reason to grant this petition. The Pennsylvania Constitution's prohibition against cruel punishment is violated by sentencing a juvenile to life imprisonment without the possibility of parole. While this Court's decision in *Commonwealth v. Zettlemyer*, 500 Pa. 16, 72-74, 454 A.2d 937, 967 (1982), *cert. denied sub nom., Zettlemyer v. Pennsylvania*, 461 U.S. 970, 103 S. Ct. 2444, 77 L.Ed.2d 1327 (1983), held that Pennsylvania's constitutional ban on cruel punishment was co-extensive with the federal constitutional ban on cruel and unusual punishment, *Zettlemyer* was both pre-*Graham* and pre-*Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887 (1991). *Edmunds* established the proper method to determine if a particular provision of the Pennsylvania Constitution should be construed more broadly than the federal constitutional analog. Hence, it would be appropriate to conduct an *Edmunds* analysis (which *Zettlemyer* did not) to evaluate whether the Pennsylvania cruel

punishment ban should be held coextensive with the federal Eighth Amendment ban on cruel and unusual punishments, particularly when dealing with a juvenile sentence.

Pennsylvania has a long and proud tradition of according juveniles greater protections than adults, as established by numerous decisions of this Court. For example, given juveniles' susceptible nature, contracts entered into by juveniles for items other than necessities are void *ab initio*. *Ruchizky v. DeHaven*, 97 Pa. 202 (1881). Negligence for juveniles has historically been assessed under a more protective standard than for adults. *Kuhns v. Brugger*, 390 Pa. 331, 135 A.2d 395 (1957). Even though all juvenile murder cases start in adult court, a juvenile can petition the adult court to send the case to juvenile court. 42 Pa. Cons. Stat. § 6322 (2005); *Commonwealth v. Pyle*, 462 Pa. 613, 342 A.2d 101 (1975). Special rules govern the admissibility of a confession by a juvenile; the juvenile's age must be considered among the totality of the circumstances regarding whether the confession was voluntary. *Commonwealth v. Williams*, 504 Pa. 511, 521, 475 A.2d 1283 (1984). Moreover, the distinctive treatment of juveniles with respect to police interrogation and confessions was recently underscored by the Supreme Court in *J.D.B. v. North Carolina*, \_\_\_U.S.\_\_\_\_, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) mandating that the age of the juvenile be deemed an 'objective factor' under *Miranda*.

In *Commonwealth v. Kocher*, 529 Pa. 303, 602 A.2d 1308 (1992), this Court vacated the decision of the Court of Common Pleas where the judge had refused to transfer the murder prosecution of a 9-year-old boy back to juvenile court. In its decision this Court was guided by and relied upon the common law presumption that children under the age of 14 are not capable of forming the requisite criminal intent to commit a crime, citing *Commonwealth v. Durham*, 255 Pa. Super. 539, 389 A.2d 108 (1978) (*en banc*), subsequently overruled by, *In re G.T.*, 409 Pa.

Super. 15, 597 A.2d 638 (1991) (*en banc*).<sup>4</sup> While the common law presumption was subsequently explicitly overruled by statute, *see* 42 Pa. Cons. Stat. § 6301 (2005), its very existence demonstrates that Pennsylvania's common law was especially protective of juveniles. This common law protection predated and has existed side-by-side with Pennsylvania's Constitution, and must be considered in interpreting the Pennsylvania Constitution.

The special treatment accorded juveniles under Pennsylvania common law comports with our legislature's determination that juveniles are treated specially under Pennsylvania statutes: 18 Pa. Cons. Stat. § 3206 (2005) (abortion prohibited for people below age 18 without parental consent); 1 Pa. Cons. Stat. § 1991 (2005) (age of majority is 21); 18 Pa. Cons. Stat. § 6308 (2005) (consumption of alcohol prohibited to people less than age 21); 18 Pa. Cons. Stat. § 6305 (2005) (possession and purchase of cigarettes prohibited for people under 18); 13 Pa. Cons. Stat. § 3305 (2005) (infancy is a defense to suit for contract enforcement); 23 Pa. Cons. Stat. § 5101 (2005) (age requirement of 18 to enter into contracts); 75 Pa. Cons. Stat. § 1503 (2005) (age limit of 18 for drivers license free and clear of restrictions); 18 Pa. Cons. Stat. § 6302 (2005) (prohibiting sale or delivery of firearms to people under 18); 18 Pa. Cons. Stat. § 6110.1 (2005) (banning possession of certain firearms for people under 18); 72 Pa. Cons. Stat. § 3761-309 (2005) (sale of lottery tickets to people under 18 prohibited); 10 Pa. Cons. Stat. § 305 (bingo prohibited for people under 18); 4 Pa. Cons. Stat. § 325.228 (2005) (placing pari-mutual bets prohibited for people under 18); 42 Pa. Cons. Stat. § 4502 (2005) (jury duty limited to people 18

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<sup>4</sup> Indeed, the two Justices tersely concurred and wrote (and here their opinion is reprinted in full), "I join the well reasoned opinion of the majority, but would go further and express that the public policy of Pennsylvania does not allow the criminal prosecution of a nine year old child for murder. That it was attempted in this instance shocks my conscience." *Commonwealth v. Kocher*, 529 Pa. 303, 315-16, 602 A.2d 1308, 1315 (1992) (Flaherty and Cappy, JJ., concurring).

and older); 23 Pa. Cons. Stat. § 1304 (2005) (marriage prohibited to those under 18); 63 Pa. Cons. Stat. § 281-29 (2005) (pawning property prohibited for people under 18); 18 Pa. Cons. Stat. § 5903 (2005) (prohibiting sale or delivery of pornography to people under 18); 18 Pa. Cons. Stat. § 6311 (2005) (prohibiting tattoos to people under age 18 without parental consent); 25 Pa. Cons. Stat. § 2811 (2005) (age 18 limit for voting); 20 Pa. Cons. Stat. § 2501 (2005) (age 18 limit for making a will). Pennsylvania case law, Pennsylvania common law and Pennsylvania statutes demonstrate that juveniles in the Commonwealth are not treated the same way as adults because of the recognition that juveniles are less capable of making intelligent and mature judgments and exercising their rights.

