

COMMONWEALTH OF PENNSYLVANIA
IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA

Vs.

QU'EED BATTS,

Appellant

:
:
: No. 1764 EDA 2014
:
:
:

Trial Court Docket No: CP-48-CR-1215-2006

APPELLANT'S REPLY TO COMMONWEALTH'S APPELLATE BRIEF

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ORAL ARGUMENT REQUESTED

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Appellant's Reply to the Commonwealth's Appellate Brief

This reply brief will address four topics: (1) the Commonwealth's claim that the Defense's challenge to the sufficiency of the evidence is actually a challenge to the discretionary aspects of sentencing (2) the impact of this Court's decision in *Commonwealth v. Seagraves* (3) the Commonwealth's response to the Defense's claim that the re-sentencing proceeding was unconstitutional and (4) the Commonwealth's failure to rebut the Defense's objections to the competency of its expert witness.

1. Because the existence of a "substantial question" can be determined from the Appellant's brief, this Court can exercise its discretion to review the merits of his discretionary LWOP sentence.

In their principal brief, the Defense first argues that the burden of proof for a juvenile life-without-parole (LWOP) proceeding under *Miller v. Alabama* can only be "beyond a reasonable doubt," the same standard applied during a capital proceeding. The basis for this claim is (a) *Miller's*

conclusion that individualized sentencing is required by *Graham's* comparison of juvenile LWOP to capital punishment (b) the gravity of the private interest at stake and (c) the "beyond a reasonable doubt" burden of proof established by the legislature for capital proceedings.¹

Otherwise, a juvenile facing LWOP will have less constitutional protection than an adult facing capital punishment. Applying this standard, the Defense then argues that the evidence was insufficient to establish "beyond a reasonable doubt" that Qu'eed Batts is "the rare juvenile offender whose crime reflects irreparable corruption."²

In opposition, the Commonwealth asserts that this claim is actually a challenge to the discretionary aspect of Judge Koury's sentence, subject to an abuse of discretion standard of review. The Commonwealth contends that (a) the Defense has failed to preserve this issue (b) the claim fails to present a "substantial question" and (c) the underlying claim is without merit. Although the Defense believes they have correctly framed the issue, they will address these contentions.

To start, the Commonwealth correctly observes that there is no automatic right of appeal from the discretionary aspects of a sentence.³ Rather, "Allowance of appeal may be granted at the discretion of the

¹ See Appellant's Br. at pp. 52-55; 89-93.

² See Appellant's Br. at pp. 48-86.

³ See 42 Pa.C.S. § 9781(b).

appellate court where it appears that there is a substantial question that the sentence imposed is not appropriate under this chapter.”

To satisfy this requirement, an appellant must set forth a concise statement of reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence.⁴ The omission of a Rule 2119(f) statement is not fatal if the presence or absence of a substantial question can easily be determined from the appellant’s brief.⁵ This Court is inclined to review a colorable argument that the trial court’s sentence is inconsistent with the sentencing code or the norms underlying the sentencing process.⁶

In *Commonwealth v. Seagraves*, this Court held that a challenge to the trial court’s application of factors when re-sentencing under *Miller* and *Batts* raises a “substantial question.”⁷ The Defense submits that the following passages in their principal brief advance a colorable claim that Judge Koury committed an abuse of discretion by (a) ignoring and misapplying the law (b) exercising his judgment for reasons of partiality, bias, or ill will or (c) arriving at a manifestly unreasonable decision:

- At pages 50-52, the Defense argues that Judge Koury allowed the cold-blooded nature of the homicide to overpower mitigating arguments based on youth in contravention of the U.S. Supreme

⁴ *Commonwealth v. Davis*, 734 A.2d 879 (Pa. Super. Ct. 1999).

⁵ *Id.* at 882.

⁶ *Id.*

⁷ *Commonwealth v. Seagraves*, 103 A.3d 839 (Pa. Super. Ct. 2014). The Defense concedes that it overlooked this decision when it asserted the absence of any Pennsylvania decision reviewing a post-*Miller* discretionary LWOP sentence. Nevertheless, as discussed below, the Defense maintains that *Seagraves* does not address the key issues raised in this appeal.

Court's recognition of categorically diminished juvenile culpability.

