conferred benefits on the defendant, those benefits were appreciated by the defendant, and it would be inequitable for the defendant not to pay for them. *Meyer, Darragh*, —— Pa. at ——, 179 A.3d at 1102 (quoting *Shafer*, 626 Pa. at 264, 96 A.3d at 993). "In determining if the doctrine applies, our focus is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched." *Shafer*, 626 Pa. at 264, 96 A.3d at 993 (internal quotation marks and citation omitted).

As discussed, the trial court determined that, because Parents were not personally liable for the cost of Alex's residence and care at Melmark, they obtained no individual benefit from Melmark's provision of the same. Thus, in the court's view, Parents did not appreciate Melmark's services in their individual capacities, only in their capacities as Alex's guardians.

While one may certainly question the trial court's reduction of the "appreciation" element of a *quantum meruit* claim to personal liability for costs incurred,[10] our resolution of the choice-of-law issue vitiates the trial court's basis for concluding that Parents did not, in their individual capacity, appreciate Melmark's services. Further, in weighing the equities, we conclude that it would be inequitable for Parents to retain the benefits they received from Melmark without paying for them. Thus, Melmark has established all three prerequisites for its equitable claims. As such, and in answer to the third question accepted for review, we hold that the Superior Court erred in finding that the trial court properly denied relief on Melmark's equitable claims.

IV. Conclusion

For the reasons given, the order of the Superior Court is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion.

Justices Baer, Todd, Donohue, Dougherty, Wecht and Mundy join the opinion.

10. Our review of the record reveals that Parents appreciated Alex's placement and receipt of services at Melmark in their individual capacities. As Alex's parents, they cared a great deal about his welfare and wanted him to remain at Melmark. By refusing to take custody of Alex on March 31, 2012, Parents were able, for the next thirteen-and-one-half months, to visit him there regularly and to use Melmark as a base from which to provide Alex with additional opportunities (such as art and speech classes and equestrian therapy) at other locations in Pennsylvania.

COMMONWEALTH of Pennsylvania, Appellee

v.

Anthony MACHICOTE, Appellant

No. 14 WAP 2018

Supreme Court of Pennsylvania.

Argued: October 24, 2018

Decided: April 26, 2019

Background: After denial of initial petition for postconviction relief, prisoner filed second petition for postconviction relief, challenging, under *Miller v. Alabama*, legality of sentence of life without possibility of parole for second-degree murder committed when he was juvenile. The Court of Common Pleas, Mercer County, No. CP–43–CR–0001958–2003, Thomas R. Dobson, J., granted petition and resentenced prisoner to term of life with possibility of parole. Sentence was vacated on appeal,

and case was remanded for reinstatement of original sentence. Prisoner then filed third postconviction petition. The Court of Common Pleas vacated sentence and resentenced prisoner to 30 years to life. Prisoner appealed. The Superior Court, No. 1621 WDA 2016, affirmed, 172 A.3d 595. Review was granted.

Holding: The Supreme Court, No. 14 WAP 2018, Mundy, J., held that claim that postconviction court failed to consider factors adopted from *Miller v. Alabama* in fashioning sentence was not rendered moot by imposition of sentence to 30 years to life.

Order of the Superior Court reversed; sentence vacated; remanded for resentencing.

Todd, J., filed dissenting opinion in which Dougherty, J., joined.

1. Criminal Law ⚿1134.75, 1139
Sentencing and Punishment ⚿34

A failure to impose a sentence in compliance with the substantive rule implicates the legality of the sentence; accordingly, the appellate court reviews the sentencing court's legal conclusion pursuant to a de novo standard and plenary scope of review.

2. Criminal Law ⚿1134.26

Prisoner's claim that trial court failed to consider and make findings in record on factors adopted from *Miller v. Alabama* in fashioning sentence for second-degree murder committed when prisoner was juvenile was not rendered moot by imposition of sentence of 30 years to life, following vacatur of sentence of mandatory life without possibility of parole, thus requiring vacatur of sentence and remand for resentencing, where prisoner faced possible sentence of life without parole under statutes in effect at time of conviction, and Commonwealth had in fact argued for sentence of life without parole. 18 Pa. Cons. Stat. Ann. § 1102 (2005); 61 Pa. Cons. Stat. Ann. § 6137(a)(1) (2005).

3. Sentencing and Punishment ⚿39

A conviction for a specific crime does not warrant the same sentence in all circumstances.

