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IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

Commonwealth of Pennsylvania :
: No. CP-67-MD-1505-2975
vs. :
: PCRA
Warner Batty :

Appearances:

For the Commonwealth: Duane Ramseur, Esquire
For Defendant: Gerald Lord, Esquire; William Graff, Esquire

OPINION

Factual and Procedural History:

The facts of this case were laid out in several previous opinions. As stated in the Opinion of June 22, 1976 overruling Defendant's post-sentence motions:

On February 1, 1975, at a time when Defendant was fifteen years of age, Defendant and an eighteen year old companion, with threat of numbers and the use of a knife, forced a young woman they encountered on the streets of York to accompany them to an abandoned city property. Despite the fact that it was cold and that there was no heat in the building this woman was forced to remove all of her clothing and to have sexual intercourse with both the Defendant and his accomplice. Subsequently, the accomplice compelled the victim, by holding a knife at her back, to commit deviate sexual intercourse. Thereafter, for a prolonged period of time they beat, kicked, cut, and struck the victim, causing her death. Before they left the

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premises they placed a mattress over her body. A fire was observed shortly thereafter which seriously marred the body and damaged the room.

On February 6, 1975, a Complaint was filed charging Defendant with 1) first degree murder, 18 Pa.C.S. 2502(a); 2) second degree murder, 18 Pa.C.S. 2502(b); third degree murder, 18 Pa.C.S.. 2502(c); and voluntary manslaughter, 18 Pa.C.S. 2503.

On November 25, 1975, Defendant pled guilty to murder generally.¹ A Degree of Guilt hearing was held on April 14, 1976 before a three-judge panel. In an Opinion dated April 21, 1976, the panel found Defendant guilty of first-degree murder and second-degree murder. Defendant filed post-trial motions which were overruled in an Opinion and Order of June 22, 1976.

Defendant was sentenced on July 9, 1976. The sentencing Order reads:

The sentence of the court is that the defendant undergo imprisonment in a state correctional institution for and during the term of his natural life, pay the costs of prosecution and stand committed until this sentence be complied with.

At the sentencing hearing, Defendant was told that he was sentenced to a mandatory life sentence.

Defendant filed a Notice of Appeal to the Supreme Court on July 9, 1976. In

¹ Defendant did request a transfer to Juvenile Court which was denied.

an Opinion entered October 27, 1978, the Judgment of Sentence was affirmed.²

Defendant filed his first Petition under the Post Conviction Hearing Act on January 22, 1985.³ Counsel was appointed and a hearing was held on September 5, 1985. An Order was issued that same date refusing and denying Defendant's requested relief.

Defendant filed a second Petition under the PCRA on January 31, 1991, which was denied without a hearing on January 31, 1991. Defendant filed a Petition for Withdrawal of Plea of Guilty to a Charge of Murder General and an amendment to his PCRA Petition on May 15, 1991. On June 19, 1991, a brief Opinion and Order denying Defendant's requested relief and denying Defendant's request for copies of his record was entered.

Defendant filed another PCRA Petition on October 19, 1995. Gerald Lord, Esquire was appointed to represent Defendant on October 26, 1995. At the request of counsel, a hearing was scheduled for February 12, 1996. Defendant filed a pro se

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Commonwealth v. Batty, 393 A.2d 435 (Pa. 1978).

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This petition was timely filed under the prior PCHA. Prior to the 1995 amendments, no time limit was imposed on filing. Following the 1995 amendments, the legislature provided that where a petitioner's judgment of sentence became final before the effective date of the amendments, a first petition filed within one year of the effective date would be deemed timely. 42 Pa.C.S. 9543(notes).

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amendment to his PCRA Petition on January 22, 1996. At the hearing in February, an Order was entered directing the production of certain transcripts. Counsel filed an amended petition on October 6, 1997 and a hearing was scheduled for October 16, 1997. The hearing was held on October 23, 1997.

An Order and Opinion were entered on October 19, 1998 denying Defendant's requested relief and dismissing his petition. A Notice of Appeal was filed with the Superior Court on November 12, 1998. The Superior Court affirmed the trial court in an unpublished decision docketed to 1800 Harrisburg 1998.

On June 8, 2010, Defendant filed the present PCRA Petition raising only one issue, the legality of his sentence following the U.S. Supreme Court's decision in *Graham v. Florida*.⁴ William Graff, Esquire was appointed to represent Defendant and a hearing was scheduled for August 27, 2010. The hearing was continued several times at the request of Defendant's counsel due to the pending decisions before the U.S. Supreme Court concerning juveniles convicted of homicide offenses and the appropriateness of life sentences. Defendant's request for relief states: "The life imprisonment sentence without parole is unconstitutional—parole must exist as an

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Graham v. Florida, —U.S.—; 130 S.Ct. 2011 (2010) held that juveniles convicted of non-homicide offenses could not be sentenced to life without parole.

option.” On August 28, 2012, this Court heard argument on the issue raised by Defendant.

