IN THE
SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

NO. 79 MAP 2009

COMMONWEALTH OF PENNSYLVANIA
Appellee

V.

QU'EED BATTS, Appellant

SUPPLEMENTAL BRIEF FOR AMICUS CURIAE THE PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF APPELLEE THE COMMONWEALTH OF PENNSYLVANIA

Defendant's Appeal By Allowance From The April 7, 2009 Order Of The Superior Court At 766 EDA 2008, Affirming the October 22, 2007 Judgments Of Sentence Of The Court Of Common Pleas Of Northampton County, Criminal Division, At CP-48-CR-0001215-2006.

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF QUESTIONS PRESENTED

1. How should resentencing proceed when required under *Miller v. Alabama*?

2. Did *Miller* negate defendant's conviction of first degree murder?

3. Should this Court categorically ban life without parole sentences under the state constitution for murderers under the age of 18 at the time of the crime?

INTEREST OF AMICUS CURIAE

The Pennsylvania District Attorneys Association is the only organization representing the interests of all District Attorneys and their assistants in the Commonwealth of Pennsylvania. This Court's resolution of constitutional issues is of special interest to district attorneys throughout Pennsylvania, as is the upholding and enforcement of legislative judgments prescribing appropriate sentences for particularly serious crimes and offenders.

STATEMENT OF THE CASE

Miller v. Alabama requires that defendant be resentenced. Consistent with that decision, the trial court, on the basis of individualized consideration, may sentence him either to life without parole, or life with the possibility of parole after the expiration of a minimum term of years to be determined by the court. This Court should so rule.

On February 7, 2006, defendant drove in a vehicle with three accomplices to the 700 block of Spring Garden street in Easton, Pennsylvania. Defendant was armed with a handgun and was wearing a mask. He walked up the front steps of 713 Spring Garden Street and from the porch fired into the head of Clarence Edwards and into the back of Corey Hilario, seriously wounding the latter and murdering Mr. Edwards. Defendant then got back into the vehicle and fled.

Police arrested defendant and, after being warned of his rights, he confessed to the double shooting and murder. He expressed no remorse but explained that he did this to earn a promotion in his criminal gang, the "Bloods."

Because defendant had been aged fourteen years and ten months at the time he committed the murder, the Honorable William F. Moran held a decertification hearing. On February 21, 2007 the court determined that defendant was not amenable to treatment as a juvenile offender.

On July 31, 2007, a jury found defendant guilty of murder of the first degree, attempted murder, and aggravated assault. On October 22, 2007, the court sentenced him to life imprisonment for the murder of Mr. Edwards and a separate term of six to twenty years for the attempted murder of Mr. Hilario.

On appeal, defendant claimed that his sentence of life imprisonment without possibility of parole amounted to cruel and unusual punishment under the federal constitution. While this direct appeal was pending, the federal Supreme Court held in *Miller v. Alabama* that "the Eighth Amendment forbids a sentencing scheme that mandates life

in prison without possibility of parole for juvenile offenders." This supplemental brief responds to assertions raised in defendant's supplemental brief in connection with that decision, and addresses what guidance to the trial court is warranted for resentencing in connection with this and other similar cases on direct appeal.

SUMMARY OF ARGUMENT

Miller v. Alabama alters virtually none of Pennsylvania's statutory sentencing provisions. Where it applies, it bars only the mandatory imposition of life without the possibility of parole. It therefore affects only a small and severable portion of the parole board jurisdiction statute. On appeal, it requires only a new sentencing proceeding in which the trial court will consider the defendant's "youth and attendant characteristics" in deciding between life without parole and life with the possibility of parole.

Contrary to defendant's unexplained argument, *Miller* does not purport to negate his conviction for first degree murder, transform that offense into third degree murder, or invalidate Pennsylvania law requiring a maximum life term for first degree murder. It requires only an individualized sentencing proceeding in which parole eligibility is an option.