4. Sentencing and Punishment ⚿372, 1607

When a juvenile is exposed to a potential sentence of life without the possibility of parole for a homicide offense, the trial court must consider the *Miller v. Alabama* factors and the statutory sentencing factors, on the record, prior to imposing a sentence. 18 Pa. Cons. Stat. Ann. § 1102.1.

5. Sentencing and Punishment ⚿1607

Under *Miller v. Alabama*, in cases of homicide committed by a juvenile offender, the sentencing court must analyze the juvenile's specific characteristics and circumstances and impose a sentence based on them.

Appeal from the Order of the Superior Court entered September 26, 2017 at No. 1621 WDA 2016, affirming the Judgment of Sentence of the Court of Common Pleas of Mercer County entered August 19, 2016, at No. CP-43-CR-0001958-2003.

Robert L. Byer, Esq., Amy Elise Farris, Esq., Brian Jeffrey Slipakoff, Esq., Duane Morris LLP, for Appellant.

Shane Thomas Crevar, Esq., Mercer County District Attorney's Office, for Appellee.

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

OPINION

JUSTICE MUNDY

In this matter, Appellant asks this Court to determine whether his sentence was illegal because he was subject to a potential sentence of life without parole, and prior to imposing his sentence, the trial court did not consider the factors enumerated in *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), as adopted by this Court in *Commonwealth v. Batts*, 620 Pa. 115, 66 A.3d 286 (2013) (*Batts I*) and *Commonwealth v. Batts* (*Batts II*), 640 Pa. 401, 163 A.3d 410 (2017). The Superior Court concluded that Appellant's challenge in this regard, was moot because he was ultimately not sentenced to life without the possibility of parole. We conclude the issue is not moot, and the trial court erred when it failed to consider the *Miller* factors on the record when it resentenced Appellant.

This case originates in 2003 when Appellant was 17 years old and a resident at George Junior Republic, a residential treatment facility for at-risk youth. Appellant and a co-resident, Jeremy Melvin, devised a plan to subdue a night supervisor at the facility in order to escape. On November 10, 2003, Appellant commenced the scheme and called the night supervisor, Wayne Urey, Jr., to his room. Melvin, who was hiding, attacked Urey from behind, put him in a chokehold, and brought him to the ground. Appellant and Melvin bound and gagged Urey, and proceeded to steal his keys, wallet, and truck. Appellant and Melvin escaped, and Urey ultimately died of suffocation.

Appellant and Melvin turned themselves in later that same day. Appellant was charged with homicide, robbery, and related offenses. On November 3, 2004, Appellant pled guilty to second-degree murder and the remaining charges were dismissed. On January 6, 2005, Appellant was sentenced to life without the possibility of parole.[1] Appellant did not appeal his sentence.

On January 11, 2006, Appellant filed a timely *pro se* Post Conviction Relief Act (PCRA) petition challenging the voluntariness of his plea, and asserting ineffective assistance of counsel. A hearing was held, and Appellant's petition was denied. The Superior Court affirmed the PCRA court's decision, and this Court denied Appellant's petition for allowance of appeal. *Commonwealth v. Machicote*, 929 A.2d 242 (Pa. Super. 2007), *appeal denied*, 594 Pa. 677, 932 A.2d 1287 (2007).

Before turning to the subsequent procedural history leading to the instant appeal, a brief discussion of the evolution of juvenile sentencing cases is required. We begin with cases decided by the United States Supreme Court over the last decade and a half and the categorical rules that have emerged in their wake, as they are integral to the development of individualized sentencing. In *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the United States Supreme Court held "[t]he Eighth and Fourteenth Amendments forbid imposition of the death penal-

1. Appellant was sentenced pursuant to the following statute.

> **§ 1102. Sentence for murder and murder of unborn child**
>
> . . .
>
> **(b) Second degree.--**A person who has been convicted of murder of the second degree or of second degree murder of an unborn child shall be sentenced to a term of life imprisonment.
>
> . . .

18 Pa.C.S. § 1102(b). Additionally, pursuant to 61 Pa.C.S. § 6137(a)(1), the Board of Probation and Parole was prohibited from paroling any defendant "condemned to death or serving life imprisonment[.]" *Id.*

ty on offenders who were under the age of 18 when their crimes were committed." *Roper*, 543 U.S. at 578, 125 S.Ct. 1183. Five years later, in *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2011), the United States Supreme Court held that "the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender." *Graham*, 560 U.S. at 75, 130 S.Ct. 2011. Critical to the reasoning in each of these decisions was an emphasis on the need for individualized sentencing for juvenile offenders.