Legal Background:

In 1976, the sentences available to the trial court for a person convicted of first-degree murder were death or imprisonment for life. 18 Pa.C.S. 1102(a). The sentence available for one convicted of second-degree murder was life imprisonment. For third-degree murder, which was all other kinds of murder, the maximum sentence was twenty years.⁵

Issue:

Should Defendant’s sentence of imprisonment for life for convictions of first-degree and second-degree murder be vacated and the Defendant resentenced or paroled?

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Title 18 was amended in in 1972. At that time, section 1103 provided that the sentence for a felony of the first degree carried a maximum sentence of twenty years. The 1974 amendment to section 2502 classified third degree murder as a felony of the first degree.

Discussion:

P.C.R.A. Relief Generally:

Defendant's requested relief is before the court on a PCRA Petition. We will first examine procedurally if this is the correct avenue for Defendant's request to take.

Several obstacles are presented to Defendant in bringing this request pursuant to the PCRA. First, the relief requested by Defendant does not fit within the categories enumerated by the Post-Conviction Relief Act affording a petitioner relief. The statute provides that to be eligible for relief, the petitioner must have been convicted of a crime and currently serving a sentence, which Defendant is. However, the statute further provides that to be eligible for relief, the conviction or sentence must have resulted from one or more of the following:

- (i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

(iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

(vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

(vii) The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

42 Pa.C.S. 9543(a)(2). The only category that might apply to Defendant's circumstances is "the imposition of a sentence greater than the lawful maximum."

However, as we will see later in this discussion, such was not the case here.

Secondly, the PCRA imposes time limits on the filing of petitions. While Defendant's conviction was prior to the 1995 amendments which first imposed a statutory time limit, this is his fourth PCRA Petition and the third time that counsel has been appointed to assist Defendant with a PCRA petition. The timeliness exception applicable to convictions arising before the amendments only applies to a Defendant's first petition. *See Commonwealth v. Banks*, 726 A.2d 374, 375 (Pa. 1999). Therefore Defendant must plead and prove one of the statutory exceptions found in 42 Pa.C.S.A. 9545(b):

(i) the failure to raise the claim previously was the result of interference by government officials with the

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presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

Defendant asserts that the U.S. Supreme Court recognized a new right in *Miller v. Alabama*, —U.S.—; 132 S. Ct. 2455 (2012), and that the right should apply retroactively. No court has yet held that the right recognized in *Miller*, if it is a “new right,” should apply retroactively.⁶

Nonetheless, we do not have to decide these issues because we conclude that the Post-Conviction Relief Act is not the manner by which Defendant can pursue the relief he requests. We recognize that counsel, with the concurrence of Defendant, has asked us to postpone decision in this matter until a decision is rendered in the Pennsylvania Supreme Court cases addressing some of these issues. We do not deem it prudent to do so, since Defendant has been incarcerated a substantial period of time

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We recognize that the Pa. Supreme Court may address some of these issues in the appeal of *Commonwealth v. Cunningham*, 38 EAP 2012. Argument was held today, September 12, 2012 in that case.

to date (in excess of the lawful maximum sentence for third degree murder, a sentencing consideration he has requested us to consider.) We are not confident that a legislative scheme to address these sentencing issues will be forthcoming soon. He had requested relief from this Court over two years ago, and he is entitled to a timely disposition of his request.

Relief from Sentence:

As we stated previously, the only category of eligibility under the PCRA that arguably applies to Defendant's circumstances is that the sentence imposed was greater than the lawful maximum. However, Defendant's sentence which he actually received from the trial court is not *per se* illegal. The U.S. Supreme Court held in *Miller* that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller, supra* 132 S. Ct. at 2469 The Court left open the possibility that a juvenile could be sentenced to a life sentence, but that the life sentence imposed could not be a mandatory one. "Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*

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The other issue with the asserted illegality of the sentence is that Defendant was not sentenced to “life without parole.” Defendant was sentenced to life imprisonment, admittedly, a result mandated by the sentencing statute. The sentences that may be imposed by a court for certain crimes are set by the legislature. The possible sentence for murder of the first degree in 1975 was death or life in prison. 18 Pa.C.S.. 1102(a) (as amended March 26, 1974). The only possible sentence for murder of the second degree was life in prison. *Id.*

The problem with “life without parole” arises in Pennsylvania as a result of application of the parole statute, not the sentencing statute nor the trial court’s sentence. Under 61 Pa.C.S. 6137 an inmate sentenced to death or serving a life sentence is not eligible for parole. The Pennsylvania Board of Probation and Parole under 61 Pa.C.S. 6132 has the exclusive power to parole all persons sentenced to imprisonment in a correctional facility, except for those persons sentenced to a maximum sentence of less than two years and those committed to county confinement. The Court of Common Pleas has no statutory authority to parole someone in Petitioner’s situation.

