NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. BERNARD WILLIAMS Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 166 MDA 2019

Appeal from the Judgment of Sentence Entered July 24, 2018
In the Court of Common Pleas of Dauphin County
Criminal Division at No.: CP-22-MD-0001715-1988

BEFORE: STABILE, McLAUGHLIN, and MUSMANNO, JJ.

MEMORANDUM BY STABILE, J.: **FILED DECEMBER 20, 2019**

Appellant Bernard Williams appeals *nunc pro tunc* from the July 24, 2018 judgment of sentence entered in the Court of Common Pleas of Dauphin County ("trial court") following a resentencing hearing held pursuant to ***Miller v. Alabama***, 132 S. Ct. 2455 (2012) and ***Montgomery v. Louisiana***, 136 S. Ct. 718 (2016).[1] Upon review, we affirm.

The facts and procedural history of this case are uncontested and fully recounted by the trial court. ***See*** Trial Court Opinion, 3/29/19 at 1-18; ***Commonwealth v. Williams***, No. 514 Harrisburg 1989, unpublished

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[1] In ***Miller***, the U.S. Supreme Court determined that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual' punishments." ***Miller***, 132 S.Ct. at 2460. In ***Montgomery***, the U.S. Supreme Court held that ***Miller*** was a new substantive rule that, under the United States Constitution, must be retroactive in cases on state collateral review. ***Montgomery***, 136 S.Ct. at 736.

memorandum, at 1-5 (Pa. Super. filed July 3, 1990) (citation omitted). Briefly, in connection with the bludgeoning death of State Representative William Telek, Appellant was charged and convicted, among other things, of first-degree murder. The trial court sentenced Appellant, who was seventeen years and seven months old at the time of Representative Telek's murder, to life imprisonment without the possibility of parole ("LWOP").

On August 23, 2012, years after Appellant's judgment sentence became final, he filed a petition for collateral relief under the Post Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-46, requesting relief under ***Miller***. Appellant argued that his sentence of LWOP for first-degree murder was unconstitutional because he was under the age of eighteen at the time of Representative Telek's murder. On March 22, 2016, Appellant amended his PCRA petition to note that ***Miller*** applied retroactively on collateral review consistent with ***Montgomery***. The PCRA court agreed, and scheduled a resentencing hearing on the first-degree murder conviction.[2] On August 7, 2017, Appellant's counsel, Andrea Haynes, filed a detailed sentencing memorandum, wherein she noted:

> [i]t wasn't until he was able to see the rehabilitation side of jail that things truly changed for him. After years of being denied programming as a lifer, [Appellant] has taken advantage of programs and classes and has hope for the first time that his life could be something more than his past.

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[2] Moreover, on May 25, 2016, the United States District Court for the Middle District of Pennsylvania granted Appellant's petition for writ of *habeas corpus* and, in so doing, vacated his mandatory life sentence under ***Miller*** and ***Montgomery***.

Sentencing Memorandum, 8/7/17 at 5. On this basis, counsel argued against the re-imposition of a LWOP sentence. Specifically, she argued that Appellant is not "one of the rarest of juvenile offenders whose crime reflects permanent incorrigibility, irreparable corruption, or irretrievable depravity." ***Id.*** at 8. In support, she pointed out that Appellant "focused on changing his life for the better by participating in therapeutic communities and victim awareness classes. He has devoted significant time to Bible study since 2012 and completed multiple courses with the Crossroad Bible Institute." ***Id.*** Attached to Appellant's sentencing memorandum were nine certificates, indicating his participation in therapeutic support groups, victim's awareness class, and Bible study.[3]

On December 5, 2017, the Commonwealth filed a "Motion for a Mental Health Examination of [Appellant]," requesting that the trial court direct Appellant to submit to an examination by the Commonwealth's expert. Appellant filed an answer to the motion, noting that "he does not intend at this time to subject himself to ay psychiatric or psychological evaluation by a defense retained expert." On December 19, 2017, the trial court denied the Commonwealth's motion.

On July 24, 2018, the trial court conducted a resentencing hearing, at which the Commonwealth first presented the testimony of Dr. John O'Brien,

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[3] We observe that with the exception of the May 13, 2013, and September 17, 2014 certificates for his participation in Bible study, all of Appellant's other certificates post-dated the Supreme Court's January 25, 2016 issuance of ***Montgomery***.

board certified in general psychiatry and forensic psychiatry. N.T. Resentencing, 7/24/18, at 4-6. Despite being unable to conduct a direct examination of Appellant, Dr. O'Brien reviewed "over [one] thousand pages" of Appellant's records to determine whether Appellant was "permanently incorrigible." ***Id.*** at 13-16. Dr. O'Brien in particular testified that Appellant had used a weapon in the murder of Representative Telek, his subsequent assaults of correctional officers in 1993 and 1999 and his aggravated assault of a prison inmate in 2015. ***Id.*** at 17-20. Dr. O'Brien opined to a reasonable degree of medical certainty that Appellant suffers from "antisocial personality disorder." ***Id.*** at 14, 23. Dr. O'Brien explained that "sometimes individuals with antisocial disorder and other personality disorders can exhibit a mollification of their personality disorder symptoms with age, and I do not see that in [Appellant's] case in terms of my review of his records." ***Id.*** at 23-24. Dr. O'Brien added that Appellant

> has an untreatable and unchanging condition. It's my opinion that he is not amenable to treatment and rehabilitation in the correctional system, and that from a legal perspective in my opinion, he does exhibit and his crimes reflect and that includes the offense and crimes since his entry into custody permanent incorrigibility, irreparable corruption, and irretrievable depravity.

Id. at 24-25. The trial court next heard statements by Representative Telek's daughters. Appellant declined his right to allocution or offer any expert testimony in counter Dr. O'Brien's opinion. The trial court resentenced Appellant to LWOP. In so doing, the trial court explained that its decision was based specifically on:

> the 36 assaults just from 1997 to 2017, plus all of those that occurred in the first nine years of which we don't have a record of other than the August 1993 shank assault of a corrections officer. Also based on the subsequent crimes of violence from '93 to '99 and as recently as just a few years ago in April 2015. So his extreme assaultive history has been established beyond a reasonable doubt.

Id. at 65. Appellant filed post-sentence motions, which the trial court denied on August 7, 2018. On September 7, 2018, the thirty-first day after the denial of his post-sentence motion, Appellant filed a notice of appeal. On October 15, 2018, we *sua sponte* quashed as untimely Appellant's appeal at docket number 1510 MDA 2018. On December 26, 2018, Appellant filed a PCRA petition requesting *nunc pro tunc* reinstatement for his direct appeal rights. The PCRA court granted relief and Appellant timely filed the instant appeal. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

On appeal, Appellant raises two issues for our review:

> I. Was not the evidence insufficient to prove beyond a reasonable doubt that the factual/legal predicates for imposing a [LWOP] sentence on a person who was a juvenile at the time of the commission of the offense?
>
> II. Was not the reimposition of a [LWOP] sentence clearly unreasonable, so manifestly excessive as to constitute an abuse of discretion, and inconsistent with the protection of the public, the gravity of the offense, and [Appellant's] rehabilitative needs?