Two years later in *Miller*, the United States Supreme Court again revisited the area of juvenile sentencing schemes. The Court in *Miller* 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.' " *Miller*, 567 U.S. at 465, 132 S.Ct. 2455. Importantly, although the Court held the mandatory nature of the sentence was unconstitutional, it noted that life without parole was still a viable sentence for a juvenile convicted of homicide. The *Miller* Court held that individualized sentencing requires "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 489, 132 S.Ct. 2455. The Court noted that mandatory life without parole fails to allow a sentencing court to consider a juvenile's "chronological age and its hallmark features - among them, immaturity, impetuosity, and failure to appreciate risks and consequences[;]" as well as the juvenile's "family and home environment ... from which he cannot usually extricate himself - no matter how brutal or dysfunctional[;]" and "the circumstances of the homicide offense, including the extent of [the juvenile's] participation in the conduct and the way familial and peer pressures may have affected him." *Id.* at 477, 132 S.Ct. 2455. The Court further noted a mandatory life without parole sentence fails to account for a juvenile's immaturity in dealing with the criminal justice system, and wholly "disregards the possibility of rehabilitation even when the circumstances most suggest it." *Id.* at 478, 132 S.Ct. 2455. Thus, the Court ultimately held that imposing mandatory sentences of life without parole on juveniles convicted of homicide violates "the Eighth Amendment's ban on cruel and unusual punishment." *Id.* at 489, 132 S.Ct. 2455.

Following *Miller*, the States were left to determine a sentencing scheme to replace mandatory life without parole sentences for juveniles convicted of homicide. In Pennsylvania, *Batts I* presented this opportunity.[2] Batts asserted the sentencing

2. On June 24, 2012, while *Batts I* was pending, the General Assembly enacted 18 Pa.C.S. § 1102.1, a new sentencing statute for juveniles convicted of first-degree and second-degree murder. The statute provides:

> **§ 1102.1. Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer**
>
> **(a) First degree murder.--**A person who has been convicted after June 24, 2012, of a murder of the first degree, first degree murder of an unborn child or murder of a law enforcement officer of the first degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:
>
> (1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.
>
> (2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life.

scheme of Section 1102(a), imposing a mandatory sentence of life-without-parole for first-degree murder was unconstitutional in its entirety in light of *Miller*. Thus, Batts argued he was entitled to a remand for resentencing at which the judge would consider the *Miller* factors, prior to imposing an appropriate sentence for third-degree murder, the most severe lesser included offense. *Id.* at 294. The Commonwealth argued the sentencing statute was not constitutionally infirm, and that as a result of *Miller*, the judge now had discretion to impose a sentence of life-without-parole, or a sentence with the possibility of parole after a specified term of years. *Id.* at 295.

This Court held the entire statutory scheme for first-degree murder was not unconstitutional. *Id.* This Court further held that defendants whose judgment of sentence was not final at the time *Miller* was decided are "subject to a mandatory maximum sentence of life imprisonment as

> **(b) Notice.--**Reasonable notice to the defendant of the Commonwealth's intention to seek a sentence of life imprisonment without parole under subsection (a) shall be provided after conviction and before sentencing.
>
> **(c) Second degree murder.--**A person who has been convicted after June 24, 2012, of a murder of the second degree, second degree murder of an unborn child or murder of a law enforcement officer of the second degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:
>
> (1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of imprisonment the minimum of which shall be at least 30 years to life.
>
> (2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of imprisonment the minimum of which shall be at least 20 years to life.
>
> **(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.
>
> **(e) Minimum sentence.--**Nothing under this section shall prevent the sentencing court from imposing a minimum sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing may not supersede the mandatory minimum sentences provided under this section.
>
> **(f) Appeal by Commonwealth.--**If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

18 Pa.C.S. § 1102.1.

required by Section 1102(a), accompanied by a minimum sentence determined by the court of common pleas upon resentencing." *Batts I*, 66 A.3d at 297. Additionally, this Court recognized "the imposition of a minimum sentence taking [the *Miller*] factors into account is the most appropriate remedy for the federal constitutional violation that occurred when a life-without-parole sentence was mandatorily applied." *Id.* Individuals convicted of first-degree murder after the date of the *Miller* decision, pursuant to Section 1102.1, are "subject to high mandatory minimum sentences and the possibility of life without parole, upon evaluation by the sentencing court of criteria along the lines of those identified in *Miller*." *Id.* Accordingly, Batts' sentence was vacated and remanded for resentencing.[3]

