[J-91-2012]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, MCCAFFERY, ORIE MELVIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 79 MAP 2009
	:	
Appellee	:	Appeal from the Order of the Superior Court at No. 766 EDA 2008 dated 04/07/2009 affirming the judgment of
v.	:	sentence of Northampton County Court of Common Pleas, Criminal Division, at No. 1215-2006 dated 10/22/2007
QU'EED BATTS,	:	
	:	
Appellant	:	ARGUED: September 12, 2012

OPINION

MR. JUSTICE SAYLOR **DECIDED: March 26, 2013**

This case concerns the appropriate remedy, on direct appeal, for the constitutional violation occurring when a mandatory life-without-parole sentence has been imposed on a defendant convicted of first-degree murder, who was under the age of eighteen at the time of his offense.

On February 7, 2006, Appellant, then fourteen years old, walked up the front porch steps of a house, shot Clarence Edwards in the head, and shot Corey Hilario in the back as the man attempted to flee. Mr. Edwards died on the way to the hospital while Mr. Hilario sustained serious bodily injury but eventually recovered. Following an investigation, police took Appellant into custody and conducted a videotaped interview. Appellant informed the detectives that he had recently been inducted into a gang, and,

on the night of the shooting, had been in a car with several other members of the gang, including a senior member named Vernon Bradley. According to Appellant, when the car was outside of the victims' residence, Bradley had given him a gun and a mask and told him to "put some work in," which Appellant interpreted as an order to shoot the two men on the porch. Appellant admitted that he had shot Mr. Edwards and Mr. Hilario, but stated that he only did so because he believed that he would be killed if he did not follow Bradley's order. Appellant also told the detectives that Bradley had promoted him to a higher ranking within the gang after the murder. The police then charged Appellant with, inter alia, first-degree murder, attempted murder, and aggravated assault. Although Appellant was a juvenile, the nature of the charges automatically placed the matter within the jurisdiction of the criminal court. See 42 Pa.C.S. §6302 (excluding murder from the definition of a "delinquent act").

Prior to trial, Appellant filed a motion requesting that his case be transferred to juvenile court pursuant to Section 6322 of the Juvenile Act, which requires a juvenile seeking transfer to establish, by a preponderance of the evidence, that "the transfer will serve the public interest." 42 Pa.C.S. §6322(a). The trial judge conducted a hearing in order to consider the statutory factors applicable to the transfer decision, including: the nature and circumstances of the offense; the impact of the offense on the victims and the community; the degree of culpability exhibited by the juvenile and any potential threat to public safety posed by the juvenile; the juvenile's amenability to rehabilitation and the time frame necessary for such; and individual characteristics of the juvenile, such as his age, maturity, mental capacity, prior delinquent history, and degree of criminal sophistication. See 42 Pa.C.S. §6355(a)(4)(iii). Based on testimony presented by both Appellant and the Commonwealth, including experts in forensic psychology, the trial judge determined that transfer to the juvenile system was not appropriate. The

judge first emphasized the "horrendous" nature of the crime and the "severe threat to the public" demonstrated by Appellant's "total lack of respect for human life." Commonwealth v. Batts, No. 1215-2006, slip op. at 5 (C.P. Northampton Feb. 21, 2007). In addition, the trial judge credited the testimony of the Commonwealth's experts that Appellant's "rehabilitation, if it ever occurs, will occur only after years of treatment and a willingness on the part of [Appellant] to seek treatment and rehabilitation, something that their clinical evaluations indicate [Appellant] is not ready to accept." Id. at 6. The judge also found that Appellant was "streetwise," with "a well-developed criminal mentality and the degree of maturity necessary to commit audacious criminal acts." Id.

Accordingly, the matter proceeded to trial, where the Commonwealth presented, inter alia, the testimony of Mr. Hilario, several officers and detectives, and the woman who had been driving the car in which Appellant, Bradley, and other gang members had been riding on the night of the murder. In defense, Appellant testified, consistent with his statement to the police, admitting that he had shot the victims, see N.T. July 30, 2007, at 68, 137-38, on the instruction of Bradley, see id. at 65-66, because his life would have been in danger if he did not follow Bradley's order, see id. at 56, 67. In addition, both the Commonwealth and Appellant presented testimony from expert forensic psychologists who opined as to the psychological factors that may have played a role in Appellant's conduct. Ultimately, despite his defense of duress, the jury convicted Appellant of first-degree murder, attempted murder, and aggravated assault. At sentencing, the court imposed the mandatory term of life imprisonment for first-degree murder, see 18 Pa.C.S. §1102(a)(1) (superseded, relative to juvenile offenders, by 18 Pa.C.S. §1102.1), which rendered Appellant ineligible for parole, see 61 Pa.C.S.