Appellant's Brief at 6 (unnecessary capitalization omitted). In support of his first issue, Appellant argues that, contrary to the trial court's conclusion, the Commonwealth did not prove beyond a reasonable doubt that he is one of those exceedingly rare and uncommon juveniles who are permanently

incorrigible.[4] With respect to his second issue, Appellant argues that the trial court abused its discretion in failing to consider mitigating factors when fashioning his LWOP sentence. Specifically, Appellant claims that the LWOP sentence is excessive because the trial court did not account for his successful participation in various programs.[5]

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[4] To the extent Appellant argues that Dr. O'Brien failed to consider certain documents evidencing his participation in various programs, such argument is waived because Appellant failed to include it in his Rule 1925(b) statement or question presented. ***See*** Pa.R.A.P. 1925(b)(4)(vii) ("[i]ssues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived."); Pa.R.A.P. 2116(a) ("No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."); ***see also*** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

[5] We have "held on numerous occasions that a claim of inadequate consideration of mitigating factors does not raise a substantial question for our review." ***Commonwealth v. Disalvo***, 70 A.3d 900, 903 (Pa. Super. 2013) (quoting ***Commonwealth v. Downing***, 990 A.2d 788, 794 (Pa. Super. 2010)); ***see Commonwealth v. Cruz-Centeno***, 668 A.2d 536, 545 (Pa. Super. 1995) ("[a]n allegation that a sentencing [judge] 'failed to consider' or 'did not adequately consider' certain factors does not raise a substantial question that the sentence was inappropriate,"), ***appeal denied***, 676 A.2d 1195 (Pa. 1996); ***Commonwealth v. Bershad***, 693 A.2d 1303, 1309 (Pa. Super. 1997) (finding absence of substantial question where appellant argued the trial court failed to adequately consider mitigating factors and to impose an individualized sentence). Thus, consistent with the foregoing cases, Appellant's claim does not raise a substantial question for our review. Even if we were to review the merits of Appellant's sentencing claim, he still would not be entitled to relief. It is well-settled that "[w]here the sentencing court had the benefit of a presentence investigation ('PSI'), we can assume the sentencing court 'was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors.'" ***Commonwealth v. Moury***, 992 A.2d 162, 171 (Pa. Super. 2010). Here, as explained in its Rule 1925(a) opinion, the trial court not only reviewed Appellant's PSI, but also examined his sentencing memorandum which

After careful review of the record and relevant case law, we conclude that the trial court accurately and thoroughly addressed the merits of Appellant's issues in this appeal. ***See*** Trial Court Opinion, 3/29/19 at 18-23. With respect to Appellant's sufficiency argument,[6] the trial court determined that Appellant was not amenable to rehabilitation because of his permanent

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detailed his efforts at rehabilitation. Additionally, the trial court's finding that Appellant simply is not amenable to rehabilitation irrespective of the steps that he may take toward that goal is supported by the record. ***See*** Trial Court Opinion, 3/29/19 at 23 (finding that "that there is no possibility that [Appellant] can be rehabilitated at any point later in his life, no matter how much time he spends in prison and regardless of the amount of therapeutic interventions he receives.").

[6] "A claim challenging the sufficiency of the evidence is a question of law." ***Commonwealth v. Widmer***, 744 A.2d 745, 751 (Pa. 2000).

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the finder of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Antidormi, 84 A.3d 736, 756 (Pa. Super. 2014), ***appeal denied***, 95 A.3d 275 (Pa. 2014).

incorrigibility which was established beyond a reasonable doubt at the resentencing hearing. The trial court reasoned:

> [Appellant] has an extreme violent assaultive history, and over thirty prison misconducts between 1997 and 2017. The credible and unrebutted evidence established that [Appellant] suffers from antisocial personality disorder. Furthermore, it is well-established that this disorder is untreatable or as Dr. O'Brien described, "is a permanent part of an individual's behavior—characterological fabric." While such a disorder is potentially subject to mollification in later years, the evidence presented showed absolutely no indication [Appellant] is currently less prone to violence than he was when he was younger. Notably, a few years ago he attacked and stabbed a prisoner with a bolt, unprovoked, and expressed no compunction against killing him.

Id. at 22. With respect to Appellant's second issue, the trial court concluded that it did not abuse its discretion in resentencing him to LWOP "because the record clearly established that [Appellant's] threat to public safety is serious." ***Id.*** at 23. Appellant "is incapable of change and should never be afforded the chance of leaving prison." ***Id.*** The trial court determined that "rehabilitation is impossible." ***Id.*** Accordingly, we affirm the trial court's July 24, 2018 judgment of sentence. We further direct that a copy of the trial court's March 29, 2019 opinion be attached to any future filings in this case.

Judgement of sentence affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/20/2019

COMMONWEALTH OF PENNSYLVANIA	: IN THE COURT OF COMMON PLEAS : DAUPHIN COUNTY, PENNSYLVANIA
v.	: NO. CP-22-CR-1715-1988 : [CP-22-MD-1715-1988]
BERNARD WILLIAMS	: PCRA–RESENTENCING- Appeal

March 29, 2019

OPINION

Before the Court is an appeal filed by petitioner Bernard Williams from my order re-sentencing him to life without parole (LWOP) for the 1988 murder of State Representative William Telek. Petitioner had been granted the right to a new sentencing hearing pursuant to Miller v. Alabama[1] and its progeny because he was a juvenile when he committed the murder. Following the hearing, I re-imposed a LWOP term because the Commonwealth proved, beyond a reasonable doubt, that petitioner is permanently incorrigible, irreparably corrupt, irretrievably depraved and incapable of rehabilitation. This opinion is written in support of that order pursuant to Pa.R.A.P. 1925(a).

Factual Background

In the early morning hours of May 17, 1988, Representative Telek was found bludgeoned to death in Susquehanna Township. His car had been stolen and cash had been taken from his person. Petitioner was arrested later that morning, following a high-speed chase, in the possession of the victim's car. At the time of the murder, petitioner was 17 years and 7 months old (DOB 10/25/70). In December 1988, following a trial before the late Hon. John C. Dowling, a Dauphin County jury found petitioner guilty of first-degree murder as well as robbery, theft, reckless endangerment and marijuana possession. Judge Dowling recounted the evidence produced at trial in an opinion addressing petitioner's post-trial motion, as follows:

> William Telek was last seen alive at approximately 1:30 a.m. on the morning of May 17, 1988 when his roommate, Representative Edgar Carlson dropped him off in the Capitol annex parking garage at Telek's vehicle, a 1987 Chrysler Fifth Avenue four-door sedan. His body was discovered shortly after 3:00 a.m. in the middle of

[1] 567 U.S. 460 (2012).

Bergner Street, some 100 feet east of Front Street and just outside the city's northern limits. His pants were pulled down, and there was obvious severe head trauma with blood seeping and forming in a large puddle. The left trouser pocket was pulled inside out. There was no wallet, no money, and no car, the victim being identified by some correspondence found in the inside breast pocket of his suit coat. This area of roadway is isolated, poorly lit, and surrounded by fields and wooded areas with the nearest residence being several hundred feet away. An autopsy revealed the death was caused by three major blows to the head from a blunt oval object, later determined to be a ballpeen hammer. There was evidence that Telek never carried a wallet and usually paid by cash which he carried in one of his front trouser pockets.

A description of Telek's car, including his license number, was quickly determined and circulated. At approximately 11:00 a.m. that same morning police saw a car matching the description in the vicinity of the William Penn Campus of the Harrisburg High School several blocks from where the body was discovered. A high-speed chase eventually ensued for several miles ending when the car was forced to a stop on the ramp of the State Street bridge, beneath the shadow of the Capitol Building. Bernard Williams, the defendant, was driving the vehicle. With him were two passengers, John and Brian Anderson. Police officers interviewed Williams on the State Street bridge ramp that morning. He related several conflicting stories. He first told Officer Holland that he got the car from "Tom White" for $100.00, and that the alleged transaction occurred near Friendly's Bar on Third Street approximately one-half hour before the police stopped him. He described Tom White as a short, light-skinned black male who always wears a white hat.