In 2016, the United States Supreme Court decided *Montgomery v. Louisiana*, —— U.S. ——, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016), in which it held *Miller* announced a new substantive rule of constitutional law that applies retroactively. The States retained discretion to decide whether to resentence juveniles serving mandatory life without parole sentences, or whether to permit the offenders to be considered for parole. *Montgomery*, 136 S.Ct. at 736. The Court noted, "[e]xtending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences." *Id.* The Court concluded, "[i]n light of what this Court has said in *Roper*, *Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside of prison walls must be restored." *Id.* at 736-37.

Following *Montgomery*, Batts returned to this Court again in *Batts II*. In *Batts II*, this Court clarified that there is "a presumption against the imposition of a sentence of life without parole for a juvenile offender[,]" and to rebut the presumption the Commonwealth "bears the burden of proving, beyond a reasonable doubt, that the juvenile offender is incapable of rehabilitation." *Id.* at 411. Further, we held "the sentencing court's decision must take into account the factors announced in *Miller* and Section 1102.1 of the Crimes Code." *Id.* at 484, 132 S.Ct. 2455.

With the evolution of the law in mind, we return to the procedural history of the instant case. On August 22, 2012, Appellant filed a second, counseled, PCRA petition seeking resentencing pursuant to *Miller*. A conference was scheduled at which the PCRA court and the parties agreed to hold the petition pending guidance from the appellate courts on the applicability of *Miller*. After several continuances the PCRA court determined it was necessary to proceed on the petition, and on August 24, 2013, a hearing was held. Thereafter, on September 30, 2013, the PCRA court vacated Appellant's sentence, determining the sentence was illegal pursuant to *Miller*. Appellant was resentenced on June 24, 2014, to a term of life with parole, with a recommendation Appellant not be paroled until his 58th birthday. On July 2, 2014, the Commonwealth filed a post-sentence mo-

3. In a concurring opinion, Justice Baer noted that although the legislature specified that Section 1102.1 would apply to juvenile offenders convicted after the date of *Miller*, he believed the trial courts re-sentencing juveniles who preserved a *Miller* claim "would be wise to follow the policy determinations made by the legislature in its recent enactment." *Batts I*, 66 A.3d at 300 (Baer, J., concurring).

tion alleging the court had lacked authority to resentence Appellant in light of *Commonwealth v. Cunningham*, 622 Pa. 543, 81 A.3d 1 (2013) (holding *Miller* did not apply retroactively). The motion was denied the same day without a hearing.

The Commonwealth appealed from Appellant's resentencing asserting that *Miller* did not apply retroactively. The Superior Court agreed and vacated Appellant's sentence and remanded for re-imposition of Appellant's original sentence. *Commonwealth v. Machicote*, 122 A.3d 1144 (Pa. Super. 2015) (unpublished memorandum). On September 11, 2015, the court resentenced Appellant in accordance with the Superior Court's order to life without the possibility of parole.

On March 22, 2016, Appellant filed a third PCRA petition asserting his sentence was illegal in light of *Montgomery*. The PCRA court held a conference at which it vacated the September 11, 2015 sentence, and scheduled a sentencing hearing, which was held on August 19, 2016. The Commonwealth asked the trial court to impose a sentence of life without the possibility of parole noting its position that Appellant was "not amenable to rehabilitative efforts." N.T., 8/19/16 at 42. Counsel for Appellant urged the court to be lenient and asserted pursuant to the mandates of *Miller*, a sentence of life without parole should be reserved "for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Id.* The sentencing court proceeded to sentence Appellant as follows.

> THE COURT: I first take into account the comments set forth in my sentence order of June 24, 2014. I reviewed the PSI again. You've had five misconducts, but they were early, which is understandable. You've obtained your GED, which is appropriate. Crimes of this nature devastate all families involved. You were over 15. While your intent was not to kill, there was intent to hurt, and hurt severely in the way that he was beaten.
>
> The Supreme Court of the United States has put forth that only - - life without parole is appropriate in very limited circumstances where their conduct and who they are are [sic] such that you cannot return them to society. That does not apply in this case.
>
> This creates a great deal of confusion because where do we start? The Supreme Court of the United States in *Montgomery* case states - - simply says life with parole. Pennsylvania has not done that. I did that in the first sentence, and as I review it I'm not sure that that is appropriate for several reasons. One, it would permit parole at any time, and I do believe there needs to be a period of substantial incarceration. Two, it is extraordinarily unfair to the family of the victim because at any time they could be subject to a parole hearing, and I don't find that fair.
>
> I look at the statutes enacted after *Miller v. Kentucky*. Clearly, it is not binding on this Court, and I am not required to do so. But I'm confronted with the fact that if I give you less than that, you benefit from committing your murder earlier. That doesn't seem right. If I go beyond that, then you are being punished more because of your timing. That is also wrong. I do find persuasive the logic set forth in the amendments after the *Miller* case.