Defendant's argument to extend *Miller* to immunize him from a maximum life term is baseless. That case does not warrant any new or different construction of the state constitution regarding criminal punishments, which this Court has always held to be coextensive with the subsequently enacted federal provision. *Miller* does not render unconstitutional a sentence of life without parole under the federal constitution, and this Court held in *Commonwealth v. Sourbeer* that life without parole for a 14 year old first degree murderer does not shock the conscience and is not cruel. *Miller* affords no reason to look to the state constitution in an effort to expand upon its limited holding under the federal constitution.

Defendant is entitled only to resentencing consistent with *Miller*.

ARGUMENT

I. RESENTENCING IS REQUIRED BY *MILLER V. ALABAMA*.

In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), a majority of Justices concluded that state sentencing schemes which mandate a sentence of life without parole for the crime of murder are unacceptable because they prevent consideration of "a juvenile's lessened culpability and greater capacity for change" and transgress "our cases' requirement of individualized sentencing for defendants facing the most serious penalties." The Court thus held "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." 132 S. Ct. at 2460 (citations and internal quotation marks omitted); 132 S. Ct. at 2469 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders"). In such a case, a sentence of life without possibility of parole requires a discretionary decision based on individualized consideration.[1]

Defendant and others so situated (i.e., those who have raised and preserved an identical Eighth Amendment claim on direct appeal) are entitled to relief in the form of resentending under the holding in *Miller*. In affording such relief, however, it is important to note what that case did *not* hold.

Miller did not hold that murderers under the age of 18 may not be sentenced to life without parole; it held only that such a sentence may not be mandatory. Life without parole may be imposed on an offender who was under 18 at the time he murdered the victim, in the sentencing court's discretion, as a matter of "individualized sentencing." 132 S. Ct. at 2460. In other words, *Miller* concerns the *process* by which such a sentence is imposed:

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[1] While defendant was 14 at the time he committed the instant murder, *Miller* applies across the board to offenders under the age of 18 and does not further distinguish between age groups. Of course, a judge imposing a sentence based on individual characteristics will necessarily consider the offenders' actual age at the time of the offense.

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

Id. at 2471.

Thus, *Miller* does not preclude a sentence of life without parole for a killer who was then under 18, but only requires the sentencing process to permit consideration of "[the] offender's youth and attendant characteristics." The Court expressly limited its holding in this regard. *Id.* at 2469 ("Because that holding is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger").

To be sure, *Miller* contains *dicta* expressing a belief on the part of the Justices who joined that decision that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," and suggesting that there is "great difficulty" in distinguishing the supposedly more ordinary pre-age-18 murderer "whose crime reflects unfortunate yet transient immaturity" from the "rare" ones "whose crime reflects irreparable corruption." But this *dicta* is not a holding, and is not binding on any state or any court. Indeed, this precatory portion of *Miller* concludes by noting that the decision "do[es] *not* foreclose a sentencer's ability" to impose life without parole in homicide cases, but only "require[s] it to *take into account* how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 132 S. Ct. at 2469, emphasis added.

Very little of Pennsylvania's statutory sentencing architecture is altered by *Miller*. 18 Pa.C.S. § 1102 (which refers to both life and death sentences; the latter are irrelevant here) states that a person convicted of murder of the first or second degree is to be sentenced to "a term of life imprisonment." The provision requires a life term but does not

address parole or eligibility for parole, and so is unaffected.[2]

The sole Pennsylvania statutory provision rendered partially unconstitutional by *Miller* is that portion of 61 Pa.C.S. § 1637(a) which denies the parole board authority to release on parole an inmate "serving life imprisonment."[3] Where *Miller* pertains, that narrow portion of § 1637 is severable, as it otherwise would be unconstitutionally applied. *Stilp v. Commonwealth*, 905 A.2d 918, 948-949 (Pa. 2006) (presumption of severability applied where statute did not contain a non-severability provision and a portion thereof was unconstitutional); 1 Pa.C.S. § 1925 (presumption of severability).[4] Consistent with *Miller*,

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[2] **18 Pa.C.S. § 1102. Sentence for murder, murder of unborn child and murder of law enforcement officer.**

(a) First degree.

