

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

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COMMONWEALTH OF PENNSYLVANIA,

SUPREME COURT
WESTERN DISTRICT

VS.

RICHARD LEE OLDS

**APPEAL FROM THE SUPERIOR COURT'S ORDER DENYING
PETITIONER'S MOTION FOR BAIL PENDING APPEAL, 1772 WDA
2016/1773 WDA 2016, DATED NOVEMBER 30, 2016.**

Filed on behalf of:
Richard Lee Olds, Petitioner

Counsel of Record for this Party:

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PA I.D. #50379

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Appeal from the Superior Court's Order Denying Petitioner's Motion for Bail Pending Appeal, 1772 WDA 2016/1773 WDA 2016, Dated November 30, 2016.¹

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF SAID COURT:

The above named Petitioner, Richard Lee Olds, by his attorneys, Wendy L. Williams and Marc Bookman, respectfully represents:

1) On November 21, 2016, pursuant to a sentencing hearing for Petitioner and a prompt filing of a Notice of Appeal, the Honorable David Cashman granted non-monetary appellate bond. Upon the Commonwealth's appeal of the setting of bond, however, Judge Cashman vacated his order. By this Motion, Petitioner requests that this Court grant non-monetary appellate bond, or in the alternative direct the lower court to conduct a bail hearing for Petitioner, who bases his request on the below facts and law:

¹ Petitioner has simultaneously filed a Petition for Extraordinary Jurisdiction in this Court and the instant Motion For Bail Pending Appeal. Petitioner also has an appeal pending in the Superior Court at 1772 WDA 2016 and 1773 WDA 2016. Petitioner prays that this Court exercise its Extraordinary Jurisdiction and grant this Motion pending disposition the Extraordinary Jurisdiction petition. Should this Court choose not to exercise Extraordinary Jurisdiction, Petitioner requests that this Court grant the instant Motion pending disposition of the Superior Court appeal, or remand this Motion to the sentencing court for a hearing on bail.

2) Petitioner Olds was 14 years old on October 9, 1979, the night of the crime that is the subject of the instant Motion. The other participants in this crime – Todd Allen and Claude Bonner - were two and four years older than he was, respectively. Petitioner's role in the crime was shockingly minimal, assuming he had any role at all. The crime itself was prompted when Petitioner said he was hungry at the end of the night, and his request prompted the two juveniles and the 18-year old to go to the Fort Wayne Cigar Store, an all night food store on the order of a modern 7-11. When co-defendant Allen suggested that he might rob someone, Petitioner sarcastically responded "yeah, right." (N.T. 388). Petitioner bought a bag of potato chips and joked with the cashier (N.T. 239, 251); when he saw co-defendant Allen pull a gun on the victim, he ran away. (N.T. 275, 396-397). These facts were corroborated by the cashier, an eyewitness, and the co-defendant driver, all of whom were Commonwealth witnesses at trial.

3) On April 2, 1980, Petitioner was convicted of Second Degree Murder, Robbery, and Conspiracy. Trial judge Samuel Strauss, a legendarily tough sentencing judge, did not want to give Petitioner a life sentence. He asked the Pittsburgh District Attorney Robert Colville to negotiate a lower sentence, but the District Attorney refused, stating that Petitioner would be in prison for 17 years and "probably much less (Exhibit A)." This was a misstatement of the law.

4) On April 28, 1981, Petitioner was sentenced to life imprisonment without the possibility of parole for his conviction of Second Degree Murder, and given no further penalty for the charges Robbery and Conspiracy by the Honorable Judge Samuel Strauss, who had no choice but to impose a sentence of life

imprisonment without the possibility of parole. Judge Strauss stated that it was his intention to write a letter on Olds' behalf to the Pardon Board. (N.T. 7, 4/28/81). Petitioner has now been in prison for 37 years.

5) On November 21, 2016, pursuant to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), Petitioner was the subject of a new sentencing hearing before the Honorable David Cashman.

6) At that sentencing hearing, Petitioner introduced into evidence a letter from the trial prosecutor asking for Petitioner's release (Exhibit B). In addition, letters and certificates were introduced establishing that Petitioner's behavior in prison over 37 years has been outstanding, that he had a job upon his release (Exhibit C), and that a re-entry program was prepared to work with him as well (Exhibit D). Finally, Petitioner's counsel represented that he had been given information from the parole board that Petitioner could be paroled without being in custody.

7) The sentencing judge sentenced Petitioner to 20 years to life, denying Petitioner's request that he be sentenced to 15-30 years, which the judge declared would be an illegal sentence (N.T. 27-28, 11/21/16). Nonetheless, the sentencing judge stated that "to call [Petitioner's] case compelling would be an understatement (N.T. 45, 11/21/16);" and noted that he would grant appellate bond as soon as the defense took an appeal; Notice of Appeal was promptly filed, and appellate bond was set.