A few minutes later, Williams told Patrolman Nelson of Susquehanna Township that he lived in Philadelphia. When confronted with the fact that Nelson had heard his name before, Williams admitted to an address on Park Street in Harrisburg which turned out to be incorrect. Defendant went on to indicate that he bought the car the evening before from a black male by the name of Tim for $100.00. He also allegedly bought a dime bag of "herb" and Tim's last name was supposedly White.

After another short interval, Williams spoke with Detective Daley of Susquehanna Township and indicated that he had bought the car earlier that morning from Tim, a light-skinned black male who wore a white hat. He described Tim as approximately 5'7" tall. He described the location of the transaction as King Boulevard near the bus terminal. Williams went on to describe that he had met the Anderson brothers at Eddie's Men's Shop on Market Street near the bus terminal shortly after buying the car. He also attempted to explain the high speed chase by stating that he had snorted coke that morning.

Upon hearing that the police were going to search his room, he indicated to Daley that they were probably going to find a knife and a gun. He said that he was out late the evening before, arriving home at approximately 11:45 p.m. on May 16th and that he had paid $100.00 for the cocaine and $100.00 for the car. When asked by Daley

how he got the money for all of these purchases, he indicated that he was a hustler, gambler, and "got over" on people.

While at City Hall, Williams asked a series of unprompted questions to police officers. He inquired, allegedly referring to the victim, "was he an executive type?" "If I was going to kill him, I'd do it alone." "They dumped the body in Susquehanna Township[.]" "The old man must have been uptown to buy drugs." Testimony at trial from numerous police officers [who] had Williams in custody during that day revealed that no one ever mentioned a murder to him, the only questioning concerned the stolen vehicle.

Subsequent police investigation revealed that sometime after 3:00 a.m. on the morning of May 17, 1988, Bernard Williams encountered four youths on a porch in the William Howard Day homes housing development within a block of the defendant's residence and within three miles of Bergner Street. Williams came over to the porch and joined the foursome commenting, "Me and my boys just came from Susquehanna." He also indicated that he had been looking for gloves. The foursome described Williams as wearing dark clothing, two of them described a shirt with the number 88 on it, that he was not wet, and that he was carrying a hammer. Williams was supposedly looking in his pockets for some marijuana (which he apparently could not locate and had to purchase two new bags), had a large quantity of cash, and bragged that he would be "floating" his grandpa's New Yorker the next day.

Yet another witness, Tanya Jackson, distantly related to the accused, told police that she saw Williams backing a car matching the general description of the Telek vehicle into a parking place in front of his home sometime on the morning of the 17th. Jackson did not recall the exact time other than to say that it was after midnight and before dawn.

Another youth testified that he had met Williams on Monday, May 16, 1988, at approximately 10:00 p.m. near the intersection of the 18th and Reservoir Park in the City of Harrisburg. He testified that at the time he observed that Williams was carrying a hammer in his pocket. The end of the hammer was like a "ball." Another witness testified that during the early morning hours of May 17, 1988, at approximately 12:30 a.m., he gave Williams a ride to the intersection of Sixth and McClay Streets in the City of Harrisburg approximately 1½ miles from the location where Telek's body was discovered.

At approximately 5:00 p.m. on May 17, 1988, police executed a search warrant at the residence of Williams' aunt where he was supposedly living at the time. In a second floor bedroom, police confiscated a ballpeen hammer which was in the headboard of the defendant's bed. The hammer had a rubber handle, similar to that described by the four youths who encountered the defendant earlier that morning. A later examination at the Pennsylvania State Police crime laboratory revealed traces of human blood on the hammer, but the amount was not sufficient for further testing. Dr. Harold L. Cottle, a pathologist, testified that he performed an examination upon

> the skull of the victim and was able to say to a reasonable degree of medical certainty that the peculiarities of the hammer corresponded precisely with the wounds on Telek's face and skull area.

Commonwealth v. Williams, 109 Dauph. Co. Rptr. 379, 379-382 (July 19, 1989).

The jury convicted petitioner on December 14, 1988. It deadlocked on the question of whether to impose the death penalty on the murder charge and as such, Judge Dowling directed a verdict of mandatory life imprisonment. After Judge Dowling denied petitioner's post-trial motion (Id.), he formally sentenced petitioner to a LWOP term plus a consecutive term of 11 to 22 years on the other charges.[2] The Superior Court denied petitioner's appeal from the denial of post-trial relief.[3] The Supreme Court denied his request for an allowance of appeal.[4]

Procedural Background

On August 23, 2012, shortly after the U.S. Supreme Court decided Miller v. Alabama, petitioner filed a request for relief under the Post-Conviction Relief Act[5] (PCRA) arguing that under Miller his LWOP sentence must be vacated and he be resentenced to a non-life term. Miller held that a LWOP sentence imposed upon a juvenile when he or she committed a crime is disproportionate and unconstitutional under the Eighth Amendment's prohibition against cruel and unusual punishment, except where the defendant remains "permanently incorrigible, irreparably corrupt, or irretrievably depraved." Miller v. Alabama at 471. A decision on petitioner's request for PCRA relief under Miller was stayed for a number of years pending resolution of related litigation addressing its application including whether it applied retroactively.

While those cases were being litigated, the Pennsylvania Legislature enacted a new statute addressing sentences for juveniles convicted of murder, applying to convictions occurring after Miller was decided. 18 Pa.C.S.A. §1102.1. The new law provided that juveniles who commit first-degree murder at the age of fifteen or younger must be sentenced to a minimum of 25 years to a

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[2] Petitioner was sentenced to 10-20 years for robbery, to run consecutively to his life term; 1-2 years concurrent for two counts of theft; 1-2 years consecutive for reckless endangerment of police officers and a concurrent 30-day term for marijuana possession. His theft sentences were later vacated by the Superior Court because they merged with the robbery count.

[3] Commonwealth v. Williams, No. 514 HBG 1989, 580 A.2d 1169 (Pa. Super. 1990) (mem.) (one judge dissenting).

[4] Commonwealth v. Williams, No. 187 M.D. 1990, 584 A.2d 317 (Pa. 1990).

[5] 42 Pa.C.S.A. §§ 9541-9551.

maximum of life or to a LWOP term. 18 Pa.C.S. §1102.1(a)(2), (e). Juvenile offenders who commit first-degree murder between the ages of fifteen to eighteen must be sentenced to a minimum of 35 years to a maximum of life or to a LWOP term. 18 Pa.C.S.A. §1102.1(a)(1), (e). The new statute further required that the Commonwealth provide notice of intent to seek LWOP following conviction and prior to sentencing. 18 Pa.C.S. § 1102.1(b). Finally, Section 1102.1 directed that the sentencing court, in making its determination of whether to sentence a juvenile defendant to LWOP, consider and make findings on the record addressing the factors enumerated in the statute (addressed below). 18 Pa.C.S.A. § 1102.1(d).