Id. at 45-47. Accordingly, the sentencing court sentenced Appellant to 30 years to life in prison with credit served from November 10, 2003 to the date of sentencing. *Id.* at 48.

Appellant filed a timely notice of appeal. In his Superior Court brief, he asserted, (1) the sentence was unlawful under *Montgomery* as there was no statutory authori-

ty to impose life without parole on June 25, 2012, and thus he should be sentenced to the lesser included offense of third-degree murder, (2) the court erred in sentencing Appellant, a juvenile convicted of second-degree murder facing a potential life without parole sentence, without considering the *Miller* factors, and (3) the trial court abused its discretion in granting Appellant's request to hire an expert, while denying him a continuance to retain one. *Commonwealth v. Machicote*, 172 A.3d 595, 599 (Pa. Super. 2017).

The Superior Court affirmed.[4] The court first addressed Appellant's claim that his sentence was illegal. The Superior Court concluded that *Batts I* held that juvenile homicide offenders tried and convicted prior to the issuance of *Miller* are subject to a mandatory maximum sentence of life imprisonment as required by the previous version of Section 1102(a) and a minimum determined by the court of common pleas at resentencing. *Machicote*, 172 A.3d at 600. Further, the Court noted that in resentencing Appellant, the court adhered to this Court's reasoning in *Batts II*, that for "juvenile offenders for whom the sentencing court determines [life without the possibility of parole] sentences are inappropriate ... sentencing courts look to the mandatory minimum sentences set forth in section 1102.1(a) for guidance in setting a minimum sentence for a juvenile convicted of first-degree murder prior to *Miller*.'" *Id.* at 601 (quoting *Batts II*, 163 A.3d at 443 n. 17). Ultimately, the Superior Court held that Appellant's thirty-years-to-life sentence was legal as "a trial court, in resentencing a juvenile offender convicted prior to *Miller*, was constitutionally permitted to impose a minimum term-of-years sentence and a maximum sentence of life imprisonment[.]" *Machicote*, 172 A.3d at 601.

Addressing Appellant's second issue, the Superior Court noted that "[t]he *Batts* decisions make clear that, the court must consider the *Miller* factors in cases where the Commonwealth is attempting to meet its burden of overcoming the presumption against juvenile LWOP sentences." *Id.* at 602 n.3. However, the Superior Court concluded that Appellant's challenge to the PCRA court's failure to consider the *Miller* factors was moot because life without parole was ultimately not imposed by the trial court. *Id.* After dismissing Appellant's argument as moot, the Superior Court addressed Appellant's claim as arguably raising a claim that the court failed to consider relevant sentencing factors, and proceeded to address the issue as implicating the discretionary aspects of his sentence. The Superior Court concluded the PCRA court had not abused its discretion in sentencing Appellant because the PCRA court "found persuasive the 'logic' of subsection 1102.1(c)(1)[,]" and Appellant's sentence was "compliant with Subsection 1102.1(c)(1) and *Batts II*[.]"[5] *Id.* at 603.

This Court granted review of the Superior Court's mootness conclusion to determine whether to comply with *Miller* and its progeny, a court sentencing a juvenile defendant for a crime for which life without parole is an available sentence must review and consider on the record the

4. In its resolution of Appellant's issues the Superior Court cited to *Batts II* for authority. It is important to note, at the time of resentencing on August 19, 2016, the trial court was without the benefit of *Batts II*, decided on June 26, 2017.

5. Although not relevant to the instant appeal, in Appellant's third and final issue, the Superior Court held "where the Commonwealth is attempting to meet its burden of overcoming the presumption against juvenile LWOP sentences, expert testimony is not constitutionally required." *Machicote*, 172 A.3d at 605 (citing *Batts II*, 163 A.3d at 431-32).

Miller factors adopted by this Court in *Batts I* and *Batts II*, regardless of whether the defendant is ultimately sentenced to life without parole. *Commonwealth v. Machicote*, 186 A.3d 370 (Pa. 2018).