(1) A person who has been convicted of a murder of the first degree or of murder of a law enforcement officer of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with 42 Pa.C.S. § 9711 (relating to sentencing procedure for murder of the first degree).

(2) The sentence for a person who has been convicted of first degree murder of an unborn child shall be the same as the sentence for murder of the first degree, except that the death penalty shall not be imposed. This paragraph shall not affect the determination of an aggravating circumstance under 42 Pa.C.S. § 9711(d)(17) for the killing of a pregnant woman.

(b) Second degree. --A person who has been convicted of murder of the second degree, of second degree murder of an unborn child or of second degree murder of a law enforcement officer shall be sentenced to a term of life imprisonment.

[3] **61 Pa.C.S. § 6137 (a) General criteria for parole.**

(1) The board may parole subject to consideration of guidelines established under 42 Pa.C.S. § 2154.5 (relating to adoption of guidelines for parole) and may release on parole any inmate to whom the power to parole is granted to the board by this chapter, except an inmate condemned to death or serving life imprisonment, whenever in its opinion [...]

[4] **1 Pa.C.S. § 1925. Constitutional construction of statutes.**

The provisions of every statute shall be severable. If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to

(continued...)

that part of § 6137(a) absolutely prohibiting parole eligibility to inmates serving a term of life imprisonment must be disregarded in cases in which the offender was under 18 at the time of the crime, with the balance of the provision remaining undisturbed.

The remaining, unaltered statutory sentencing provisions, taken together, require a court to comply with *Miller* by sentencing an offender who was under 18 when he committed first or second degree murder to life imprisonment. The sentencing court has discretion to impose life without parole, or life with the possibility of parole. Since the sentencing court is entitled to impose life without parole, it follows that where the court decides to permit parole it may also defer parole eligibility, in its discretion, by a term of years.[5]

In summary, consistent with *Miller* and Pennsylvania law, this Court should remand for resentencing in cases on direct appeal in which *Miller* applies and a *Miller*-type Eighth Amendment claim was preserved. In such cases it should instruct the sentencing court to consider the offender's individual characteristics as well as "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."

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[4](...continued)
other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

[5] 42 Pa.C.S. § 9756(b)(1), which requires "a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed," is inapplicable because a life term, which remains mandatory under 18 Pa.C.S. § 1102, states no period of years that can be halved. *Commonwealth v. Manning*, 435 A.2d 1207, 1212 & n.5 (Pa. 1981) (finding "meritless" claim that mandatory life term was "illegal" because it did not include a half-term of years); *See* 1 Pa.C.S. § 1922 (presumption that General Assembly "does not intend a result that is absurd, impossible of execution or unreasonable"). Nothing in *Miller* alters this settled law. On the contrary, since *Miller* expressly permits (provided individualized consideration is afforded) a sentence of life without any possibility of parole at all, *a fortiori*, it also permits anything less, including a sentence that defers parole eligibility for any term of years.

Following such consideration and in its discretion, the court may sentence the offender either to life without possibility of parole; or life including such eligibility, in which case the court should specify a term of years that the offender must serve in order to be eligible for parole.

Miller requires this, and no more than this.

II. *MILLER* DOES NOT NEGATE DEFENDANT'S CONVICTION OF FIRST DEGREE MURDER.

Defendant argues that *Miller* effectively negates his first degree murder conviction and requires that he be resentenced only "for the lesser included offense of third degree murder" (defendant's supplemental brief, 1). This claim is frivolous.