In 2016 the U.S. Supreme Court held that Miller applied retroactively to cases on collateral review, rendering petitioner's PCRA claims ripe for review. Montgomery v. Louisiana, __ U.S. __, 136 S. Ct. 718, 732-27 (2016) (overruling Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013)). A year after Montgomery was decided, the Pennsylvania Supreme Court revisited a number of issues related to juveniles sentenced to LWOP terms in Commonwealth v. Batts, 63 A.3d 410 (Pa. 2017) (Batts II). The Court in Batts II summarized the applicable case law to date:

> The United States Supreme Court decisions that control in this matter unambiguously permit the imposition of a life-without-parole sentence upon a juvenile offender only if the crime committed is indicative of the offender's permanent incorrigibility; that the crime was not the result of the "unfortunate yet transient immaturity" endemic of all juveniles. See Montgomery, 136 S.Ct. at 726, 734; Miller, 567 U.S. at 479, 132 S.Ct. 2455; see also Graham[v. Florida], 560 U.S. [48,] 73, 130 S.Ct. 2011 [(2010)]; Roper [v. Simmons], 543 U.S. [551,] 573, 125 S.Ct. 1183 [(2005)]. Therefore, for a sentence of life without parole to be proportional as applied to a juvenile murderer, the sentencing court must first find, based on competent evidence, that the offender is entirely unable to change. It must find that there is no possibility that the offender could be rehabilitated at any point later in his life, no matter how much time he spends in prison and regardless of the amount of therapeutic interventions he receives, and that the crime committed reflects the juvenile's true and unchangeable personality and character. Montgomery, 136 S.Ct. at 733 (stating that pursuant to Miller, life without parole is only justified for "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible").
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> Under Miller and Montgomery, a sentencing court has no discretion to sentence a juvenile offender to life without parole unless it finds that the defendant is one of the "rare" and "uncommon" children possessing the above-stated characteristics, permitting its imposition. Montgomery, 136 S.Ct. at 726, 734; Miller, 567 U.S. at 479, 132 S.Ct. 2455; see Graham, 560 U.S. at 73, 130 S.Ct. 2011; Roper, 543 U.S. at

> 572–73, 125 S.Ct. 1183. A sentence of life in prison without the possibility of parole for a murder committed when the defendant was a juvenile is otherwise disproportionate and unconstitutional under the Eighth Amendment. Montgomery, 136 S.Ct. at 734, 735.

Id. at 435.

The Batts II Court devised a procedure for the implementation of the Miller and Montgomery decisions in Pennsylvania for juveniles whose sentences were imposed prior to the enactment of the new juvenile sentencing law (18 Pa.C.S.A. § 1102.1). The court initially held "that in Pennsylvania, a faithful application of the holding in Miller, as clarified in Montgomery, requires the creation of a presumption against sentencing a juvenile offender to [LWOP]." Commonwealth v. Foust, 180 A.3d 416, 427 (Pa. Super. 2018) (citing Batts II at 451-52). "The adoption of any other presumption would be contrary to 'the central premise of Roper, Graham, Miller[,] and Montgomery — that as a matter of law, juveniles are categorically less culpable than adults.'" Foust at 427 (quoting Batts II at 452). The Batts II court thus held that the Commonwealth must prove a juvenile is incapable of rehabilitation by proof beyond a reasonable doubt and that this determination may be decided by a jury but can be decided by a judge. Batts II at 452–456. It further held that the Commonwealth's evidence and the sentencing court's decision must take into account the factors enumerated in Section 1102.1(d) of the new juvenile sentencing statute. Id. at 459-60. Finally, the Batts II court held that even where the Commonwealth satisfied its burden of proof, the sentencing court nevertheless maintained discretion to choose not to impose LWOP upon the juvenile offender. Id.

After the stay on the petitioner's PCRA petition was lifted, his request for re-sentencing was assigned to me. I held the re-sentencing hearing July 24, 2018, following which I re-sentenced petitioner to life in prison.[6] Petitioner filed a post-sentence motion challenging this sentence, which I denied. Petitioner's attorney filed a notice of appeal one day late and the appeal was quashed by the Superior Court due to untimeliness.[7] He then filed a PCRA petition raising ineffective

[6] My order further directed that petitioner not receive duplicate credit for any other sentences imposed consecutively to his prior life sentence, including for crimes committed while incarcerated in Huntingdon, Clearfield and Erie Counties. Those cases and the underlying crimes committed by petitioner during his incarceration are discussed later in this opinion.

[7] Commonwealth v. Williams, No. 1510 MDA 2018 (Pa. Super.) (appeal quashed Nov. 27, 2018).

assistance of sentencing counsel and seeking reinstatement of his appeal rights, *nunc pro tunc*, which request I granted. Petitioner thereafter filed his *nunc pro tunc* notice of appeal January 29, 2019.

Re-Sentencing

Prior to the re-sentencing hearing, I directed Dauphin County Probation Services to prepare a Pre-Sentence Investigation (PSI) Report. See Pa.R.Cr.P. 702. The PSI Report attached supporting documentation including the Commonwealth's expert report by psychiatrist John S. O'Brien, II, and a "Juvenile Lifer Packet" prepared by the Department of Corrections (DOC) containing scores of petitioner's prison and criminal history records which I reviewed prior to the hearing and considered in determining petitioner's ultimate sentence. See Commonwealth v. Moury, 992 A.2d 162, 171 (Pa. Super. 2010) ("Where the sentencing court had the benefit of a [PSI], we can assume the sentencing court was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors.")

I also considered petitioner's Sentencing Memorandum which summarized his personal childhood history, as follows[8]:

> Bernard was born, along with his twin sister, in Philadelphia in 1970 to abusive parents. Before the age of 2, Bernard's father killed his twin sister. Both his mother and father went to jail and Bernard was sent to live with his aunt in Harrisburg. Bernard's life with his aunt was stable and for the first and only time he felt loved. By age 5, however, Bernard's mother was released from jail and she took him back to live in Philadelphia. From this point on, Bernard's life was chaotic, unstable, and greatly influenced by drugs and alcohol and by both physical and sexual abuse.
>
> Bernard showed potential as a child. In first and second grade, Bernard excelled and received good grades. Unfortunately, his mother started to use heroin and began beating him for no reason ... including [with] broom sticks and extension cords. At age 7 ... Bernard's 21-year-old sister forced him to perform oral sex on her. After facing physical and sexual abuse, Bernard ran away and lived alone on the streets of Philadelphia. He would sleep at a playground at the top of a slide that had a small roof, and would break into cars to try to get money for food. Eventually he became so hungry he returned home, not to a worried or relieved mother, but to a mother who gave him a beating that he would never forget. The marks from the extension cord were visible, and Bernard's teacher at school saw them and reported the abuse. For

[8] The Sentencing Memorandum was filed under this docket August 7, 2017. The personal history recited therein is supported by other documents submitted prior to sentencing.

the next few years, Bernard would be shuffled through the system staying at hospitals and being passed from foster home to foster home.

Bernard vividly remembers the first place he was sent to after being removed from the custody of his mother, the fourth floor at Hahnemann Hospital. At Hahnemann Hospital, Bernard was strapped down at times, and recalls being injected with something to make him sleep. He remembers the pain from the injections. From Hahnemann Hospital, Bernard was moved to a facility called Silver Springs, just outside Philadelphia. Bernard was placed with other boys and girls at Silver Springs and for a short time, he was in a stable environment. Bernard learned to play sports, went to the pool and on other field trips. He remembers specifically that he was well fed.

Bernard was eventually placed in a foster home, but Bernard's foster parents had four other children, and didn't treat Bernard the same as the other kids. Bernard ended up back at Silver Springs for the second time and was placed on medication for aggression and nightmares. Bernard remembers that his counselor would lay in his bed with him and hold him to try to comfort him until she had to go home.

Unfortunately, Bernard was again placed into foster care and had an even worse experience than his placement. Bernard was placed with two older women with no children. He would go to the grocery store to steal food because his foster family would only feed him dinner. It was not the first time Bernard found it necessary to engage in criminal activity in order to feed himself. For the third time, at age 12, Bernard ended up at Silver Springs. He was placed in a unit with older kids. This time Bernard's stay was not as stable. Although not his first experience, Bernard recalls losing his virginity at age 12.