Appellant begins by noting that the *Montgomery* Court held that an assessment of the *Miller* factors "is a *mandatory* procedural step necessary to 'give[ ] effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." Appellant's Brief at 19 (citing *Montgomery*, 136 S.Ct. at 735). Thus, Appellant maintains the trial court's failure to assess the *Miller* factors was not moot, and the Superior Court's holding confuses the substantive right of a juvenile not to be sentenced to life without parole except in rare circumstances, with *Montgomery*'s procedural holding that the *Miller* factors must be assessed to guarantee individualized sentencing. *Id.*

Appellant further asserts "the sentencing court must expressly evidence its consideration of the *Miller* factors on the record." Appellant's Brief at 26. In support of his argument Appellant notes that the General Assembly has already adopted the framework because Section 1102.1(d) requires the *Miller* factors be considered on the record. Furthermore, in *Batts II*, we held the court shall consider and make findings on the record "after the sentencing court's evaluation of the criteria identified in *Miller*." *Batts II*, 163 A.3d at 421.

The Commonwealth counters that *Miller* is inapplicable because under Section 1102.1, a juvenile convicted of second-degree murder does not face a potential life without parole sentence. Commonwealth's Brief at 11. On this premise, the Commonwealth asserts that Section 1102.1(d) sets forth the factors the sentencing court must consider "in determining whether to impose a sentence of life without parole under subsection (a) [for first-degree murder]." 18 Pa.C.S. § 1102.1(d). Thus, the Commonwealth argues subsection (d) has no applicability for juvenile offenders, such as Appellant, convicted of second-degree murder. Commonwealth's Brief at 11.

The Commonwealth concedes its agreement with a portion of Appellant's argument noting, "whether a trial court must consider the *Miller* factors when sentencing a juvenile facing a potential life without possibility of parole sentence, regardless of the ultimate sentence imposed - has been answered." Commonwealth's Brief at 16. The Commonwealth continues, "[t]he answer is "Yes," a trial court must consider the *Miller* factors when sentencing a juvenile facing a potential life-without-parole sentence, but this will only occur when a juvenile is convicted of first-degree murder." *Id.* The Commonwealth concludes that if Appellant had been sentenced to first-degree murder he would "indeed face a potential life-without-parole sentence, [and] the sentencing court would be mandated, pursuant to § 1102.1(d) and *Batts II*, to consider the *Miller* factors prior to determining whether to impose a life-without-parole sentence[.]" *Id.* at 16-17. Alternatively, the Commonwealth argues that if the trial court was required to consider the *Miller* factors, the record evidence of the sentencing hearing reveals "serious consideration was given to all, or at least a strong majority, of the factors set forth in *Miller* and § 1102.1(d) at the time of re-sentencing on June 24, 2014[,]" and that the PCRA court took into account the comments from the June 24, 2014 re-sentencing at the August 19, 2016 re-sentencing. *Id.* at 26.

In his reply to the Commonwealth's argument, Appellant notes that the Commonwealth "fundamentally agrees" with him that " 'a trial court must consider the *Miller* factors when sentencing a juvenile

facing a potential life-without-parole sentence.' " Appellant's Reply Brief at 2 (quoting Commonwealth's Brief at 16). However, Appellant fervently disagrees with the Commonwealth's assertion that he was not statutorily eligible to be sentenced to life without parole.

[1] As a threshold matter, we must first determine our scope and standard of review. In *Batts II*, this Court recognized that "in the absence of the sentencing court reaching a conclusion, supported by competent evidence, that the defendant will forever be incorrigible, without any hope for rehabilitation, a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose." *Batts II*, 163 A.3d at 435 (citations omitted). Because *Montgomery* announced a substantive rule of law, albeit with a procedural component, a failure to impose a sentence in compliance with the substantive rule implicates the legality of the sentence. *Montgomery*, 136 S.Ct. at 724 ("a court has no authority to leave in place a conviction or sentence that violates a substantive rule[.]") Accordingly, we "review the sentencing court's legal conclusion [regarding whether Appellant is] eligible to receive a sentence of life without parole pursuant to a de novo standard and plenary scope of review." *Batts II*, 163 at 435 (citing *Commonwealth v. McClintic*, 589 Pa. 465, 909 A.2d 1241, 1245 (2006)).