8) The Commonwealth appealed the setting of bond before Petitioner's release could be effectuated, and upon the Commonwealth's appeal the sentencing judge vacated his grant of appellate bond. The Superior Court had taken no action on

the Commonwealth's appeal before the bond was vacated. Petitioner remains in custody at S.C.I. Somerset.

9) Petitioner is entitled to bail pending this Court's exercise of Extraordinary Jurisdiction or his Superior Court appeal. The Commonwealth argued in its sentencing memorandum, and again in court at the sentencing hearing, that the Judge's sentence was controlled by *Commonwealth v. Batts*, 620 Pa.115 (2013). This is incorrect. As noted in *Batts* itself:

[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, see *Miller*, --- U.S. at ----, 132 S.Ct. at 2476 (Breyer, J., concurring) (discussing additional constitutional concerns connected with the imposition of life-without-parole sentences on juveniles convicted of murder as a result of participation in a felony who have neither killed nor intended to kill), ***are not implicated in the present matter*** (emphasis added).

Petitioner did not kill or intend to kill, and the Commonwealth does not contend that he did. Thus *Batts* doesn't apply to the instant case.

10) The Commonwealth also argued that *Commonwealth v. Secreti*, 134 A.3d 77 (Pa. Super. 2016) controlled, requiring the sentencing court to follow *Batts*. This too is incorrect. Just as *Batts* dealt with sentencing for juveniles convicted of First Degree Murder, *Secreti* is also a First Degree Murder case. *Secreti* does not

say a single word about the sentencing of a juvenile who did not kill or intend to kill.

11) The Commonwealth claimed in its Emergency Application For Relief Pursuant To Pa.R.A.P 123 and 1762 that Petitioner was not eligible for bail for two reasons: that the appellate bond granted by the sentencing judge (now vacated) was pursuant to the Post Conviction Relief Act; and that bail was precluded by Article 4, Section 14 of the Pennsylvania Constitution.

12) The Commonwealth cites *Commonwealth v. Bishop*, 829 A.2d 1170 (Pa. Super. 2003) to argue that the now vacated Order was pursuant to the PCRA. *Bishop* is not applicable, as it deals with the trial court's jurisdiction for granting bail while the case was in a higher court. In addition, *Bishop* says nothing at all to support the Commonwealth's claim that a petitioner is not entitled to bail under an Order entered pursuant to the PCRA; indeed, 42 Pa.C.S. 9546 specifically allows for bail. *Bishop* is, purely and simply, a case that deals with appropriate jurisdiction. There is no doubt that this Court has jurisdiction to order appellate bond, and that the lower court would similarly have jurisdiction if this Court remanded this Motion for a bail hearing there.

13) The Commonwealth also relies on Article 1, Section 14 of the Pennsylvania Constitution. This reliance is misplaced. The constitutional amendment in question came into effect in 1998, 14 years before *Miller v. Alabama*, 132 S.Ct. 2455 (2012), ruled that mandatory life sentences for juveniles were unconstitutional. While juvenile sentences of life without parole are still constitutional after a sentencing hearing wherein the "*Miller* factors" are considered, such sentences can no longer be mandatory.

14) Should Petitioner lose his appeal, he will not receive a life sentence, but rather a sentence of 20 years to life, for which he has already served 37 years. When Article 1, Section 14 was amended in 1998, all life sentences in Pennsylvania were without parole. In short, the language cited by the Commonwealth (“...for which the maximum sentence was life imprisonment...”) applied to all First and Second Degree sentences, for which there was no parole by law; the sentence received by Petitioner did not exist under Pennsylvania law when Article 1, Section 14 was amended. The clear intent of Article 1, Section 14 is to preclude bail when defendants are looking at a likely life without parole sentence. Arguing that such language applies in the instant case, where Petitioner has already done 17 years more than his minimum, has adjusted extraordinarily well to prison, and will almost surely be paroled, would be the triumph of form over substance.

15) Applying any other logic would place the Pennsylvania Constitution in conflict with Title 61, Section 6137, which begins: “(1) The board may parole subject to consideration of guidelines established under 42 Pa.C.S. Section 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.” No one contests the obvious fact that Petitioner is eligible for parole, nor that others similarly situated have been paroled. Thus, Petitioner strongly believes that this Court has reason and jurisdiction to grant bail, or to remand this Motion with the instruction that Petitioner is eligible for bail if the sentencing court again believes that bail is appropriate.

16) As already noted above, Petitioner believes that he has a strong likelihood of prevailing in this appeal. The Commonwealth's argument that *Batts* controls a sentencing for a juvenile who did not kill or intend to kill is flatly wrong. Even *Batts* notes that "as a policy matter, ...*Miller*'s rationale—emphasizing characteristics attending youth—militates in favor of individualized sentencing for those under the age of eighteen both in terms of minimum *and maximum* sentences (emphasis added)." The sentencing judge wrongly held that a sentence involving a maximum less than life imprisonment was illegal. Indeed, the Commonwealth's position that every juvenile who did not kill or intend to kill must receive a maximum sentence of life imprisonment is a violation of *Miller*.