§6137(a)(1), as well as six to twenty years for attempted homicide, to be served concurrently.[1]

After the trial court denied Appellant's post-sentence motions, he appealed to the Superior Court. Appellant argued, inter alia, that the imposition of a mandatory sentence of life imprisonment without the possibility of parole was unconstitutional in light of the Supreme Court's decision in Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183 (2005), which held that subjecting juveniles under the age of eighteen to the death penalty violated the Eighth Amendment's prohibition on cruel and unusual punishment. See id. at 578, 125 S.Ct. at 1200.

The Superior Court upheld the sentence of life without parole, distinguishing Roper because that case discussed only the death penalty, which the court emphasized was categorically different than a sentence of imprisonment. See Commonwealth v. Batts, 974 A.2d 1175 (table), No. 766 EDA 2008, slip op. at 12 (quoting Commonwealth v. Wilson, 911 A.2d 942, 946 (Pa. Super. 2006), for the proposition that: "[T]he Roper decision bars only the imposition of the death penalty in cases involving juvenile offenders. The ruling does not affect the imposition of a sentence of life imprisonment without parole, the sentence imposed in the present case."). Further, the court explained that prior caselaw had determined that imposing the statutorily-required life-without-parole sentence on juvenile offenders -- even those who were fourteen years old at the time of the crime -- did not violate the Eighth Amendment. See id. at 13 (citing Commonwealth v. Sourbeer, 492 Pa. 17, 33, 422 A.2d 116, 123-24 (1980) (plurality), superseded by statute on other grounds, 42 Pa.C.S. §6322; Commonwealth v. Carter, 855 A.2d 885, 892 (Pa. Super. 2004)). Addressing Appellant's as-applied

[1] Appellant's conviction for aggravated assault merged with the attempted murder conviction for purposes of sentencing.

Eighth Amendment challenge, the court concluded that the sentence was not grossly disproportionate to the gravity of the offense, given that "Appellant was convicted as the principal actor of a brutal, senseless and premeditated murder." Id. at 14. The Superior Court also rejected Appellant's contention that due process required the trial court to first consider mitigating circumstances before imposing a life sentence on a juvenile, noting that caselaw requiring the consideration of mitigating circumstances was limited to the context of the death penalty, see id. at 15-16 (citing Sumner v. Shuman, 483 U.S. 66, 76, 107 S.Ct. 2716, 2722-23 (1987)), and that adults may be sentenced to a mandatory term of life-without-parole without consideration of mitigating evidence, see id. at 16 (citing Harmelin v. Michigan, 501 U.S. 957, 996, 111 S.Ct. 2680, 2702 (1991)).

This Court granted allowance of appeal, limited to the questions of whether Roper rendered imposition of a sentence of life imprisonment without the possibility of parole on a juvenile unconstitutional and whether Appellant's Eighth and Fourteenth Amendment rights were violated by the mandatory nature of his sentence. See Commonwealth v. Batts, 603 Pa. 65, 981 A.2d 1283 (2009) (per curiam). We further reserved consideration pending disposition of Graham v. Florida, __ U.S. __, 129 S.Ct. 2157 (2009), and Sullivan v. Florida, __ U.S. __, 129 S.Ct. 2157 (2009).

After the Supreme Court decided Graham v. Florida, __ U.S. __, __, 130 S.Ct. 2011, 2033 (2010),[2] which held that imposition of a sentence of life imprisonment without the possibility of parole on juvenile non-homicide offenders violated the Eighth Amendment, the parties filed substantive briefs addressing the federal constitutional issues. In addition, for the first time, Appellant also included a separate argument concerning the constitutionality of his sentence under Article 1, Section 13 of the

[2] The writ of certiorari in Sullivan was dismissed as improvidently granted. See Sullivan v. Florida, __ U.S. __, 130 S. Ct. 2059 (2010) (per curiam).

Pennsylvania Constitution, which prohibits "cruel punishments." Pa. Const. art. I, §13. Following oral arguments, this Court again reserved consideration, this time pending disposition of Miller v. Alabama and Jackson v. Hobbs, which were to be argued in tandem. See Miller v. Alabama, __ U.S. __, 132 S.Ct. 548 (2011) (per curiam); Jackson v. Hobbs, __ U.S. __, 132 S.Ct. 548 (2011) (per curiam). The United States Supreme Court issued a deeply divided decision in those cases in June 2012. See Miller v. Alabama, __ U.S. __, __, 132 S.Ct. 2455 (2012).