[2] Instantly, Appellant was sentenced to 30 years to life in prison for second-degree murder. Contrary to the Commonwealth's contention, Appellant was not subject to sentencing pursuant to Section 1102.1, but was properly sentenced pursuant to the earlier version of Section 1102, as he was convicted prior to June 24, 2012. As such, life without the possibility of parole was a viable sentence. Furthermore, at Appellant's sentencing hearing, the Commonwealth specifically stated "the Commonwealth recommends a sentence of life without the possibility of parole[,]" and proceeded to argue to overcome the presumption against imposing a sentence of life without the possibility of parole. N.T., 8/19/16, at 42. Thus, the record of Appellant's sentencing hearing reveals Appellant was facing a possible sentence of life without the possibility of parole. Having resolved this threshold dispute, the parties are essentially in agreement that the trial court was required to consider the *Miller* factors on the record.

[3] As iterated throughout this opinion, one of the hallmarks of the line of United States Supreme Court cases pertaining to juvenile sentencing, is the notion that conviction for a specific crime does not warrant the same sentence in all circumstances. The individualized sentence based on the criteria developed in *Miller* must be considered in each case. Thus, although the trial court imposed a sentence that is in line with Section 1102.1, the sentence did not evidence the required individualized consideration. In light of the foregoing, we conclude Appellant's sentence is illegal and must be vacated and remanded for resentencing. In so holding, we recognize that Appellant's sentence was based on the guidance available to the trial court at the time. The trial court looked to Section 1102.1 and imposed the statutory sentence for a juvenile convicted after June 24, 2012. Further, the trial court acknowledged that the *Miller* factors must be considered in determining whether the Commonwealth has met its burden to overcome the presumption against life without parole. The trial court's misstep was not considering the *Miller* factors on the record when the Commonwealth had asked for a sentence of life without parole, and when Appellant was exposed to said sentence as a result of his conviction prior to

Miller and the statutory language of Section 1102.

[4, 5] We hold today, that when a juvenile is exposed to a potential sentence of life without the possibility of parole the trial court must consider the *Miller* factors, on the record, prior to imposing a sentence. The core reasoning behind this long line of ever-evolving case law has been the need to individualize sentences for the youngest offenders who had not developmentally matured. This requires a sentencing court to analyze an individual's specific characteristics and circumstances and to impose a sentence based on them. Thus, the Superior Court's conclusion that the issue is moot because Appellant was ultimately not sentenced to life without the possibility of parole was erroneous, as it effectively nullified the procedural protection set forth in *Montgomery* and solidified by this Court in *Batts II*.

Trial courts must consider, on the record, the *Miller* factors and Section 1102.1 criteria, in all cases where a juvenile is exposed to a sentence of life without parole. As the trial court in the first instance is in the best position to discover and develop this information, the trial court is required to make a record of the *Miller* factors at sentencing. This rule satisfies the United States Supreme Court's directive, and the subsequent rules adopted by this Court, that sentencing of juvenile homicide offenders must be individualized, and creates a record to aid the appellate courts throughout the appeal process.

Based on the foregoing, we conclude that the Superior Court erred when it held that the trial court's failure to address the *Miller* factors on the record was moot. In addition, we further determine that by failing to consider those factors on the record, the trial court erred and imposed an illegal sentence. Accordingly, the order of the Superior Court is reversed, the judgment of sentence is vacated, and the case is remanded to the Court of Common Pleas for resentencing.

Chief Justice Saylor and Justices Baer, Donohue and Wecht join the opinion.

Justice Todd files a dissenting opinion in which Justice Dougherty joins.

JUSTICE TODD, Dissenting

The majority's analysis is based on the premise that Appellant – who was *not* sentenced to life without the possibility of parole ("LWOP") – falls within the class of persons which *Miller* [1] and *Montgomery* [2] deemed entitled to protection. In my view, he plainly does not, and thus is not entitled to resentencing. Accordingly, I respectfully dissent.

Miller held that, under the Eighth Amendment to the United States Constitution, a sentencing court is precluded from imposing a sentence of LWOP on a juvenile unless the juvenile's crime reflects, to use one characterization, permanent incorrigibility.[3] A LWOP sentence imposed

1. *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

2. *Montgomery v. Louisiana*, —— U.S. ——, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016).

