

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

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

**CONCURRING OPINION**

**MR. JUSTICE BAER**

**DECIDED: March 26, 2013**

I join in full the Majority's opinion, vacating the Superior Court's decision and remanding the case to the trial court for it to resentence Appellant based upon his individual circumstances to a sentence of life imprisonment either with the possibility of parole or without the possibility of parole for his conviction of first degree murder committed when he was a fourteen year old juvenile. As noted by the Majority, this determination is premised upon the United States Supreme Court's decision in Miller v. Alabama, 132 S.Ct. 2455(2012), holding that a mandatory sentence of life imprisonment without the possibility of parole upon a juvenile defendant violates the Eighth Amendment's prohibition of cruel and unusual punishment.

The Majority directs that upon remand, if a trial court believes a sentence of life imprisonment with the possibility of parole is appropriate, the court shall then set the imposition of the minimum sentence before the parole board first considers the defendant, taking his circumstances into account. Maj. Slip Op. at 18. I write separately to note my belief that, for purposes of uniformity in sentencing, it would be appropriate for trial courts engaging in the task of resentencing under this circumstance to seek guidance in determining a defendant's sentence and setting a minimum term from the General Assembly's timely recent enactment in response to the U.S. Supreme Court's decision in Miller.

As noted by the majority, on October 25, 2012, the Governor signed a new sentencing scheme into law applicable to offenders under the age of eighteen convicted of murder. Therein, a juvenile offender under the age of fifteen years 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). An offender at least fifteen but under the age of eighteen years, 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(a)(1). The statute then lists multiple individualized factors that the court should consider in making its determination, including, but not limited to: 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) & (d)(7)(vii).

While the legislature specified that its enactment applied to juvenile offenders convicted on or after the date of the Miller decision, which would not include Appellant, I believe that trial courts conducting resentencing of defendants like Appellant, whose

conviction pre-dated Miller, but who preserved a Miller claim on appeal, would be wise to follow the policy determinations made by the legislature in its recent enactment. Here, the minimum sentence applicable to Appellant, if given a sentence of life with parole, would be 25 years.

If trial courts fail to take guidance from the recent legislative enactments, the minimum sentence imposed on any given juvenile before becoming eligible for parole could vary widely. One court could immediately parole an 18 year old offender, while another court could impose a 50 year minimum sentence on a 14 year old offender. While discretionary sentencing is a valid trial court function and Miller specifies that individual circumstances should be considered by judges sentencing juvenile murder offenders, given that the legislature is the policy-making body for our Commonwealth and has quickly responded to Miller indicating the minimum sentences it views as appropriate for different aged juvenile homicide offenders, I believe courts engaging in resentencing necessitated by the Miller decision, should look to the newly enacted statute for guidance without abrogating their discretion as appropriate in individualized cases.<sup>1</sup>

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<sup>1</sup> My suggestion in this regard is neither an endorsement nor a judgment on the propriety or constitutionality of the new legislation directed at juvenile homicide offenders. Such issues will be for another day once the statute is fully implemented. I merely make this suggestion recognizing that until challenged or struck, the statute represents the policy choice of the legislature on what the appropriate statutory minimum should be.