Like Appellant, Miller and Jackson were each subject to a mandatory sentence of life imprisonment without the possibility of parole. The underlying homicide, in each case, was committed when the defendant was fourteen years old, though the circumstances of each crime substantially differed. In the course of concluding that such sentences violate the Eighth Amendment, the five-Justice majority related that Graham and Roper "establish that children are constitutionally different from adults for purposes of sentencing," given that children lack maturity and have "an underdeveloped sense of responsibility," can be more susceptible to "negative influences and outside pressures," and have "less fixed" character traits. Id. at __, 132 S.Ct. at 2464. The "foundational principle" of Graham and Roper, the majority continued, was that "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." Id. at __, 132 S.Ct. at 2466. The majority analogized mandatory life-without-parole sentences for juvenile offenders to the death penalty, finding that, just as individualized consideration of mitigating circumstances -- particularly youth -- was constitutionally required before the imposition of a capital sentence, such concerns must also be taken into account when imposing the harshest sentence possible for a juvenile. See id. at __, 132 S.Ct. at 2467-68. Specifically, the majority explained that the mandatory nature of the life-without-parole sentences at

issue precluded the sentencing court from considering important factors, such as chronological age, level of maturity, family and home environment, the circumstances of the offense, the extent of the juvenile's participation in the unlawful conduct, the impact of familial and peer pressures, the juvenile's ability to negotiate with police or prosecutors, and the possibility of rehabilitation. See id. at __, 132 S.Ct. at 2468. Absent the ability to reflect on these concerns, the majority reasoned, the imposition of a sentence of life imprisonment without the possibility of parole on a juvenile "poses too great a risk of disproportionate punishment." Id. at __, 132 S.Ct. at 2469.

However, the Supreme Court did not entirely foreclose the imposition of a life-without-parole sentence on a juvenile offender; rather, the majority stated that the occasion for such a punishment would be "uncommon," and, in any event, must first "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at __, 132 S.Ct. at 2469. In this regard, the majority distinguished its prior ruling in Harmelin, 501 U.S. at 996, 111 S.Ct. at 2702, noting that Harmelin "had nothing to do with children and did not purport to apply its holding to the sentencing of juvenile offenders." Miller, __ U.S. at __, 132 S.Ct. at 2470. Indeed, the majority indicated, "if (as Harmelin recognized) death is different, children are different too." Id. at __,132 S.Ct. at 2470. The Court also determined that proceedings which allow for the potential transfer of the case from adult to juvenile court (or from juvenile to adult court), even those that provide for individualized consideration, "cannot substitute for discretion at post-trial sentencing in adult court -- and so cannot satisfy the Eighth Amendment." Id. at __, 132 S.Ct. at 2475. Observing that the information available at the time of such transfer proceedings will often be limited, the majority reasoned that "transfer decisions often present a choice between extremes: light punishment as a child or standard sentencing as an adult (here, life without

parole)," which significantly differs from "discretionary sentencing in adult court" that allows for intermediate options, namely, "a lifetime prison term with the possibility of parole or a lengthy term of years." Id. at __, 132 S.Ct. at 2474-75 (emphasis in original). Thus, the majority explained that its decision "mandates only that a sentence follow a certain process -- considering an offender's youth and attendant characteristics -- before imposing a particular penalty." Id. at __, 132 S.Ct. at 2471.[3]

Justice Breyer, joined by Justice Sotomayor, filed a joining concurrence, opining that "[t]he only juveniles who may constitutionally be sentenced to life without parole are those convicted of homicide offenses who kill or intend to kill," differentiating such offenders from those who were convicted of murder as a result of participation in a felony. Id. at __, 132 S.Ct. at 2476 (Breyer, J., concurring) (citing Graham, 560 U.S. at __, 130 S.Ct. at 2027). This distinction, Justice Breyer reasoned, stems from the "fallacious" application of the theory of transferred intent -- which is based on "the idea that one engaged in a dangerous felony should understand the risk that the victim of the felony could be killed, even by a confederate" -- to a juvenile who did not kill or intend to kill, notwithstanding the fact that "the ability to consider the full consequences of a course of action and to adjust one's conduct accordingly is precisely what we know juveniles lack capacity to do effectively." Id.