- At pages 55-59, the Defense argues that, absent a competent expert opinion that Qu'eed Batts is not amenable to rehabilitation, Judge Koury must have relied on his own subjective determination that Mr. Batts is incorrigible, in contravention of the Eighth Amendment.
- At pages 55-65, the Defense argues that Judge Koury ignored or misapplied *Miller* by imposing a LWOP sentence despite Batts' demonstrated capacity for rehabilitation.
- At pages 65-71, the Defense argues that Judge Koury misapplied the law and ignored the record by rejecting duress as a mitigating factor.⁸
- At pages 71-80, the Defense argues that Judge Koury misapplied the law and ignored the record by rejecting gang affiliation as a mitigating factor and giving only limited consideration for youth and immaturity.
- At pages 81-85, the Defense argues that Judge Koury misapplied the law and ignored the record by rejecting Batts' youthful

⁸ In footnote 10 of its brief, the Commonwealth attempts to undermine the applicability of *Commonwealth v. Bullicki*, 513 A.2d 990 (Pa. Super. Ct. 1986), cited by the Defense for the proposition that reduced deference to a trial court's factual findings is warranted where the sentencing judge did not preside over the trial. In so doing, the Commonwealth omits the key passage relied upon the Defense for this proposition:

"Although we did not observe the defendant at the sentencing hearing, we are otherwise in the same position as the sentencing judge: we were absent from the trial and must rely on the transcribed notes of testimony, the presentence report, and other documents which constitute the record in this case." 513 A.2d at 419.

That is precisely the situation Judge Koury was in—having to make factual determinations based solely on a review of transcripts. For this reason, the Defense maintains that his factual determinations, e.g., no duress in connection with the homicide, are properly subject to reduced deference.

incompetence when interacting with the police as a mitigating factor.⁹

- At pages 85-86, the Defense argues that Judge Koury misapplied the law and ignored the record in finding that Batts' prison record was an aggravating factor.
- At pages 86-89, the Defense argues that Judge Koury abused his discretion by (a) imposing a LWOP sentence (b) allowing the brutal nature of the homicide to overpower mitigating arguments based on youth (c) imposing a LWOP sentence without a competent expert opinion and (d) imposing LWOP based on a subjective determination of incorrigibility.

Each argument is supported with citations to the record and the applicable authority. Accordingly, the Defense submits that they have raised a "substantial question" that Judge Koury misapplied the factors outlined in *Miller* and *Batts*. This Court is therefore at liberty to review the merits of this discretionary LWOP sentence.

2. The *Seagraves* decision is not dispositive with regard to the standards of proof and review for a post-*Miller* juvenile LWOP sentencing.

The Commonwealth points out that the Defense erred when it asserted that there have been no post-*Miller* decisions in Pennsylvania reviewing the

⁹ Although the Commonwealth asserts that it is "ridiculous" to argue that Mr. Batts may not have been charged with first-degree murder without his confession, the Defense notes that Vernon Bradley, the senior "Bloods" member who ordered Batts to commit the murder, plead guilty to two counts of criminal solicitation, for which he received 20 to 40 years' imprisonment. Unlike Batts, who provided a full written and videotaped confession in less than two hours of interrogation, Bradley never admitted to anything during his hours of interrogation by the police. The Defense submits that this outcome is attributable to Batts' youthful immaturity, as recognized by the U.S. Supreme Court in *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011).

discretionary imposition of juvenile LWOP. The Defense acknowledges that it overlooked this Court's November 2014 panel decision in *Commonwealth v. Seagraves*, 103 A.3d 839 (Pa. Super. Ct. 2014). In *Seagraves*, a divided Superior Court panel held that the trial court did not abuse its discretion in re-imposing LWOP for a 17-year-old convicted of first-degree murder for stabbing his victim 45 times and slashing him with a meat cleaver.¹⁰

The Defense disagrees with the Commonwealth's claim that *Seagraves* is conclusive with regard to the appropriate standard of review. In *Seagraves*, the defense concedes the abuse of discretion standard of review in his statement of the question presented on appeal:

"Whether the [trial] court abused its discretion when it sentenced Appellant, who was a juvenile at the time of the crime, to life without parole without properly taking into consideration mitigating factors listed in *Miller v. Alabama*."¹¹

In contrast, this appeal presents the following issues:

- Whether the evidence was insufficient to establish beyond a reasonable doubt that Defendant is one of the rare incorrigible juveniles who deserve a life without parole sentence?
- Whether the Defendant's re-sentencing proceeding was unconstitutional because it provided him with fewer procedural safeguards than an adult facing capital punishment?

¹⁰ In his dissenting opinion, former Justice Fitzgerald concluded that the trial court's equivocal conclusion concerning the defendant's capacity for rehabilitation warranted a remand.

¹¹ *Commonwealth v. Seagraves*, 103 A.3d 839, 841 (Pa. Super. Ct. 2014).

- Whether the Defendant's sentence of life without parole violated the Pennsylvania Supreme Court's directive that Defendant be sentenced to "a mandatory maximum sentence of life imprisonment as required by Section 1102(a), accompanied by a minimum sentence determined by the common pleas court upon resentencing?"

