

**IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA**

<p>COMMONWEALTH OF PENNSYLVANIA,</p> <p style="text-align: center;">Respondent,</p> <p style="text-align: center;">v.</p> <p>AARON PHILLIPS,</p> <p style="text-align: center;">Petitioner.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p><u>Criminal Division</u></p> <p>CP-46-CR-0025720-1986</p>
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 MONTGOMERY COUNTY
 PENNSYLVANIA
 CLERK OF COURT

**SECOND AMENDED PETITION FOR
HABEAS CORPUS AND POST-CONVICTION RELIEF**

Petitioner Aaron Phillips, through counsel, files this Second Amended Petition for Habeas Corpus and Post-Conviction Relief. Petitioner is also filing a Motion for Leave to Amend on this date. In support of this Second Amended Petition, Petitioner states as follows:

1. Petitioner is currently incarcerated at SCI-Frackville in Frackville, Pennsylvania, serving a mandatory sentence of life imprisonment without parole. Petitioner was convicted of guilty of second degree murder, aggravated assault, simple assault, robbery, burglary, theft by unlawful taking, criminal conspiracy, and recklessly endangering another person related to an offense that took place on July 9, 1986, when Petitioner was seventeen years old. Petitioner's date of birth is May 23, 1969.

2. In his Petition filed August 20, 2012 and Amended Petition filed December 5, 2013, Petitioner sought *vacatur* of his life sentence and imposition of a new constitutional sentence based on the United States Supreme Court's recent decision in Miller v. Alabama, 567

U.S. ___, 132 S. Ct. 2455 (2012), which holds that a mandatory life-without-parole sentence for a juvenile violates the Eighth Amendment to the United States Constitution.

3. Petitioner files this Second Amendment based on changes in the law since the filing of his Petition and First Amendment.

4. In Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (Jan. 25, 2016), the Supreme Court of the United States declared that Miller announced a new substantive constitutional rule that must be applied retroactively on state collateral review.

5. The United States Supreme Court's decision in Montgomery effectively overruled the Pennsylvania Supreme Court's decision in Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013) (holding that Miller does not apply retroactively to post conviction petitioners in Pennsylvania).

6. The Montgomery Court noted that States have discretion to reform their statutory sentencing and/or parole structures to accommodate Miller's constitutional rule. Montgomery, 136 S. Ct. at 736. For those convicted prior to June 24, 2012, however, Pennsylvania has chosen not to reform its statutes. See 18 Pa.C.S. § 1102.1 (Act 204-2012, eff. Oct. 25, 2012).

JURISDICTION

7. This Court has jurisdiction over this Petition pursuant to 42 Pa. C.S. § 9545, which states the following in pertinent part:

(b) Time for filing petition.

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

8. Petitioner's conviction became final at the conclusion of his direct appeal in 1991. See Phillips v. Vaughn, 55 Fed. Appx. 100 (3d Cir. 2003). This Petition is timely because Petitioner meets the requirements of 42 Pa. C.S. § 9545(b)(1)(iii), due to the constitutional right recently recognized by the United States Supreme Court in Miller and held retroactive by the United States Supreme Court in Montgomery.

9. Petitioner initiated these habeas and post-conviction proceedings in a Petition filed on August 20, 2012—within 60 days of the Miller decision.

10. Petitioner files this Second Amendment within 60 days of the Montgomery decision.

11. This Court has jurisdiction under 42 Pa.C.S. § 9545(b)(1)(iii) whether the 60-day statutory time limit runs from the date of the Miller decision or the date of the Montgomery decision.

12. On February 11, 2016, the Supreme Court of Pennsylvania order that Petitioner be granted leave to amend his Petition to address the Montgomery decision: “To the extent necessary, leave is to be granted to amend the post-conviction petition to assert the jurisdictional provision of the Post Conviction Relief Act extending to the recognition of constitutional rights by the Supreme Court of the United States which it deems to be retroactive. See 42 Pa.C.S. § 9545(b)(1)(iii).”

RELIEF REQUESTED

13. Petitioner's mandatory sentence of life without parole, imposed for an offense committed before he was 18 years old, violates his rights under the United States and Pennsylvania Constitutions.

14. Based on the Supreme Court's decisions in Miller and Montgomery, Petitioner seeks immediate *vacatur* of his mandatory life sentence and an order that he be individually resentenced.

15. This Court may not impose upon Petitioner a new sentence that lacked a constitutional or statutory basis at the time of the offense underlying Petitioner's conviction. That would constitute an improper judicial assumption of the legislative function, it would violate separation of powers principles embedded in the federal and state constitutions, and it would deprive Petitioner of liberty without due process of law under the federal and state constitutions. U.S. Const. amend. XIV; Pa. Const. art. 1, § 9.

16. This Court may not resentence Petitioner under a legislative scheme that was enacted after the date of the offense, as this would violate state and federal prohibitions against *ex post facto* laws. U.S. Const. amend. XIV; U.S. Const. art. 1, § 9; U.S. Const. art. 1, § 9; Pa. Const. art. 1, § 17.

17. Because no constitutional penalty existed under Pennsylvania law for Petitioner's conviction at the time of the offense in Petitioner's case, this Court may not resentence Petitioner above the statutory maximum penalty allowed for any lesser-included offense(s) that existed at the time of the offense. Accordingly, this court may not resentence Petitioner above the statutory maximum penalty associated with the felony underlying his second degree homicide conviction.

WHEREFORE, based on the foregoing, Petitioner respectfully requests that this Court:

- a) vacate his sentence of life without parole;
- b) order an individualized sentencing hearing;
- c) order that Petitioner be re-sentenced on the lesser-included offense the felony underlying the second-degree homicide offense;
- d) permit Petitioner to amend this Petition as necessary; and
- e) order such other relief as appropriate.

Respectfully submitted:



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