Four Justices dissented in three separate opinions. Chief Justice Roberts, joined by Justices Scalia, Thomas, and Alito, first noted that "the direction of society's evolution" had moved away from implementing a rehabilitative approach in favor of reducing recidivism, which "led many legislatures to reduce or eliminate the possibility of

[3] In this regard, the Court reserved consideration of the defendants' argument that the Eighth Amendment requires a categorical bar against imposition of a sentence of life without the possibility of parole for juveniles aged fourteen and younger. See Miller, __ U.S. at __, 132 S.Ct. at 2469.

parole, imposing longer sentences in order to punish criminals and prevent them from committing more crimes." Id. at __, 132 S.Ct. at 2478 (Roberts, C.J., dissenting) (citations omitted). Notwithstanding this progression, Chief Justice Roberts opined, the majority's rationale -- "that because juveniles are different from adults, they must be sentenced differently" -- will ultimately lead to not only a bar on life-without-parole sentences for juveniles, but also to "never permitting juvenile offenders to be tried as adults." Id. at __, 132 S.Ct. at 2482. The Chief Justice reasoned that this is especially true in light of the majority's "announce[ment] that discretionary life without parole for juveniles should be 'uncommon'—or, to use a common synonym, 'unusual.'" Id. at __, 132 S.Ct. at 2481. However, Chief Justice Roberts explained, mandatory life-without-parole sentences for juveniles convicted of homicide are not "unusual," id. at __, 132 S.Ct. at 2477, and, despite the lower number of jurisdictions permitting life-without-parole sentences for juveniles as compared to the punishment addressed in Graham, the number of actual life-without-parole sentences imposed on juveniles "is over 5,000 times higher than the corresponding number in Graham," id. at __, 132 S.Ct. at 2479. The Chief Justice also faulted the majority for its reliance on Graham and Roper, as Graham expressly stated that murder should not be compared to the nonhomicide crimes at issue in that case, and "Roper reasoned that the death penalty was not needed to deter juvenile murderers in part because 'life imprisonment without the possibility of parole' was available." Id. at __, 132 S.Ct. at 2481 (citations omitted).

Justice Thomas, joined by Justice Scalia, dissented based on his disagreement with the rationales of Roper and Graham, and, like Chief Justice Roberts, found those cases inapplicable in the present context. See id. at __, 132 S.Ct. at 2485 (Thomas, J., dissenting). Additionally, Justice Thomas reasoned that the majority's requirement of an individualized sentencing procedure prior to the imposition of a life-without-parole

sentence was at odds with Harmelin's conclusion that such a procedure does not apply outside of capital cases due to "the qualitative difference between death and all other penalties." Id. at __, 132 S.Ct. at 2485 (quoting Harmelin, 501 U.S. at 995, 111 S.Ct. at 2702).

Finally, Justice Alito, joined by Justice Scalia, filed a dissenting opinion, noting that the majority decision demonstrated that the Court's "Eighth Amendment cases are no longer tied to any objective indicia of society's standards," and disregarded the legislative "position that the risk that these offenders will kill again outweighs any countervailing consideration, including reduced culpability due to immaturity or the possibility of rehabilitation." Id. at __, 132 S.Ct. at 2490 (Alito, J., dissenting).

In light of the Supreme Court's opinion in Miller, we directed the parties to submit supplemental briefing and conducted oral argument on two additional issues:

> 1) What is, as a general matter, the appropriate remedy on direct appeal in Pennsylvania for a defendant who was sentenced to a mandatory term of life imprisonment without the possibility of parole for a murder committed when the defendant was under the age of eighteen?
>
> 2) To what relief, if any, is appellant entitled from the mandatory term of life imprisonment without parole for the murder he committed when he was fourteen years old?

See Commonwealth v. Batts, No. 79 MAP 2009, July 9, 2012 Order (per curiam).

As a final contextual matter, on October 25, 2012, the Governor signed into law a new sentencing scheme for persons under the age of eighteen convicted of murder. See Act of Oct. 25, 2012, P.L. __, No. 204; see also Commonwealth v. Lofton, __ A.3d __, __, 2012 WL 6062578, at *6 (Pa. Super. Dec. 7, 2012). This legislation reflects the General Assembly's effort to address Miller.

Under the new statute, a person under fifteen years of age at the time of the offense may receive "a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life." 18 Pa.C.S. §1102.1(a)(2). A person at least fifteen but under eighteen years of age may receive "a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life." 18 Pa.C.S. §1102.1(a)(1). In determining whether a life-without-parole sentence should be imposed pursuant to this statute, the court must take into account various individualized factors, including: the nature and circumstances of the offense; the defendant's age, mental capacity, maturity, culpability, and degree of criminal sophistication; and the success or failure of any prior rehabilitative attempts. See 18 Pa.C.S. §1102.1(d). The statute also leaves room for the court to consider any other factors that it deems relevant to its assessment. See 18 Pa.C.S. §1102.1(d)(7)(vii).

The new sentencing statute, by its terms, applies only to minors convicted of murder on and after the date Miller was issued (June 25, 2012). See Act of Oct. 25, 2012, P.L. __, No. 204 §2; 18 Pa.C.S. §1102.1(a). Accordingly, it does not apply to Appellant, and it does not moot the present controversy.