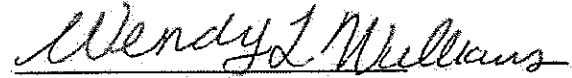
17) The recent case of *Songster v. Beard*, 2016 WL 4379233 (August 17, 2016), properly analyzed why the Commonwealth's position is unconstitutional:

Fixing the maximum sentence at life permits the Parole Board to deny parole, effectively working to imprison the defendant for the duration of his life. As long as the Parole Board has the authority to refuse to grant parole, life without parole remains a possibility regardless of the individual's peculiar situation. If the sentencing court finds that the defendant is not corruptible and not incorrigible, it must impose a maximum sentence less than life to reflect that finding. It can not avoid determining whether the defendant is irreparably corrupt and permanently incorrigible. Fixing the maximum sentence at life permits the Parole Board to deny parole, effectively working to imprison the defendant for the duration of his life. As long as the Parole Board has the authority to refuse to grant parole, life without parole remains a possibility regardless of the individual's peculiar situation. If the sentencing court finds that the defendant is not corruptible and not incorrigible, it must impose a maximum sentence less than life to reflect that finding.

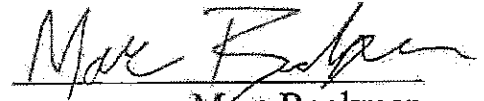
WHEREFORE, it is requested that this Court grant non-monetary Appellate Bond, pending disposition of Petitioner's Extraordinary Jurisdiction petition or

his appeal in the Pennsylvania Courts; or in the alternative, that this Court remand this Motion to the sentencing court for consideration of bail.

Respectfully submitted,



Wendy Williams



Marc Bookman
Counsel for Petitioner

Colville said he sympathizes with Strauss, noting "sentencing is probably a judge's most difficult role. But the law is the law.

"Besides, the standard of life imprisonment in this state is not prison for the rest of your natural life. With good behavior, he could be out in 17 years and maybe far less."

Clipped By:



wendy_williams_law
Tue, Nov 15, 2016

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November 16, 2016

The Honorable David Cashman
Administrative Judge of Criminal Division
Court of Common Pleas of Allegheny County
Allegheny County Courthouse
Grant Street
Pittsburgh, PA 15219

Re: *Commonwealth of Pennsylvania v. Ricky Lee Olds*, CC# 1979-06857

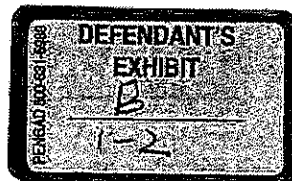
Your Honor,

I am Of Counsel of the Law Firm of Meyer, Darragh, Buckler, Bebenek, & Eck, PLLC., having practiced law for forty three (43) years, with a concentration in Criminal Law. From 1974-1980, I served as a prosecuting attorney, culminating in my appointment Deputy District Attorney for Complex Litigation. As such I prosecuted sixty three (3) Homicide Cases. In later years, as defense counsel, I litigated another two hundred (240) such cases, to include Capital Cases. In 1979, I was the Attorney for the Commonwealth in the above-captioned case.

Prior to and at the time of the trial/sentencing, I was aware of many of the mitigating factors that are of record in this case, to include the weight and strength of the evidence against Mr. Olds as a co-conspirator in a Felony Murder, his age, and other salient facts. At that time, I exercised my prosecutorial discretion to offer Olds a Plea Agreement to enter a plea of guilty to the reduced or lesser included charge of Murder of the Third Degree. The exclusive reason for such offer was to afford the accused that opportunity to avoid the mandatory life imprisonment sentence that was commensurate with a conviction for the crime of Murder of the Second Degree. I was somewhat taken aback when his proposed Agreement was rejected by the Defense. The case was then fairly tired, and verdict rendered. Personally, however, I believed that the mandatory sentence was unjust.

At that time, there was no question that the sentence was mandatory. However, it is presently unclear in my mind whether parole eligibility was ever applicable to life sentences for Second Degree Murder convictions. During the 1970's, parole eligibility was often required with many mandatory types of otherwise "mandatory" sentences.

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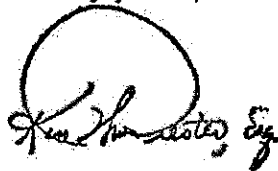
The minimums were mandatory, while the maximums were discretionary with the Parole Board. We often heard the term - "after serving two-thirds (2/3rds) of the sentence." In the years thereafter, it became abundantly clear that there was no parole option for a life sentence, without distinction between First and Second Degree homicides.