Bernard was subsequently sent back to live with his Aunt in Harrisburg. She was much worse off than what Bernard remembered from his early childhood. She was indigent and lived in a roach and mice infested house. Although Bernard went to a special school in Pennbrook, he never went to Middle School, and considered himself to be a little slow. He fell in with a bad crowd and started committing crimes, breaking into cars and sheds. He was eventually caught and put in a juvenile detention center where he remained for a couple of years. He was once again placed in a foster home .... The first night in his new home, Bernard's foster mom gave him drugs and by the second night, started having sex with him. Sadly, Bernard remembers this as being one of the better times in his life because he remembers that his foster mom fed him really well. Although Bernard started to experience financial stability, steady meals, and even got a job into high school, the sexual abuse and drug abuse continued. Bernard's foster mom introduced him to cocaine when she started using it. She started to get jealous of Bernard's girlfriends.

Bernard eventually started stealing again, his job had ended, and his girlfriend was pregnant. Bernard was caught stealing, and was sent to live with his aunt again. Conditions were worse than before and Bernard can remember that his aunt had a

liver condition, that the food his aunt cooked turned green, and that neither of them had beds. Bernard's aunt slept on the couch, and he slept on the floor.

Despite these conditions, Bernard searched for a job, but no one would hire him. With a new baby on the way, Bernard was overwhelmed, and once again returned to committing crimes to survive. At the time ... Bernard was 17 [and] had no support system, no one who truly cared about him, and he was barely able to cope with the hunger and abuse that was his childhood.

(Sent. Mem. pp. 2-5; see also N.T. 52-53)

Petitioner's criminal history reflects that following his conviction for the murder of Representative Telek, petitioner was involved in three violent incidents while incarcerated, each of which resulted in criminal convictions. (See N.T. 66) In 1993, petitioner assaulted a corrections officer with a homemade weapon. He was charged with assault and retaliation for past official action and later pled guilty to simple assault, for which he received a one to two year sentence.[9] In 2000, petitioner was charged with attempted homicide, aggravated assault, simple assault and recklessly endangering another person arising from another attack on a corrections officer with a homemade weapon. Petitioner pled guilty to aggravated assault and was sentenced to an 8 to 16 year term, consecutive to his life sentence.[10] In April 2015, when petitioner was 45 years old, he attacked a prisoner with a weapon in the SCI Albion cafeteria. The attack was captured on surveillance video and shown at the re-sentencing hearing. (See N.T. 30; Exbt. C-3) During the incident, petitioner, without provocation, got up from his table, walked up to the victim from behind and repeatedly stabbed him with a six-inch metal bolt in his head and neck causing major injuries including a fractured orbital socket. (See N.T. 18) Petitioner pled guilty to aggravated assault and received a 10 to 20 year sentence, concurrent to his life sentence.[11]

At petitioner's re-sentencing hearing before me, the Commonwealth presented the testimony and report of psychiatrist Dr. O'Brien, as well as victim impact testimony from Marcia Telek DePaula and Rita Telek Durst, two of the victim's daughters. In addition, Rita Telek Durst read into the record a statement written by her mother Leona Telek.

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[9] Commonwealth v. Williams, No 31-CR-120-1994 (Huntingdon Co.). It is unclear from the record if the sentence imposed was concurrent or consecutive.
[10] Commonwealth v. Williams, No 17-CR-208-2000 (Clearfield Co.).
[11] Commonwealth v. Williams, No 25-CR-3050-2015 (Erie Co.).

i. Expert Testimony

Dr. O'Brien is board certified in general psychiatry and forensic psychiatry and also has a juris doctor degree. (N.T. 5-6; Exhibit C-1) Although Dr. O'Brien was not able to interview petitioner, he had access to close to a thousand pages of records for the purpose of determining whether a LWOP sentence was appropriate. (N.T. 13) The vast majority of the documents he reviewed were from the Pa. Department of Corrections (DOC) reflecting petitioner's incarceration between 1988 through 2017 and included voluminous disciplinary and misconduct files, psychiatric records and evaluations. (N.T. 14-16) Dr. O'Brien also reviewed the trial court opinion issued by Judge Dowling in 1989, which provided details about petitioner's arrest and prosecution, as well as state police investigation records from petitioner's prison assaults in 1993, 1999 and 2015, including the videotape of the most recent attack. (N.T. 14-16)

Dr. O'Brien offered his opinion, within a reasonable degree of medical certainty, as follows:

> Well, first of all, my opinion in reference to his diagnosis, as I've already stated his antisocial personality disorder, which is not a treatable or curable condition, it is a permanent part of an individual's behavior -- characterological fabric ... and is associated with behavior consistent with the behavior exhibited by [petitioner], both at the time of the offense and afterwards following his entry into and throughout his period of state custody.
>
> The terms permanent incorrigibility, irreparable corruption and irretrievable depravity are not clinical terms. They are not psychiatric terms. They are legal terms. It's my opinion that Mr. Williams has an untreatable and unchanging condition. It's my opinion that he is not amenable to treatment and rehabilitation in the correctional system, and that from a legal perspective in my opinion, he does exhibit and his crimes reflect and that includes the offense and crimes since his entry into custody, permanent incorrigibility, irreparable corruption, and irretrievable depravity.

(N.T. 24-25; see also Exhibit C-2) Dr. O'Brien concluded that in his opinion, petitioner will always be dangerous. (N.T. 25)

Regarding petitioner's mental health, Dr. O'Brien had access to records reflecting that petitioner received consistent and documented mental health services over the course of his incarceration. (N.T. 17) The records showed that while petitioner repeatedly reported symptoms indicative of psychiatric illness, and was given numerous psychiatric diagnoses at different times - including schizophrenia, major depressive disorder with psychotic features, adjustment disorder,

malingering and antisocial personality disorder – in every instance of being treated for a psychiatric illness, petitioner was ultimately found to not actually have psychiatric symptoms or a psychiatric diagnosis other than a personality disorder. (N.T. 17-18) According to Dr. O'Brien, the records "clearly reflect him to be dishonest and manipulative and to exhibit symptoms indicative of malingering." (N.T. 17)

Petitioner's DOC records further revealed a history of misconducts and numerous separations, including being placed in disciplinary custody, restrictive housing unit placements and transfers between state correctional institutions. (N.T. 15-16, 18) Petitioner received more than thirty misconducts while in prison, between 1997 and 2017. There were no records available for misconducts prior to 1997. (N.T. 20-21) These records, including of petitioner's three prison assaults discussed above, revealed an "extreme assaultive history" according to Dr. O'Brien. (N.T. 18)

With regard to the 2015 attack at SCI Albion, Dr. O'Brien found it notable that petitioner attacked the victim from behind and without apparent provocation. (N.T. 18) Petitioner was also alleged to have told the victim at that time that he did not have a problem killing him. (N.T. 18-19) Dr. O'Brien also found notable that petitioner used a weapon in committing the 1993 and 1999 assaults. (N.T. 20) Use of a weapon in those attacks suggested to Dr. O'Brien a degree of premeditation by petitioner, as opposed to a reaction arising in the moment. (N.T. 20)

Dr. O'Brien found particularly significant the longevity and severity of petitioner's misbehavior, which revealed a lack of evidence petitioner has rehabilitated himself during his incarceration. (N.T. 23) He found this consistent with petitioner's antisocial personality disorder diagnosis, "which is an untreatable and life-long condition. But more importantly than that, sometimes individuals with antisocial personality disorder ... can exhibit a mollification of their personality disorder symptoms with age, and I do not see that in [petitioner's] case .... There's nothing about his record that would suggest that his personality disorder symptoms have mollified or become softened or muted with age and experience." (N.T. 23-24)