The questions raised in this appeal are matters of law; our standard of review is de novo; and our scope of review is plenary. See Commonwealth v. Davidson, 595 Pa. 1, 11, 938 A.2d 198, 203 (2007).

I.

As reflected above, given the developing jurisprudence, our focus in this appeal has shifted from broadly questioning the constitutionality of a life-without-parole sentence imposed on a juvenile offender to a narrow issue concerning the appropriate remedy for the Eighth Amendment violation that, under Miller, occurred when Appellant

was mandatorily sentenced to life imprisonment without the possibility of parole upon his conviction for first-degree murder. Further, despite 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.

Substantively, Appellant asserts that the statutory scheme providing for a mandatory sentence of life-without-parole upon conviction of first-degree murder is unconstitutional in its entirety in light of Miller. Hence, Appellant contends that this Court should look to other statutes existing at the time that the offense was committed in order to determine the appropriate sentence that may be imposed consistent with the Eighth Amendment. See Supplemental Brief for Appellant at 7-8 (citing Miller, __ U.S. at __, 132 S.Ct. at 2464). This existing constitutional sentence, Appellant argues, should be based on the most severe lesser included offense, namely, third-degree murder, with a maximum term of forty years' imprisonment. See id. at 8 (citing 18 Pa.C.S. §1102(d)). Devising any other sentence would, in Appellant's view, be most appropriately left to the Legislature. See id. at 8-9 (citing Spectrum Arena L.P. v. Commonwealth, 603 Pa. 180, 197-98, 983 A.2d 641, 651 (2009) ("It is not within this Court's power to alter this scheme and the impact of any inconsistency is more properly addressed directly to the legislature.") (citations omitted)). Appellant contends that this approach is particularly apt in the present matter, as it recognizes that "juveniles are categorically less culpable than adults," id. at 10 (citing Miller, __ U.S. at __, 132 S.Ct. at 2464), and ameliorates the concern that juveniles sentenced to life imprisonment will

necessarily serve a longer term than adults receiving the same sentence, see id. at 11 (citing Graham, __ U.S. at __,130 S. Ct. at 2028). Moreover, Appellant maintains that this remedy is consistent with that applied in analogous cases. See id. at 9 (citing Commonwealth v. Story, 497 Pa. 273, 282, 440 A.2d 488, 492 (1981) (imposing a sentence of life imprisonment when a statute mandating imposition of the death penalty in certain circumstances was found unconstitutional)); id. at 10 (citing Rutledge v. United States, 517 U.S. 292, 306, 116 S.Ct. 1241, 1250 (1996), for the proposition that "where a greater offense must be reversed, the courts may enter judgment on the lesser included offense").

A remedy that would permit a court to impose a sentence of life imprisonment with the possibility of parole, Appellant continues, would still violate the Eighth Amendment under Miller, as the mandatory nature of such a sentence (absent further revision to the statutory scheme) fails to take into account the age-related factors set forth by the Supreme Court. See Supplemental Reply Brief for Appellant at 4 n.3 (citing Miller, __ U.S. at __, 132 S.Ct. at 2467). Accordingly, Appellant argues that he is entitled to a remand for an individualized sentencing hearing in which the judge should consider the factors delineated in Miller prior to imposing an appropriate sentence pursuant to the statutory penalty for third-degree murder. See Supplemental Brief for Appellant at 12 (citing Miller, __ U.S. at __, 132 S.Ct. at 2468).

Characterizing the impact of Miller on the current sentencing scheme as "minimal," the Commonwealth responds that the unconstitutional portion of the sentencing scheme is the statute governing parole eligibility, which does not distinguish juvenile offenders when stating that parole may not be granted to those serving a life sentence. See Supplemental Brief for Commonwealth at 7 (citing 61 Pa.C.S. §6137(a)(1) (excluding inmates serving terms of life imprisonment from those who may

be released on parole)). Because this portion of the statute is severable, the Commonwealth continues, the "remaining unaltered statutory sentencing provisions," including Section 1102(a) of the Criminal Code, still require that the court impose a sentence of life imprisonment for a juvenile convicted of first-degree murder. See Supplemental Brief for Commonwealth at 8 (citing 18 Pa.C.S. §1102(a) (superseded, in relevant part)). In the Commonwealth's view, however, the judge now has discretion, based on the age-related considerations set forth in Miller, to impose the sentence either without parole or with the possibility of parole after a specified term of years. See id. The Commonwealth observes that the United States Supreme Court expressly limited its holding in this regard:

> Our decision does not categorically bar a penalty for a class of offenders or type of crime -- as, for example, we did in Roper or Graham. Instead, it mandates only that a sentencer follow a certain process -- considering an offender's youth and attendant characteristics -- before imposing a particular penalty.