In *Commonwealth v. Knox*, ---A.3d---; 2012 PA Super 147 (2012), the Superior Court recently examined this issue and stated:

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[W]e reiterate that there is no single particular statute in Pennsylvania which directs that juveniles must be sentenced to a term of life in prison without parole upon a conviction of second-degree murder. Rather a series of statutes in Pennsylvania intertwine to reach the result of a mandatory sentence of life imprisonment without parole for juveniles convicted of second-degree murder.

In *Knox*, the defendant was a juvenile who had been sentenced to a mandatory life sentence for second-degree murder. In Mr. Batty's case, he was a juvenile sentenced to a mandatory life sentence for first-degree murder. The possibility of a death sentence was removed due to Mr. Batty's agreement to plead to murder generally. In *Knox*, the Superior Court also noted that under *Miller*, it was not "unconstitutional for a juvenile to spend the rest of his life in prison, only that the mandatory nature of the sentence, determined at the outset, is unconstitutional." *Knox, supra*.

Even if we were to determine that the combination of the parole statutes and sentencing statutes, and hence the trial court's sentence, runs afoul of Miller's dictates, we are unable to grant Mr. Batty relief.

In *Knox*, the Superior Court vacated the judgment of sentence and remanded the case to the trial court for resentencing.⁷ *Knox*, however, was at the Superior Court

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We are not sure what the trial court is to do in the face of such a remand when there are no other statutorily authorized sentencing alternatives available given the verdict.

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on a direct appeal from his judgment of sentence. The same is not true of our Defendant. His case is before us on a fourth PCRA petition. At the time Defendant was sentenced, there was no other sentence for first-degree murder, other than life imprisonment or death. At this time, there is no other statutorily authorized sentence less than life in prison for first- or second-degree murder. We cannot legislate from the bench and create a new sentence, where none previously existed nor currently exists. Because Defendant was lawfully convicted of first- and second-degree murder, it would also be illegal for this Court to impose a sentence for third-degree murder.

We are also precluded from granting Petitioner parole, since that authority rests exclusively with the Parole Board. Since it is the Parole statute which creates the legal obstacle to Mr. Batty's consideration for release, his remedy is to apply to the Board of Probation and Parole for relief by way of parole. We have no jurisdiction to parole, nor authority to order that Mr. Batty be paroled or released from custody.

Conclusion:

The sentence Petitioner received from the sentencing judge was not in excess of the statutorily authorized maximum then and is not in excess of the maximum sentence permitted now for the crimes for which he was convicted. He received a life

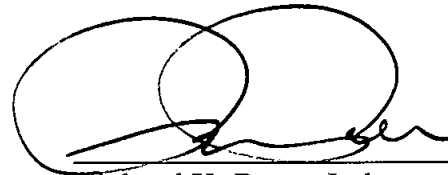
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sentence, which may still be an appropriate sentence for a juvenile convicted of first or second degree murder. Defendant is only eligible for relief under the PCRA if his sentence is greater than the lawful maximum. The sentence he received is not greater than the lawful maximum.

Additionally, we do not believe that his petition overcomes the timeliness obstacles of seeking relief pursuant to the PCRA. The *Miller* decision did not specifically state that it was to be retroactively applied.

The relief requested by Defendant under the Post-Conviction Relief Act will be denied.

BY THE COURT,



Richard K. Renn, Judge

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ORDER DENYING POST CONVICTION RELIEF

AND NOW, this 12th day of September, 2012, the Defendant's request for relief under the Post Conviction Relief Act is DENIED for the reasons set forth in the accompanying opinion.

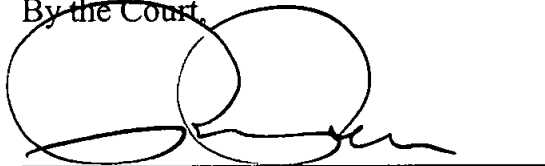
We direct that copies of this ORDER shall be provided to the York County District Attorney's office; Gerald Lord, Esquire; William Graff, Esquire; and, to Defendant at SCI-Rockview.

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By the Court,



Richard K. Renn, Judge.