Finally, Dr. O'Brien testified that the DOC records revealed petitioner's lack of participation in educational and vocational training while in the prison system. Dr. O'Brien found this to be an atypical finding based upon his experience reviewing participation records in other

criminal cases including those of juvenile lifers, which typically showed participation in a wide array of programs. (N.T. 19)

iii. Victim Impact Testimony

Under the juvenile sentencing statute, this court must consider victim impact testimony, which was offered by the Commonwealth at the hearing through Telek family members. The evidence presented established that William Telek and his wife Leona were married in 1955 and at the time of the murder, were 64 and 57 years old, respectively. They had seven children at the time of the murder, the youngest of whom was 18 years old. They also had six grandchildren at that time. (N.T. 35-36) At the hearing, their daughter Rita Telek Durst read into the record the following victim impact statement written by her mother Leona:

> When my daughter called to tell me that there was going to be a re-sentencing hearing for the man that killed my husband, I was shocked. Our family has tried so hard over the years to forget that one horrific day that ended my husband's life. I couldn't understand why we would have to re-live this nightmare all over again.
>
> There are times when I feel like it was only yesterday that my husband, Bill, was here with me. We would talk about what we would do once we could retire after our youngest was through college. After raising seven children, we would finally have time for each other again. Our plans were not elaborate. They were simple. We would have more time to spend with our grandchildren, we could relax at home and have dinner, or we could just watch television.
>
> And then there are times when it feels like an eternity that I have been without him. So much has happened since his death, both happy and sad, but they were the times when I needed him the most.
>
> Our oldest daughter passed away only five short years after my husband. One of our grandsons was diagnosed with cancer before his second birthday. Our youngest daughters graduated college and got married. Eight more grandchildren were born.
>
> I am an 87-year-old woman. I have been without my husband for over 30 years. This is almost as long as we were married. My children and grandchildren have been my purpose to move forward.
>
> Life hasn't been easy for me, but I chose not to let this one angry man take away anymore from me than he had already taken on May 17, 1988, when he brutally murdered my husband.
>
> I have had thoughts of my husband buried deep inside my heart. Many questions still run through my mind, especially when I am taken back to that awful day. Did I

remember to say I love you? Did I kiss him good-bye before he left for Harrisburg the morning before? As he was lying there dying on the deserted street, did he know he was gonna die? What were his final thoughts? Did he see us on our wedding day? Did he see the faces of our children? Did he wonder how this could ever happen to him? Did he whisper he loved me and say good-bye? Did he plead for God to help him as he was taking his last breath? I pray to God that he felt no pain, that he didn't suffer. Logically, I don't know how this could be true, while he was repeatedly being beaten to death with a hammer. I have asked myself what kind of person could possess such anger and rage to take another human being's life in such a brutal manner, a man he didn't know, the man that I loved, my husband, the father of my children.

As a mother, I do not want my children to see my pain. I needed to be strong for them. This was their father, the man who was always there for them. So I kept my pain and my heartache inside, not allowing them to see me cry, not burdening them with my own struggles to understand all that had happened.

I continued to work for the next 30 years, partly because I financially needed to, but it also kept me busy. I did not allow myself to dwell on what could and should have happened to my husband Bill. We were robbed of so many things, all the milestones, the memories we should have shared together, the opportunity to grow old together and to take care of one another.

My husband's brothers and sisters lived well into their 80s and 90s, all told, Bill would have also. I tried not to let my mind think about these things because it hurts my heart too much.

One day I will see my husband again, all of my questions will be answered. We will be reunited on that day and nothing or no one will separate us again. It is at that time that my heart will be filled with joy again and not sorrow. The tears I have cried will be because I am truly happy once again. I will have the peace that I'm looking for all these years.

This violent and dangerous criminal should continue to serve life in prison without parole. I fear for the safety of my family and the safety of others. I do not want anyone else to experience the devastation that I felt for 30 years. Bill would want me to protect others from suffering such a horrific death.

(N.T. 46-49)

According to Marcia Telek DePaula, the youngest of the Telek children, after the murder, her mother had to "become both parents" to her and her siblings and she put her family before herself. Shortly after the murder, Leona agreed to run for her husband's seat and was elected. She served four years before her district was reapportioned, after which she ran for tax collector and served in that position for twenty-four years. (N.T. 42) According to Marcia, "I think she was afraid not to work

because she would have to have more time to think about her pain. She was never able to relax and enjoy retirement with our Dad. At 87 years old, our Mom deserves peace." (N.T. 42-43)

Marcia testified that she had just completed her first year in college when her father was killed. (N.T. 32) Her father was a veteran of WWII, graduated from the University of Miami on a G.I. Bill, and then obtained a Master's Degree from Penn State. He was initially a school teacher before his election to the House of Representatives. (N.T. 35) She recalled him to be an honest, hard-working man who didn't have much but he made the most of what he had. He loved his wife, children and grandchildren. (N.T. 35)

She described her father as a kind and compassionate man who "was able to give advice without you realizing it and never judging you for making a mistake." He cared deeply for people, had the gift of talking to strangers for hours and was a friend to many people from many walks of life. "[I]f someone had a problem, he was going to help them solve it." (N.T. 43) He played golf with his two sons and the family listened to polkas every Sunday after church. On his trips back from Harrisburg, he would make sure to stop and visit his grandchildren. (N.T. 34)

Marcia still vividly recalls the day she learned about her father's murder – a date seared into her memory. She described it as a surreal day of frantic denial. (N.T. 33, 38) She was with her mother when she got the news and saw as "[t]he life drained out of her." (N.T. 38) It was a day she never wants to remember but will never be able to forget. (N.T. 33-34) Marcia recalled that whenever she thinks about the day her father died she is reminded of how she was eagerly anticipating telling him she got a 4.0 on her final semester's grades, but was never able to do so. (N.T. 37) Marcia also offered the final recollections of her sisters Rita and Robin; both still vividly recalling the routine but personal nature of their final conversations with their father. (N.T. 36-37)

Marcia testified about the emotionally destructive aftermath of the murder:

> The days and months that followed seemed like a nightmare. We cried ourselves to sleep only to wake up to the nightmare once again. Learning the details of the murder made it worse. Our Dad was left alone to die in the street ... if we could only have been there to help him.
>
> How could someone do this?
> What were our Dad's last thoughts?
> Did he know that he was going to die?
>
> Our Dad was beaten so badly that his face needed to be reconstructed and he had to wear his glasses in his casket. We tried to comfort each other with thoughts that God took Dad

to heaven before he felt the pain. My sister told me to picture Dad looking down on us and remember him when he was alive and full of happiness. Our Dad was buried on his 33rd wedding anniversary.

The trial was painful for us. We had to re-live these horrible details of our Dad suffering. Our Mom showed great courage, but we could see the pain that she was trying to conceal.