None of these issues were raised or addressed in *Seagraves*.

Consequently, this Court did not decide if the application of the highly deferential abuse of discretion standard contravenes the Eighth Amendment and *Miller's* instruction that juvenile LWOP should be "uncommon."¹² The Defense therefore submits that this novel question is properly before the Court.

3. The Commonwealth cannot rebut the Defense's claim that the resentencing provided Qu'eed Batts with less constitutional protection than an adult facing capital punishment.

Throughout their brief, the Defense argues that anything below the death penalty standards of proof and review for a juvenile LWOP proceeding would violate the Eighth Amendment. In response, the Commonwealth characterizes this argument as "patently without merit."

The Commonwealth raises the following points in opposition: (a) defense counsel's lack of input as to which judge would preside over the resentencing hearing is irrelevant (b) to date, no Pennsylvania court has held that a juvenile facing LWOP is entitled to the same constitutional protection

¹² *Miller*, 132 S.Ct. at 2469.

as an adult facing capital punishment (c) only the legislature can enact procedural safeguards and (d) the legislature has determined that a juvenile LWOP proceeding does not require a jury, a reasonable doubt burden, and automatic review by the Pennsylvania Supreme Court.

To start, the Commonwealth misinterprets the Defense's argument about the right to have "input" concerning the identity of the sentencer. In this regard, 42 Pa.C.S. § 9711(b) provides:

"If the defendant has waived a jury trial or pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose unless waived by the defendant with the consent of the Commonwealth, in which case the trial judge shall hear the evidence and determine the penalty in the same manner as would a jury as provided in subsection(a)." (emphasis added).

Unlike an adult facing capital punishment, Qu'eed Batts did not have the opportunity to have a jury decide if he should receive LWOP. It is therefore indisputable that he had fewer procedural safeguards than an adult facing capital punishment. This omission renders his re-sentencing unconstitutional in light of the U.S. Supreme Court's comparison of juvenile LWOP to the death penalty.¹³

Turning to the Commonwealth's second argument, the fact that Pennsylvania has yet to adopt a "beyond a reasonable doubt" burden of proof for juvenile LWOP does not preclude this Court from adopting that

¹³ See *Miller*, 132 S.Ct. 2455 at 2466 ("*Graham's* '[t]reat[ment] [of] juvenile life sentences as analogous to capital punishment' (citation omitted) makes relevant here a second line of our precedents, demanding individualized sentencing when imposing the death penalty.").

standard. The Defense notes that the Commonwealth does not argue that a juvenile facing LWOP is not entitled to the same constitutional protection as an adult facing capital punishment. Instead, the Commonwealth merely observes that no Pennsylvania court has yet reached this conclusion.¹⁴

With regard to the Commonwealth's third and fourth arguments, the Defense disputes the notion that the legislature's determination is conclusive with regard to the procedure needed to impose a valid juvenile LWOP sentence. "It is emphatically the province and duty of the judicial department to say what the law is."¹⁵ This Court can and should decide whether the Eighth Amendment entitles Mr. Batts to the same procedural protections as an adult facing capital punishment.¹⁶

4. The Commonwealth failed to rebut the Defense's objections to the competency of Dr. Michals' expert testimony.

Under *Miller v. Alabama*, a trial court must find that a juvenile's crime reflects "irreparable corruption" to impose a LWOP sentence.¹⁷ The Defense argues that this difficult determination requires the support of a competent and unequivocal expert opinion that a defendant is incapable of rehabilitation within the adult criminal justice system.

¹⁴ See Commonwealth's Br. at pp. 37-40.

¹⁵ See, e.g., *Marbury v. Madison*, 5 U.S. 137 (1803).

¹⁶ Absent a valid procedure for imposing a minimum sentence, this Court must vacate the LWOP and remand for re-sentencing without a minimum sentence. See *Commonwealth v. Newman*, 99 A.3d 86 (Pa. Super. Ct. 2014) (striking down Pennsylvania mandatory minimum sentencing statute in its entirety after U.S. Supreme Court's decision in *Alleyne v. United States*).

¹⁷ 132 S.Ct. 2455 at 2469.

In pages 55-59 of its brief, the Defense points out numerous shortcomings in the expert opinion of Dr. Michals, the lone expert who concluded that Qu'eed Batts is not amenable to rehabilitation:

- In his written report, Dr. Michals failed to offer an opinion on the outcome of the re-sentencing or Qu'eed Batts' amenability to rehabilitation within the adult criminal justice system.
- His dismissive assessment of the scientific research into adolescent behavior is at odds with the governing line of U.S. Supreme Court precedent.
- His testimony about Qu'eed Batts' capacity for change was equivocal and betrayed a confirmation bias.
- His statement, "We are who we are," is diametrically opposed to U.S. Supreme Court precedent.