While conceding that "existing statutes" are controlling (*Id.*), defendant asserts that Miller "struck down" Pennsylvania's entire statutory framework for first and second degree murder when it comes to killers under the age of 18, effectively leaving the state with "no other ... sentencing option" (*Id.*, 7-8). He offers no analysis of the relevant statutes or statutory language to support this sweeping conclusion, and it is entirely invalid. As discussed above, the statutory penalty of life imprisonment for first and second degree murder is unaffected by *Miller*, which concerns only processes that mandate life sentences with no possibility of parole without regard to the individual characteristics of the youthful offender. Thus, the one and only Pennsylvania statute partially negated by *Miller* is the severable portion of 61 Pa.C.S. § 1637(a) which prevents parole of an inmate who was under 18 at the time of the offense and is "serving life imprisonment." While that language must now be disregarded as unconstitutional in offender-under-18 cases, all the remaining provisions are sound. *Miller* does not prevent resentencing defendant in accordance with those provisions – i.e., to life imprisonment with, or without, the possibility of parole, following individualized consideration and in the court's discretion.[6]

Defendant attempts to rely on inapposite capital cases in which a death sentence was vacated and could no longer be imposed because no applicable sentencing statute

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[6] The Superior Court recently reached this same conclusion when applying *Miller* and remanding for resentencing in *Commonwealth v. Knox*, 2012 Pa. Super. LEXIS 1582, *27, *32 (Pa. Super. 2012) (July 16, 2012) ("[T]here is no single particular statute in Pennsylvania which directs that juveniles must be sentenced to a term of life in prison without parole ... We emphasize that our disposition does not mean that it is unconstitutional for a juvenile actually to spend the rest of his life in prison, only that the mandatory nature of the sentence, determined at the outset, is unconstitutional").

existed.[7] This case is quite different. Nothing in *Miller* prevents the same sentence from being imposed again. *Miller* declined to impose any categorical ban on life without parole for juveniles and stated that it did *not* "foreclose a sentencer's ability" to impose such a sentence in homicide cases. 132 S. Ct. at 2469. *Miller* requires "only" consideration of the "offender's youth and attendant characteristics" before imposing such a sentence. *Id.* at 2471. Nothing in that case, or any other case, suggests that a sentence of life without parole, originally imposed in a constitutionally unsound manner, cannot be reimposed in a constitutionally sound one.

It is clear, therefore, that *Miller* did not somehow effectively negate defendant's conviction for first degree murder or require him to be resentenced instead for some other lesser offense.

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[7] *E.g., Commonwealth v. Story*, 440 A.2d 488, 489 (Pa. 1981) (where prior capital sentencing statute held invalid, applying presumption that "the Legislature did not intend the Act of September 13, 1978, to apply to an offense committed in 1974"); *accord Commonwealth v. Bradley*, 295 A.2d 842 (Pa. 1972); *Commonwealth v. Edwards*, 411 A.2d 493 (Pa. 1979). In the nonprecedential decisions in *State v. Davis*, 227 S.E.2d 97, 119 (N.C. 1976), and *Carey v. Garrison*, 452 F. Supp. 485, 486 (W.D.N.C. 1978), a North Carolina statute required a sentence of life imprisonment should a capital sentence be deemed unconstitutional. There is no such statute here, nor did *Miller* declare life without parole sentences to be unconstitutional. Indeed, *Carey* rejected an argument identical to defendant's: Carey unsuccessfully offered an "imaginative" argument that invalidation of his death sentence implicitly removed all penalties for first degree murder. 452 F. Supp. at 488.

Rutledge v. United States, 517 U.S. 292 (1996), has no bearing on defendant's claim. In that case the Court concluded that Rutledge's convictions, in a single trial, of "criminal conspiracy" and "continuing criminal enterprise," both of which require criminal agreement, were in effect a single offense under *Blockburger v. United States*, 284 U.S. 299 (1932), and so vacated the conspiracy conviction. Defendant has no claim under *Blockburger*, and contrary to what he states, *Rutledge* contains no holding to the effect that "where a greater offense must be reversed," courts should "enter judgment on the lesser included offense" (defendant's supplemental brief, 10). As already noted, defendant's conviction for first degree murder is unaffected by *Miller*.

III. DEFENDANT IS NOT ENTITLED TO ADDITIONAL RELIEF UNDER THE STATE CONSTITUTION.

Defendant contends that if he is not entitled to the sweeping relief he seeks under *Miller*, this Court should nevertheless impose "a categorical ban on life without parole for juveniles" under the state constitution (defendant's supplemental brief, 7). His claim should be rejected.