(N.T. 39)

Marcia remorsefully testified that her father never met eight of his fourteen grandchildren. He was not around to walk his three youngest daughters down the aisle on their wedding day. He never saw his younger children graduate from college and Marcia from law school. He was not around to help their mother when the oldest Telek daughter died in 1993. (N.T. 36) Marcia's uncle walked her down the aisle for her own wedding, and through tears, she shared her "father-daughter" dance with her mother. (N.T. 40)

Following her graduation from college, Marcia got a job out-of-state which she quit because "I just couldn't be away from home, be away from family and have so many fears. Fears I really never got over -- fears of being alone, being afraid and always thinking something bad was going to happen. I had to leave this perfect job and return home." (N.T. 40) Marcia explained that time has not healed her wounds. (N.T. 41) "Time does have a way of lessening the pain, but the pain never really goes away. You just learn to accept what you cannot change and you move forward as best you can. Sometimes it was just getting out of bed that day. Sometimes it wasn't even that." (N.T. 41)

She recounted the broader implications of her father's murder:

How has it changed us? There are obvious things that have been taken away from us, birthdays, anniversaries, graduations, weddings, and the births of more grandchildren. But our Dad's brutal murder took away a lot more than that. It took away our innocence and our sense of security. We were robbed of a man we could turn to any time we needed him -- his wisdom, his guidance, and his unconditional love, but mostly, it took away our mother's partner -- someone that she could lean on in hard times; someone to comfort her when our sister died; and someone to hold her and tell her it was going to be okay when we heard her quietly crying in her room.

(N.T. 43)

Marcia ultimately stressed, however, that she was offering her testimony

... because we don't want this to happen to anybody else. We have lived 30 years of tragedy, and we don't want anybody else to be in that position. We want to prevent that. Any death is tragic, but a murder is traumatic and it had long-lasting emotional effects on not just the immediate family but all of the family that we live with currently. (N.T. 35)

...

> Our Dad and our family will never have a second chance. We will always be in prison without parole. This murderer who brutally beat our father in the head with a hammer should not be given a second chance. He has not changed in 30 years and he never will. (N.T. 44)

Rita Telek Durst, the third youngest of the Telek children, was 22 years old when her father was killed. She testified as follows:

> The impact that it had back then, it still continues to have today. I miss my father every day. He had loved all of his children. He made every single one of us feel like we were his favorite. And I had the luxury, because I was working in town, to be with my father on the days that he was off and home from Harrisburg.
>
> The impact that it has, we have all banded together as a family. When dad -- when we did get that off on the years, all the kids came home, the kids stayed together and we all slept in the living room with mom for what appeared like an eternity.
>
> But that has carried onto our adult lives what has happened to us as younger adults. The way that we raise our family, the feelings that we have, the insecurities that we have, the fears that we have, and the nightmares that we have.
>
> But with us we were fortunate to have such a wonderful loving, caring man as a father. Those things that he gave us in the 22 short years that I had him will never be taken from me and I carry those with me still today.

(N.T. 45-46)

iii. Petitioner's Statement

At the re-sentencing hearing, petitioner admitted he struck William Telek with a hammer but claimed he never intended to kill him.[12] (N.T. 61) He stated that the testimony offered by the Telek family members on the impact of the murder on their lives made him fight back tears and that it "did hurt me in my heart." (N.T. 61-62) Petitioner admitted he hadn't changed much while in prison but that he was trying, was remorseful for his crimes and knew he needed to change and become a better person. (N.T. 61-62) He noted that for most of incarceration there weren't many programs available to lifers although more have become available recently and he claimed to have participated in a number of them. (N.T. 61)

[12] Petitioner participated remotely from prison via video conference. (N.T. 3-4)

Petitioner explained that he has acted violently at times in his life because "you had to be violent to survive, and I grew up violent, and sometimes it was me or them." (N.T. 61) He explained that he assaulted a prisoner in 2015 because the victim there was a "gang banger" who was going to hurt petitioner so petitioner had to "get him first." (N.T. 61) Despite his history, petitioner believes he is capable of change and that if he were ever released, he would not commit crimes. (N.T. 61, 63)

At the conclusion of the hearing, I issued the following statement for the record:

> Based upon the testimony presented and the exhibits, some of which have been marked today and others I think which were filed at the docket for my review, I find that the Commonwealth has established beyond a reasonable doubt that the defendant is permanently incorrigible, irreparably corrupt, [and] irretrievably depraved.
>
> This is based on various things presented today that I'll just review briefly. I will do it more extensively if an opinion is required. It's based on the 36 assaults just from 1997 to 2017, plus all of those that occurred in the first nine years of which we don't have a record of other than the August 1993 shank assault of a corrections officer. Also based on the subsequent crimes of violence from '93 to '99 and as recently as just a few years ago in April 2015. So his extreme assaultive history has been established beyond a reasonable doubt.
>
> Furthermore, the diagnosis of antisocial personality disorder is well-established in the scientific community as being one that is untreatable. While in later years, there may be some mollification, this defendant has not shown that that will occur with him, because we have this 2015 assault quite recently, which demonstrates that he is not less prone to be violent. It is an untreatable personality disorder, which he has exhibited prior to and after the age of 17, although he is in his 40s.
>
> Accordingly, I re-sentence him to life in prison.
>
> ...
>
> So, Mr. Williams, while you may have been as they say, convicted in the womb based upon who your parents were and your traumatic childhood, based upon the law and the evidence presented, because you have proven to be permanently incorrigible, irreparably corrupt and irretrievably depraved, the life sentence is hereby reimposed.

(N.T. 65-67)

Legal Discussion

In his statement of errors complained of on appeal, petitioner argues that (1) the Commonwealth presented insufficient evidence to prove beyond a reasonable doubt that a LWOP sentence was warranted, under Miller v. Alabama and Batts II, supra; and (2) that even if this court was justified in finding the Commonwealth met its burden of proof, the court should have exercised its discretion and imposed a sentence that would allow petitioner the opportunity for parole consideration at some point during his natural life.

Before addressing these issues, I reiterate the standard of proof set forth in Batts II:

> For sentencing purposes, there is a presumption against the imposition of a sentence of life without parole for a defendant convicted of first-degree murder committed as a juvenile. ... To rebut the presumption, the Commonwealth has the burden to prove, beyond a reasonable doubt, that the juvenile offender is permanently incorrigible and thus is unable to be rehabilitated. Consistent with the mandate of Miller and Montgomery, for a life-without-parole sentence to be constitutionally valid, the sentencing court must find that the juvenile offender is permanently incorrigible and that rehabilitation would be impossible. The Commonwealth's evidence and the sentencing court's decision must take into account the factors announced in and section 1102.1(d) of the Crimes Code. Even if the Commonwealth satisfies its burden of proof, the sentencing court is not required to impose a life-without-parole sentence upon a juvenile offender.
>
> In sentencing a juvenile offender to life with the possibility of parole, traditional sentencing considerations apply. See 42 Pa.C.S. § 9721(b). The sentencing court should fashion the minimum term of incarceration using, as guidance, section 1102.1(a) of the Crimes Code.

Batts II at 459–60.

Petitioner first argues that the evidence was insufficient to prove, beyond a reasonable doubt, that he should receive a LWOP sentence, specifically contesting that "with near certainty" he is one of the "exceedingly rare" and "uncommon" juveniles who exhibits "permanently incorrigibility," "irreparable corruption," and "irretrievable depravity;" that rehabilitation is "impossible"; that petitioner is "entirely unable to change" and "that there is no possibility that [petitioner] could be rehabilitated at any point later in his life, no matter how much time he spends in prison and regardless of the amount of therapeutic interventions he receives."

When evaluating a sufficiency claim, a court views all the evidence and reasonable inferences deducible therefrom in the light most favorable to the Commonwealth to determine whether it could reasonably be determined that each element was established beyond a reasonable doubt. See, Commonwealth v. King, 990 A.2d 1172, 1178 (Pa. Super. 2010).