Miller, __ U.S. at __, 132 S.Ct. at 2471. The Commonwealth also notes that, in other cases, the Superior Court has remanded for resentencing in light of Miller for the trial court to consider the relevant factors and determine whether a sentence of "life imprisonment with, or without, the possibility of parole" should be imposed. Supplemental Brief for Commonwealth at 10 (citing Commonwealth v. Knox, 50 A.3d 732, 745 (Pa. Super. 2012)). Thus, the Commonwealth reasons that the appropriate remedy for Appellant's unconstitutionally mandatory life-without-parole sentence is for this Court to remand for a new sentencing hearing at which the trial court may consider the factors detailed in Miller and impose a life sentence, either with or without parole. See id. at 10-11.

The Commonwealth's amicus, the Pennsylvania District Attorneys Association, adds that Appellant's argument is, in essence, an attempt to "negate[ ] his first degree murder conviction" in order to obtain the lesser sentence for third-degree murder. Supplemental Amicus Brief at 11. In this regard, amicus argues that the capital cases relied upon by Appellant are inapposite, as they involved death sentences that "could no longer be imposed because no applicable sentencing statute existed." Id. at 11-12 (citing Story, 497 Pa. at 282, 440 A.2d at 492). By contrast, amicus continues, Miller did not invalidate the entire sentencing scheme and does not prevent Appellant from receiving a life-without-parole sentence after the trial court considers the age-related factors set forth by the Supreme Court. See id. at 12 (citing Miller, __ U.S. at __, 132 S.Ct. at 2471). Similarly, amicus distinguishes Rutledge because that case involved convictions for two offenses that were based on the same activity, which necessitated vacating one conviction and sentence. Id. at 12 n.7 (citing Rutledge, 517 U.S. at 307, 116 S.Ct. at 1250-51). Moreover, amicus asserts that "[n]othing in that case, or any other case, suggests that a sentence of life without parole, originally imposed in a constitutionally unsound manner, cannot be reimposed in a constitutionally sound one." Id. at 12.

We find the Commonwealth's construction of the applicable statutes to be the best supported. Appellant's argument that the entire statutory sentencing scheme for first-degree murder has been rendered unconstitutional as applied to juvenile offenders is not buttressed by either the language of the relevant statutory provisions or the holding in Miller. Section 1102, which mandates the imposition of a life sentence upon conviction for first-degree murder, see 18 Pa.C.S. §1102(a), does not itself contradict Miller; it is only when that mandate becomes a sentence of life-without-parole as applied to a juvenile offender -- which occurs as a result of the interaction between Section

1102, the Parole Code, see 61 Pa.C.S. §6137(a)(1), and the Juvenile Act, see 42 Pa.C.S. §6302 -- that Miller's proscription squarely is triggered. See Miller, __ U.S. at __, 132 S.Ct. at 2469. Miller neither barred imposition of a life-without-parole sentence on a juvenile categorically nor indicated that a life sentence with the possibility of parole could never be mandatorily imposed on a juvenile. See id. at __, 132 S.Ct. at 2469. Rather, Miller requires only that there be judicial consideration of the appropriate age-related factors set forth in that decision prior to the imposition of a sentence of life imprisonment without the possibility of parole on a juvenile. See id. at __, 132 S.Ct. at 2467-68.

We recognize, as a policy matter, that 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. In terms of the actual constitutional command, however, Miller's binding holding is specifically couched more narrowly. See id. at ___, 132 S.Ct. at 2469 ("We . . . hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.") (emphasis added). The High Court thus left unanswered the question of whether a life sentence with the possibility of parole offends the evolving standards it is discerning.

Significantly, in the arena of evolving federal constitutional standards, we have expressed a reluctance to "go further than what is affirmatively commanded by the High Court" without "a common law history or a policy directive from our Legislature." Commonwealth v. Sanchez, __ Pa. __, __, 36 A.3d 24, 66 (Pa. 2011), cert. denied, __ U.S. __, 133 S.Ct. 122 (2012). Moreover, barring application of the entire statutory scheme as applied to juveniles convicted of first-degree murder, based solely on the policy discussion in Miller (short of its affirmative holding), would contradict the "strong

presumption that legislative enactments do not violate the constitution." Commonwealth v. Chase, 599 Pa. 80, 89, 960 A.2d 108, 112 (2008); see also 1 Pa.C.S. §1922(3) (presumption that the General Assembly does not intend to violate the federal or state constitutions when it enacts legislation).