This Court has repeatedly held that the state provision regarding cruel punishments and the Eighth Amendment are coextensive.[8] Contrary to what defendant implies (*Id.*, n.6), this coextensive construction is not limited to capital cases. *Commonwealth v. 5444 Spruce St.*, 832 A.2d 396, 399 (Pa. 2003) (concerning property forfeiture) ("Article I, Section 13 of the Pennsylvania Constitution is coextensive with the Eighth Amendment") (footnote omitted); *Jackson v. Hendrick*, 503 A.2d 400, 404 (Pa. 1986) (concerning prison conditions) ("Article I, section 13 of the Pennsylvania Constitution is coextensive with the Eighth Amendment").

In arguing that this Court should nevertheless seek to exceed what *Miller* requires by resort to the state constitution, defendant refers to Pennsylvania's supposed "longstanding historical commitment" to constitutionally insulating minor killers from criminal punishment (defendant's supplemental brief, 6). But this is historical fantasy on defendant's part. When it comes to murder, Pennsylvania – whose constitution predates the federal one and was a model for it – has no tradition of special treatment for juveniles, but rather has a longstanding tradition of treating murder as a special category of violence that cannot be categorically excused or mitigated by youthful impetuosity. *See Commonwealth v. Williams*, 522 A.2d 1058, 1063 (Pa. 1987) ("[T]here is no constitutional guarantee of special treatment for juvenile offenders"); *Commonwealth v. Pyle*, 342 A.2d 101, 104 (Pa.

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[8] **Pa. Const. Art. I, § 13. Bail, fines and punishments.**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

1975) ("Where murder is charged, treatment as a 'youthful offender' still does not arise as a matter of right"). As shown above, defendant will receive the individualized sentencing that *Miller* requires under existing Pennsylvania statutes.

Moreover, this Court has held that life imprisonment without parole for a juvenile murderer is *not* cruel punishment. In *Commonwealth v. Sourbeer*, 422 A.2d 116, 123 (Pa. 1980), in which the offender was 14 years old at the time of the murder, this Court – without distinguishing between the state and federal constitutions – concluded that life without parole "is not cruel and unusual punishment for it is not an excessive and unnecessary punishment disproportionate to the crime and does not shock the moral conscience of the community." *Sourbeer* did not limit its holding to claims under the Eighth Amendment. On the contrary, under defendant's own reasoning, *Sourbeer*'s holding that such a punishment is not "cruel and unusual" necessarily held that it is not "cruel," rejecting relief under the state constitution.[9]

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[9] The consensus among the states is likewise to permit sentences of life without parole for juvenile offenders convicted of murder. Including Pennsylvania, no fewer than **45 of the 50 states – 90%** – do so: Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Washington, West Virginia, Wisconsin, Wyoming: Ala. Code §§ 13A-5-6, 13A-5-9; Ariz. Rev. Stat. Ann. §§ 13-501 & 13-703.01(A); Ark. Code Ann. § 5-4-104, § 9-27-318; Cal. Penal Code § 190.5(b); Conn. Gen. Stat. § 53a-35a; Conn. Gen. Stat. § 46b-127; Del. Code Ann. Tit. 10, §§ 1010, 1011; Del. Code Ann. Tit. 11, § 4209; Fla. Stat. §§ 775.082, 985.225; Ga. Code Ann. §17-10-6; Ga. Code. Ann. § 17-10-6.1(a)(2) and 17-10-7(b) (1 & 2); Haw. Rev. Stat. §§ 706-656, 706-657; Idaho Code Ann. § 20-509(3)-(4); 730 Ill. Comp. Stat. 5/5-8-1; Ind. Code Ann. § 35-50-2-3; Iowa Code § 902.1 & 902.2; Ky. Rev. Stat. Ann. § 532.025, Ky. Rev. Stat. Ann. § 532.030; La. Child. Code Ann. art. 305 (West 2004); La. Crim. Code. Ann. art. 14:30; La. Crim. Code. Ann. art. 14:30; Me. Rev. Stat. Ann. Tit. 15, § 3101; Md. Code Ann., Crim. Law §§ 2-202, 2-304; Mass. Gen. Laws Ann. ch. 265, § 2; Mass. Gen. Laws Ann. ch. 199, § 72(b); Mich. Comp. Laws Ann § 750.316; Minn. Stat. § 609.106; Miss. Code Ann., § 97-3-21; Mo. Rev. Stat. § 565.020; Mont. Code Ann. § 46-18-222; Neb. Rev. St. § 29-2204; Neb. Rev. St. § 29-2522; Nev. Rev. Stat. Ann. § 200.030; N.H. Rev. Stat. § 630:1-a; N.J. Stat. Ann., § 2C:11-3 (b) & (g); N.C. Gen. Stat. § 14-17; N.D. Cent. Code § 12.1-32-01; N.Y. McKinney's Penal Law § 409.25 & 290.25(d); Ohio. Rev. Code Ann. § 2929.03C(2)(a) (I), -D(2)((b), -D(3) (b); Ohio Rev. Code Ann. § 2971.03; Okla. Stat. tit. 21 § 701.9 (West Supp. 2006); R.I. Gen. Laws