Over my career, I became aware of certain post-conviction proceedings involving Mr. Olds. It was my personal hope that relief would have been afforded Mr. Olds, in the form of a new-trial followed by a plea to the original offer - Murder of the Third Degree (with time served). He was not successful. Most recently, I have reviewed historical documents and decisional authorities that have resulted in the instant re-sentencing proceedings. Being now aware of additional mitigating circumstances that have transpired and accumulated over the past thirty seven (37) years, to include his adjustment to incarceration, hardship on the family, remorse, etc. I can unequivocally state that I recommend that relief should be granted. This relief to come in the form of a sentence tantamount to that extended in the original Plea Agreement - he serves a minimum of ten (10 years, to be released on parole at the earliest possible time thereafter, but not more than twenty (20) years).

Your Honor, I categorically believed that this proposed disposition was in the interest of justice in 1979. I can state with certainty that a similar disposition would be so warranted in 2016.

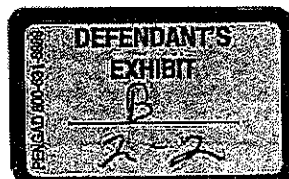
Your professional courtesies extended to me over the course of my career have been greatly appreciated.

Sincerely yours,



Kim William Riester, Esq.

KWR/ds
101155/Olds



C&F

PARTNERSHIP

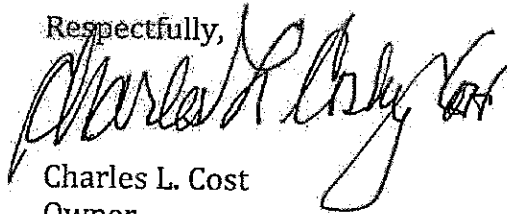
November 21, 2016

The Honorable Judge Cashman
Allegheny County Courthouse
436 Grant Street, Room 308
Pittsburgh, PA 15219

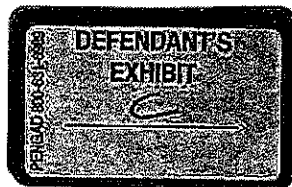
Dear Judge Cashman:

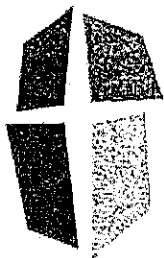
I am pleased to inform the Court that Mr. Richard "Ricky" Olds has a job with C&F Partnership waiting for him upon his hopeful release today. He will be employed as a maintenance worker for our commercial real estate properties, which fits well with his skills and abilities. I have reviewed Mr. Olds' records carefully, and feel confident that he will be an asset to my company; all of us at C&F Partnership look forward to assisting Mr. Olds as he reintegrates to society.

Respectfully,



Charles L. Cost
Owner





Allegheny Center ALLIANCE CHURCH

following Jesus in diverse community

November 16, 2016

To Whom This May Concern:

We, Aftercare Jail and Prison Ministry Support Group strive to find the best ways to walk along side of those who have a criminal background history. We aim to *Educate, Equip* and *Empower* in the following ways:

- By sharing the Gospel of Jesus Christ;
- Providing help, hope, healing, and resources;
- To provide a safe place for attendees to express real issues in a non-judgmental environment while providing confidentiality, understanding that YOU are not alone.

We have resources such as employment, housing, and counseling for individuals just released from jail or prison. We believe true rehabilitation begins in the heart, so ALL are welcomed to attend our support group at Allegheny Center Alliance Church. We look forward to working with Mr. Ricky Olds.

Sincerely,

Michael Gregory

Michael Gregory,

Coordinator



WORSHIP

GROW

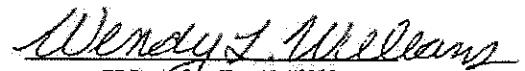
SERVE

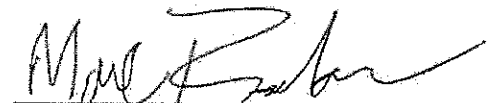
PROOF OF SERVICE

I herby certify that a true and correct copy of the attached and foregoing Appeal from the Superior Court's Order Denying Petitioner's Motion for Bail Pending Appeal, 1772 WDA 2016/1773 WDA 2016, Dated November 30, 2016 was served upon the following persons in the following manner, this 20th day of December, 2016, which services satisfies the requirements of Pa.R.A.P. 121:

DDA Ronald M. Wabby, Jr.
Allegheny County District Attorney's Office
401 Allegheny County Courthouse
436 Grant Street
Pittsburgh, PA 15219
Via Hand Delivery and E-Mail – rwabby@alleghenycountyda.us

Mr. Ricky Lee Olds
AP 5288
SCI Somerset
1600 Walter Mill Road
Somerset, PA 15510
Via U.S. Mail


Wendy L. Williams


Marc Bookman