In addition, Appellant's argument that he should be sentenced as if he had been convicted of the lesser offense of third-degree murder finds little support in the authorities upon which he relies, as such caselaw is simply inapplicable to the present circumstances. In Story, for example, this Court imposed a life sentence because the effectuation of a death sentence would violate the defendant's equal protection and due process rights. See Story, 497 Pa. at 281, 440 A.2d at 492 ("Because appellant was tried, convicted, and sentenced to death under an unconstitutional statute, he must be treated the same as all those persons whose death penalties have been set aside."). Notably, the life sentence imposed in Story, like the death penalty that was vacated, was a legislatively sanctioned punishment for first-degree murder and not a lesser offense. See id. at 277, 440 A.2d at 490. Rutledge is similarly distinguishable, as that case involved the vacation of one conviction and sentence where the defendant had been convicted of two separate crimes, one of which was determined to be a lesser-included offense. See Rutledge, 517 U.S. at 307, 116 S.Ct. at 1250. Here, by contrast, Appellant's conviction for first-degree murder has not been vacated; rather, we are tasked with determining an appropriate scheme for resentencing for that offense, consistent with Miller.

Regarding the appropriate age-related factors, as the Commonwealth and its amicus observe, the Superior Court has considered the impact of Miller and vacated and remanded for resentencing, instructing the trial court that:

> [A]t a minimum it should consider a juvenile's age at the time of the offense, his diminished culpability and capacity for

> change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation.

Knox, 50 A.3d at 745 (citing Miller, __ U.S. at __, 132 S.Ct. at 2455). We agree with the Commonwealth that the imposition of a minimum sentence taking such factors into account is the most appropriate remedy for the federal constitutional violation that occurred when a life-without-parole sentence was mandatorily applied to Appellant.

We recognize the difference in treatment accorded to those subject to non-final judgments of sentence for murder as of Miller's issuance and those convicted on or after the date of the High Court's decision. As to the former, it is our determination here that they are subject 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. Defendants in the latter category are subject to high mandatory minimum sentences and the possibility of life without parole, upon evaluation by the sentencing court of criteria along the lines of those identified in Miller. See 18 Pa.C.S. §1102.1. Nevertheless, in the absence of a claim that such difference violates constitutional norms, we have interpreted the statutory provisions applicable to Appellant (and all others similarly situated) in accord with the dictates of the Eighth Amendment as set forth in Miller, as well as the Pennsylvania Legislature's intent as reflected in the relevant statutory provisions.

II.

Given the breadth of the issues for which review was initially granted, we will also address Appellant's corollary argument that a categorical ban on the imposition of life-without-parole sentences on juvenile offenders is required by Article I, Section 13 of the Pennsylvania Constitution, which prohibits "cruel punishments." See Pa. Const. art. I, §13 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted."). In this regard, Appellant has not presented a fully developed analysis in accord with Commonwealth v. Edmunds, 526 Pa. 374, 390, 586 A.2d 887, 895 (1991) (setting forth the appropriate method for determining whether a provision of the Pennsylvania Constitution provides broader protections than its federal counterpart), but, rather, refers to an amici brief in which the Edmunds factors are discussed.[4]

In Edmunds, this Court has indicated that, in considering whether the Pennsylvania Constitution should be interpreted more expansively than the United States Constitution, the Court may consider: the text of the Constitution; the provision's history including relevant decisional law; related case law from other states; and policy considerations unique to Pennsylvania. Id. [5]

[4] These amici include the Juvenile Law Center, the Defender Association of Philadelphia, and law professors Sara Jacobson, Michelle Leighton, Brian J. Foley, and Constance De La Vega.

[5] We recognize that this Court has previously held Article I, Section 13 to be coextensive with the Eighth Amendment in several contexts. See Commonwealth v. Zettlemoyer, 500 Pa. 16, 73-74, 454 A.2d 937, 967 (1982), abrogated on other grounds by Commonwealth v. Freeman, 573 Pa. 532, 827 A.2d 385 (2003) (death penalty); Commonwealth v. 5444 Spruce St., 574 Pa. 423, 427-28, 832 A.2d 396, 399 (2003) (excessive fines); Jackson v. Hendrick, 509 Pa. 456, 465 n.10, 503 A.2d 400, 404 n.10 (1986) (prison conditions). However, none of those cases involved juvenile offenders, who the Supreme Court has indicated are to be treated differently with respect to criminal punishment. See, e.g., Miller, __ U.S. at __, 132 S.Ct. at 2470.

In terms of the relevant text, Appellant and his amici emphasize that the language of Article I, Section 13 (prohibiting "cruel punishment") differs from that of the Eighth Amendment (prohibiting "cruel and unusual punishment") and compare this distinction to the Michigan Constitution, which prohibits "cruel or unusual punishment," Mich. Const. art. I, §16, and has been interpreted by that state's courts as providing broader protection than the Eighth Amendment, see People v. Bullock, 440 Mich. 15, 31 n.11, 485 N.W.2d 866, 872 n.11 (1992) ("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).