(continued...)

The 5-4 decision of the federal court in *Miller* is a poor starting point from which to extrapolate more lenient sentencing rules under the state constitution. The dissenting opinions in that case explain why it is worse than merely wrong, being utterly unsupported by any precedent or principled basis of decision. *E.g.*, 132 S Ct. at 2479 (Roberts, C.J., Scalia, Thomas, and Alito, JJ., dissenting) (explaining that the Court's Eighth Amendment jurisprudence had long acknowledged that widespread legislative approval tends to negate "cruel and unusual" claims; but while in a recent case the Court had cited the low number of sentences actually imposed to explain why a high number of statutes allowing them could be overlooked, here it paradoxically overlooks the frequency of the challenged sentences on the ground that they were required by legislation); 2481 (Scalia and Thomas, JJ., dissenting) ("This process has no discernible end point"); 2487 (Alito and Scalia, J.J., dissenting) (asking whether elected representatives are not more likely than unelected judges to understand societal standards; "What today's decision shows is that our Eighth Amendment cases are no longer tied to any objective indicia of society's standards" but are instead based on "whatever the majority views as truly evolved standards of decency").

The *Miller* majority decision, in short, is sentimentality with a legalistic veneer. The proper functions of the federal supreme court do not include behaving as a kind of secular American papacy authorized to issue *ex cathedra* pronouncements on matters of ultimate truth and morality. *Miller* is to be followed because it must be, not because it should be. It is a poorly reasoned decision of dubious legitimacy. It is not a sound basis for construing the state constitution.

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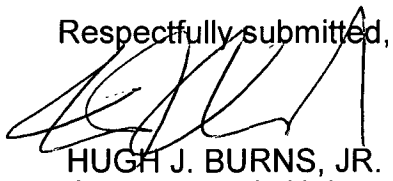
[9](...continued)
§ 12-19.2-4; S.C. Code Ann. § 17-25-45; S.D. Codified Laws § 22-6-1; S.D. Codified Laws § 24-15-4; Tenn. Code Ann. §§ 37-13-134, 39-13-202, 204; Tex. Fam. Code Ann. § 54.02; Tex. Penal Code § 8.07; Utah Code Ann. § 78-3a-502(3); Vt. Stat. Ann. tit. 13, § 2303; Va. Code Ann. § 18.2-10; Wash. Rev. Code Ann. § 10.95.030; W. Va. Code § 49-5-13(e), W. Va. Code § 61-2-2; Wis. Stat. Ann. § 973.014; Wyo. Stat. Ann. § 6-2-101.

CONCLUSION

For the foregoing reasons, the amicus for the Commonwealth respectfully requests this Court to order resentencing with appropriate guidance to the trial court.

Respectfully submitted,



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