Before reaching the sufficiency claim, I note that under Batts II "the sentencing court's decision must take into account the factors announced in and section 1102.1(d) of the Crimes Code." Id. at 459-60. Those factors are:

> (d) Findings. -- In determining whether to impose a sentence of life without parole under subsection (a), the court shall consider and make findings on the record regarding the following:
>
> (1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.
>
> (2) The impact of the offense on the community.
>
> (3) The threat to the safety of the public or any individual posed by the defendant.
>
> (4) The nature and circumstances of the offense committed by the defendant.
>
> (5) The degree of the defendant's culpability.
>
> (6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.
>
> (7) Age-related characteristics of the defendant, including:
> (i) Age.
> (ii) Mental capacity.
> (iii) Maturity.
> (iv) The degree of criminal sophistication exhibited by the defendant.
> (v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.
> (vi) Probation or institutional reports.
> (vii) Other relevant factors.

18 Pa.C.S.A. § 1102.1(d).

The first factor under (d)(1) is evidence of the impact of the offense on the victim as made or submitted by family members "detailing the physical, psychological and economic effects of the crime on the victim and the victim's family." The family's evidence may include comment on the proposed sentence. Id. The evidence of the physical impact upon the victim was that, at age 64, he was brutally bludgeoned with a hammer to his head and face by petitioner, then a young man. The attack left the victim with a face so badly beaten, it had to be reconstructed for the open casket. The psychological effects of the crime on William Telek's large family were profound, irreparable and continuing. These effects are fully recounted above through the compelling testimony offered by his two daughters and through the written statement of his widow. Regarding financial impact, the victim was his family's breadwinner and his loss necessitated that his wife work, which she did for the next thirty years, well into her 80's.

The next factor set forth in (d)(2) requires the court to consider the impact of the offense on the community. The impact to the community from Representative Telek's murder was broad. The effect was no doubt felt by his colleagues in Harrisburg, constituents in Cambria and Somerset Counties, where he had been elected to a number of terms, and to various friends and acquaintances in both communities.

Under factor (d)(3), the court is to consider the threat posed by petitioner to the safety of the public or any individual. Petitioner remains a very dangerous person who according to Dr. O'Brien, will always be dangerous. He has revealed himself incapable of refraining from acting upon violent impulses as revealed by his various criminal charges and convictions and misconducts while incarcerated. His violent actions include a brutal attack just four years ago, while age 45, upon a fellow prisoner. Petitioner was undeterred in his attack by a room full or witnesses, security and in front of surveillance cameras. The record establishes him to remain permanently incorrigible, irreparably corrupt, irretrievably depraved and incapable of rehabilitation.

Factor (d)(4) addresses the nature and circumstances of the offense committed by petitioner. The record reflects that theft and assault appear to have been amongst petitioner's primary motives on May 17, 1988. Notably, he met the victim already in possession of a weapon (ballpeen hammer), revealing a level of premeditation. Petitioner has never offered a viable motive for bludgeoning the victim to death. The murder was completely senseless.

Subsection (d)(5) directs the court to consider the degree of petitioner's culpability. Petitioner was solely culpable for the victim's murder. There were no co-conspirators or any other persons involved in the murder.

This court has considered, under subsection (d)(6), the guidelines for resentencing juveniles who commit first-degree murder between the ages of fifteen and eighteen, which currently suggest a term with a minimum of 35 years to a maximum of life. 18 Pa.C.S.A. §1102.1(a)(1), (e). A minimum sentence of 35 years is not appropriate. The evidence presented to this court revealed that a minimum sentence of less than life would not be proper inasmuch as the Commonwealth has proven beyond a reasonable doubt that petitioner, at the age of 48, is permanently incorrigible, irreparably corrupt, irretrievably depraved and incapable of rehabilitation.

Finally, the court must consider under (d)(7) a list of age-related characteristics, presumably at the time the murder was committed, including (i) age, (ii) mental capacity, (iii) maturity, (iv) the degree of criminal sophistication exhibited by petitioner, (v) the nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate petitioner, (vi) probation or institutional reports and (vii) other relevant factors.

Petitioner was 17 years and 7 months old when he murdered William Telek, just five months shy of legal adulthood. There is no evidence that he lacked the requisite mental capacity at the time of the murder or that he was lacking in maturity for his biological age. Petitioner's actions prior to committing the crime reveal a small level of sophistication. Notably, he met the victim already in possession of a weapon, showing some level of premeditation. Petitioner's actions thereafter reveal little sophistication. He drove away in the victim's car, which he continued to possess until discovered by police within 12 hours. A few hours after the murder, he bragged to friends about having a car he intended to sell. He was also seen by a number of witnesses within a few hours of the murder with a large amount of cash and still in possession of the hammer. Once arrested, he made conflicting statements to police and without prompting asked questions about a murder when police never mentioned to him they were investigating a murder. There was no

evidence in the records supplied that previous attempts to rehabilitate petitioner were successful. Finally, this court fully reviewed all relevant institutional reports and documents which primarily reveal a history of juvenile delinquency, and primarily for theft crimes.

Based upon the entirety of the evidence presented and review of the juvenile sentencing factors under Crimes Code Section 1102.1(d), when viewed most favorably to the Commonwealth, this record supports my determination that the Commonwealth proved beyond a reasonable doubt that petitioner is permanently incorrigible, irreparably corrupt and irretrievable depraved, and that rehabilitation is impossible because petitioner is entirely unable to change. As I explained at the re-sentencing hearing, the extensive and compelling testimony proved that petitioner has an extreme violent assaultive history, including the murder of Representative Telek, the three prison assaults and convictions, and over thirty prison misconducts between 1997 and 2017. The credible and unrebutted evidence established that petitioner suffers from antisocial personality disorder. Furthermore, it is well-established that this disorder is untreatable or as Dr. O'Brien described, "is a permanent part of an individual's behavior -- characterological fabric." While such a disorder is potentially subject to mollification in later years, the evidence presented showed absolutely no indication petitioner is currently less prone to violence than he was when he was younger. Notably, just a few years ago he attacked and stabbed a prisoner with a bolt, unprovoked, and expressed no compunction against killing him.

In addition, the factors this court must take into account under Section 1102.1(d), which are thoroughly addressed above, overwhelmingly weigh in favor of a finding that petitioner must receive a LWOP sentence. Most notably, this court found particularly weighty the factors relating to victim impact, the serious continuing threat posed by petitioner to public safety, the circumstances of murder committed by petitioner and the level of petitioner's culpability. With regard to the age-related characteristics, outside of showing a lack of sophistication immediately after he committed the crimes, the bulk of the characteristics under this factor overwhelmingly support the imposition of a LWOP sentence upon petitioner.

Finally, under Batts II, even where this court finds that the Commonwealth has met its burden of proving beyond a reasonable doubt that a LWOP sentence is appropriate, this court may nevertheless exercise its discretion and decide against imposing a LWOP term. I declined to

impose a term less than LWOP because the record clearly established that petitioner's threat to public safety is serious, he is incapable of change and should never be afforded the chance of leaving prison.

In summary, the Commonwealth presented evidence, beyond a reasonable doubt, that petitioner is one of the exceedingly rare and uncommon juveniles who exhibits permanently incorrigibility, irreparable corruption, and irretrievable depravity; that rehabilitation is impossible; that petitioner is entirely unable to change and that there is no possibility that petitioner can be rehabilitated at any point later in his life, no matter how much time he spends in prison and regardless of the amount of therapeutic interventions he receives.

Accordingly, I issued my order dated July 24, 2019 (entered July 31, 2019), imposing a LWOP sentence upon petitioner.

March 29, 2019
Date

Judge Turgeon, Judge

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