It is precisely this well settled and historical understanding regarding the special and distinctive nature of the treatment of juveniles that must inform the constitutional analysis. Hence, while *Zettlemyer* might have ruled that the Pennsylvania constitutional prohibition of “cruel punishment” was co-extensive with the federal constitutional prohibition, Keith *Zettlemyer* was an adult and the decision, therefore, did not take into account the special characteristics of youth. Decided prior to the Supreme Court’s rulings in *Roper*, *Graham* and *J.D.B.*, *Zettlemyer* did not consider the juvenile’s developmental status and can hardly be considered as precedent regarding juveniles. Granting review in this case will allow this Court to consider whether the relevant Pennsylvania Constitution protection is broader than the federal counterpart, and whether our Constitution was violated by the imposition of life imprisonment without parole for a crime committed as a juvenile.

International law is also violated by a juvenile sentence of life imprisonment without parole. In *Graham* the Supreme Court referred to the laws of other countries and to international

authorities as instructive for its interpretation of the Eighth Amendment's prohibition of "cruel and unusual" punishment. The Supreme Court considered the evolution of international law and also the evolution of practice in the community of nations. International law and practice should be considered to determine whether JLWOP is unconstitutional.

International law as expressed through international treaties and other agreements ratified by the United States is the supreme 'law of the land' in the United States and, pursuant to the Supremacy Clause, must be applied by the states in the context of juvenile sentencing. U.S.CONST., Article VI, Clause 2.

Hence, when a treaty and state law conflict, the treaty controls. Pennsylvania must comply with the United States' international law obligations. "One consequence of our form of government is that sometimes States must shoulder the primary responsibility for protecting the honor and integrity of the Nation" in applying an international law obligation of the United States. *Medellin v. Texas*, 552 U.S. \_\_\_, 128 S.Ct. 1346, 1374 (2008) (Stevens, J. concurring).

The prohibition against applying life without parole sentences to juveniles is recognized as an obligation of the United States under the International Covenant on Civil and Political Rights ("ICCPR"), to which the United States is a party.<sup>5</sup> The Committee on Human Rights, the oversight authority for the treaty, determined that the United States is not in compliance with the treaty because it allows juvenile life without parole sentences. It made this determination even

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<sup>5</sup>International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976, ratified by the United States on June 8, 1992. See <http://www2.ohchr.org/english/law/ccpr.htm> (last visited Jan. 30, 2012). The Committee found the U.S. out of compliance with its treaty obligations, in particular Article 24(1) ("every child shall have, without any discrimination . . . the right to such measures of protection as are required by his status as a minor") in applying juvenile LWOP sentences. Concluding Observations of the Human Rights Committee on the United States of America, 87th Sess. held on 27 July 2006, (CCCPR/C/SR.2395), at para. 34.

though the United States had taken a reservation to the treaty allowing states to try juveniles in adult court in “exceptional circumstances.”<sup>6</sup> The Committee also expressed its grave concern “that the treatment of children as adults is not applied in exceptional circumstances only . . .” *Id.*

Moreover, minority juveniles in the United States are subject to discrimination in the application of JLWOP sentences. The rate of African-American youth compared to white youth per 100,000 youths incarcerated in adult prisons is 26 to 2 and youth of color in some jurisdictions receive more than 90% of the JLWOP sentences given. de la Vega and Leighton, *Sentencing our Children to Die in Prison: Global Law and Practice*, 15, [http://www.usfca.edu/law/docs/sentencing\\_our\\_children](http://www.usfca.edu/law/docs/sentencing_our_children) (last visited Jan. 30, 2012). For this reason, the Committee on the Elimination of Racial Discrimination, the official oversight authority for the Convention on the Elimination of Racial Discrimination, to which the United States is a party, determined that JLWOP sentences are incompatible with the United States’ treaty obligations. International law is violated by the imposition of JLWOP sentences.

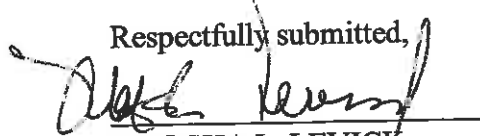
This Petition for Allowance of Appeal presents an important constitutional issue: whether it is constitutional to sentence a child to the adult punishment of life imprisonment without the possibility of parole. This Court is considering this issue in *Batts*, and the United States Supreme Court will soon consider the issue in *Miller v. Alabama* and *Jackson v. Hobbs*, *supra*. This Court is holding open petitions for review in three other cases that present the issue: *Cunningham*, *Romanelli* and *Batzig*, *supra*. This Court should grant review here to consider the constitutionality of the sentence on federal, state and international law grounds

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<sup>6</sup> Human Rights Committee Concluding Observations, at para. 34. In ratifying the ICCPR the United States declared, “The United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14.” See <http://www2.ohchr.org/english/law/ccpr.htm> (last visited Jan. 30, 2012).

WHEREFORE, for all of the foregoing reasons, this Court should grant the instant Petition for Allowance of Appeal and reverse the order of the Superior Court.

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