As to history and policy considerations, Appellant and his amici also aver that Pennsylvania has "a longstanding historical commitment to providing special protections for minors against the full weight of criminal punishment," Supplemental Brief for Appellant at 6, and that the purposes of the Juvenile Act "demonstrate[ ] a commitment towards fairness and consideration to the most youthful offenders," Brief for Appellant at 28 (citing 42 Pa.C.S. §6301(b)). Similarly, Appellant observes that the Supreme Court has recognized that "juveniles are categorically less culpable than adults who commit similar offenses." See Supplemental Brief for Appellant at 10 (citing Miller, __ U.S. at __, 132 S.Ct. at 2464). This diminished level of culpability, Appellant continues, is "well established in academic literature," which has confirmed that youth affects competence and impulse control, as well as the ability to logically reason and appreciate consequences. See id. at 10-11 n.12 (citations omitted). Appellant also points out that he was sentenced to life imprisonment without the possibility of parole due to a convergence of statutory provisions rather than a definitive statement from the Legislature indicating its intent to subject all juveniles convicted of first-degree murder to

mandatory life sentences. See id. at 4 (citing 18 Pa.C.S. §1102(a)(1); 42 Pa.C.S. §6302; 61 Pa.C.S. §6137(a)(1)).

We find the textual analysis provided by Appellant and his amici to carry little force. The purport of the argument is that this Court should expand upon the United States Supreme Court's proportionality approach, not that it should derive new theoretical distinctions based on differences between the conceptions of "cruel" and "unusual." Cf. Trop v. Dulles, 356 U.S. 88, 100 n.32, 78 S. Ct. 590, 598 n.32 (1958) (plurality) (suggesting that most of the judicial decisions have treated "cruel and unusual" as, essentially, an amalgam).

In terms of the history, Appellant is correct that there is an abiding concern, in Pennsylvania, that juvenile offenders be treated commensurate with their stage of emotional and intellectual development and personal characteristics. As a matter of legislative judgment, this is reflected in the salient transfer provisions of the Juvenile Act, which, historically, has been considered to be the most appropriate manner in which to make individualized determinations concerning age-related characteristics and situational factors in connection with a particular offender's suitability for treatment within the juvenile system. See 42 Pa.C.S. §6322(a). While the United States Supreme Court has determined that such provisions are insufficient to mitigate an Eighth Amendment deficiency in the sentencing of underage offenders to mandatory life without parole, nothing in the arguments presented suggests that Pennsylvania's history favors a broader proportionality rule than what is required by the United States Supreme Court.

We view Appellant's policy arguments in essentially the same light. These emphasize the trend of the United States Supreme Court towards viewing juveniles as a category as less culpable than adults, and, while we recognize this progression,

Appellant does not acknowledge that there has been no concomitant movement in this Court or in the Pennsylvania Legislature away from considering murder to be a particularly heinous offense, even when committed by a juvenile. See, e.g., Commonwealth v. Cotto, 562 Pa. 32, 44, 753 A.2d 217, 224 (2000) (noting that "murder has always been excluded from the jurisdiction of the juvenile courts"); Commonwealth v. Williams, 514 Pa. 62, 72, 522 A.2d 1058, 1063 (1987), superseded by statute on other grounds, 42 Pa.C.S. §6322 ("Murder is a heinous and serious crime, and the legislature's assumption that one who commits murder is in need of adult discipline and restraint is a reasonable one.").

For these reasons, the arguments presented do not persuade us that the Pennsylvania Constitution requires a broader approach to proportionality vis-à-vis juveniles than is reflected in prevailing United States Supreme Court jurisprudence.[6]

Accordingly, the decision of the Superior Court is vacated, and the matter is remanded to the trial court for further proceedings consistent with this opinion.

Madame Justice Orie Melvin did not participate in the consideration or decision of this case.

Mr. Chief Justice Castille, Mr. Justice Eakin, Mr. Justice Baer, Madame Justice Todd and Mr. Justice McCaffery join the opinion.

Mr. Justice Baer files a concurring opinion.

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[6] Certainly, "[d]etermining the appropriate sentence for a teenager convicted of murder presents grave and challenging questions of morality and social policy." Miller, ___ U.S. at ___, 132 S.Ct. at 2477 (Roberts, C.J., dissenting, joined by Scalia, Thomas, and Alito, JJ.). Our role in establishing the direction of social policy is a limited one, however. See, e.g., Naylor v. Twp. of Hellam, 565 Pa. 397, 408, 773 A.2d 770, 777 (2001) (recognizing the General Assembly's superior ability to examine social policy issues and to establish appropriate substantive legal standards).