The Commonwealth does not address these assertions in its brief. Instead, after a review of the conclusions and testimony of Dr. Michals, Dr. Datillio, and Dr. Kraus, the Commonwealth concludes:

"[W]hen looking at these reports in their totality and considering them as one factor among many the court is required to consider, the reports and testimony proffered by the three expert witnesses in this case do not require a different sentence than that imposed."¹⁸

This statement ignores the fact that both Dr. Datillio and Dr. Kraus found that Qu'eed Batts was amenable to rehabilitation. Because these experts ultimately concluded that Mr. Batts is capable of change, their

¹⁸ Commonwealth's Br. at p. 35.

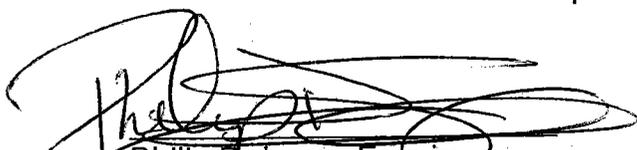
statements cannot be used in a piecemeal fashion to augment Dr. Michals' incompetent finding of incorrigibility.

In *Roper v. Simmons*, the Supreme Court observed:

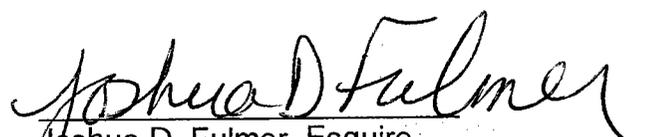
"It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."¹⁹

In their brief, the Defense argues that, because Dr. Michals denies the human capacity for change, his expert opinion could not assist Judge Koury in deciding if Qu'eed Batts is (a) the juvenile offender whose crimes reflect unfortunate yet transient immaturity or (b) the rare juvenile offender whose crime reflects irreparable corruption.²⁰ Absent a competent expert opinion on this topic, Judge Koury must have drawn a subjective conclusion that Mr. Batts is incorrigible.²¹ The Commonwealth's failure to address and rebut this assertion provides an alternative basis for relief.

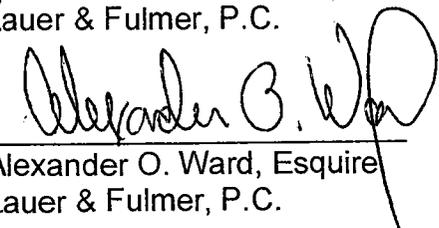
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¹⁹ 543 U.S. 551 at 573.

²⁰ See Appellant's Br. at p. 59.

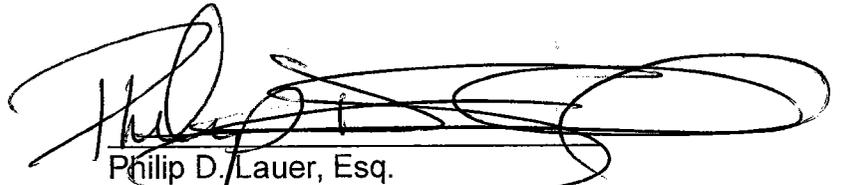
²¹ See *id.* (citing *Graham v. Florida*, 560 U.S. 48, 76-77 (2010)).

CERTIFICATE OF SERVICE

I, Philip D. Lauer, Esq., counsel for the Appellant, Qu'eed Batts, hereby certify that I have this day served a copy of the foregoing document to the persons listed below by hand-delivering a copy of same, which satisfies the requirements of Pa.R.Crim.P. 575:

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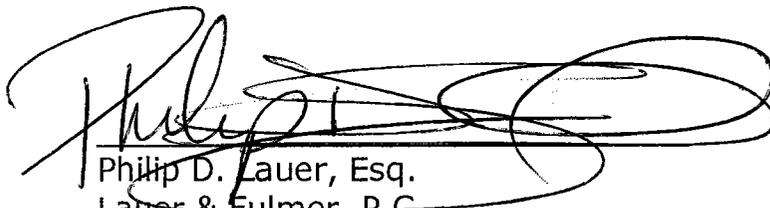
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CERTIFICATE OF COMPLIANCE

The Appellant hereby certifies that the foregoing brief does not exceed 7,000 words.

June 29, 2015

A large, stylized handwritten signature in black ink, appearing to read "Philip D. Lauer". The signature is written over a horizontal line that serves as a separator between the signature and the printed contact information.

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