3. As we discussed in *Commonwealth v. Batts*, 640 Pa. 401, 163 A.3d 410 (2017) ("*Batts II*"), *Miller* directed the consideration of a variety of factors, with an overriding focus:

> The [*Montgomery*] Court clarified that *Miller* requires far more than mere consideration of an offender's age prior to imposing a life-without-parole sentence, as such a sentence "still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" Life without parole "is a disproportionate sentence for all but the rarest of children, those whose crimes reflect irreparable corruption," "permanent incorrigibility," and

without such a determination is unconstitutionally excessive, and thus a sentencing court lacks the authority to impose such a sentence. *See Montgomery*, 136 S.Ct. at 734 ("*Miller* ... did not bar a punishment for all juvenile offenders .... *Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility."); *Batts II*, 163 A.3d at 435 ("[I]n the absence of the sentencing court reaching a conclusion ... that the defendant will forever be incorrigible, without any hope for rehabilitation, a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose."). *Montgomery* clarified that such sentences will be rare.

Here, Appellant was sentenced to 30 years to life in prison, and, accordingly, was eligible for parole. Nevertheless, the majority concludes he is entitled to resentencing because his sentence was illegal under *Miller*, *Montgomery*, and this Court's pronouncements in *Batts I* and *Batts II*. The majority holds that, "when a juvenile is exposed to a potential sentence of life without the possibility of parole the trial court must consider the *Miller* factors, on the record, prior to imposing a sentence." Majority Opinion at 1120. Citing the high Court's concern for "individualize[d] sentences for the youngest offenders who had not developmentally matured," the majority reasons that "the Superior Court's conclusion that the issue is moot because Appellant was ultimately not sentenced to life without the possibility of parole was erroneous, as it effectively nullified the procedural protection set forth in *Montgomery* and solidified by this Court in *Batts II*." *Id.* at 1120.

The problem with this analysis, in my view, is that it conceives of *Miller* and *Montgomery* as principally setting forth procedural protections, protections which the majority herein deems a large class of juveniles to be constitutionally entitled – those who *might be* or *could have been* sentenced to LWOP. I interpret *Miller*, however, as announcing a substantive rule of constitutional law[4] which constrains a court's *authority* to impose a LWOP sentence, prohibiting a court from imposing a LWOP sentence on a juvenile whose crimes do not reflect incorrigibility. Indeed, the high Court's determination in *Montgomery* that *Miller* must be applied retroactively is based on this substantive-versus-procedural conclusion. *See generally Montgomery*, 136 S.Ct. at 732-36. The *Montgomery* Court went to great pains to clarify its ruling was substantive in nature:

> To be sure, *Miller*'s holding has a procedural component. *Miller* requires a sentencer to consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence. Louisiana contends that because *Miller* requires this process, it must have set forth a procedural rule. This argument, however, conflates a procedural require-

> "such irretrievable depravity that rehabilitation is impossible," thereby excluding "the vast majority of juvenile offenders" from facing a sentence of life in prison without the possibility of parole.

Id. at 433 (citations omitted). The high Court in *Miller* and *Montgomery* did not impose formal factfinding requirements to make these determinations, but left that task to the States. *See Montgomery,* 136 S.Ct. at 735. As the majority discusses, pursuant to that mandate, this Court set forth such requirements in *Commonwealth v. Batts,* 620 Pa. 115, 66 A.3d 286 (2013) ("*Batts I*"), and *Batts II*.

4. As the high Court explained in *Montgomery,* "[s]ubstantive rules ... set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose." *Montgomery,* 136 S.Ct. at 729.

> ment necessary to implement a substantive guarantee with a rule that "regulate[s] only the manner of determining the defendant's culpability." There are instances in which a substantive change in the law must be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish. For example, when an element of a criminal offense is deemed unconstitutional, a prisoner convicted under that offense receives a new trial where the government must prove the prisoner's conduct still fits within the modified definition of the crime. In a similar vein, when the Constitution prohibits a particular form of punishment for a class of persons, an affected prisoner receives a procedure through which he can show that he belongs to the protected class. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 317, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (requiring a procedure to determine whether a particular individual with an intellectual disability "fall[s] within the range of [intellectually disabled] offenders about whom there is a national consensus" that execution is impermissible). Those procedural requirements do not, of course, transform substantive rules into procedural ones.

Id. at 734–35 (some citations omitted).

By contrast, the majority conceives of *Miller* as imposing procedural requirements on the juvenile sentencing process, as creating a constitutional right to individualized sentencing for juveniles. *See* Majority Opinion at 1119 (noting that Appellant's "sentence did not evidence the required individualized consideration"). Under the majority's holding, a juvenile sentencing proceeding that fails to consider the *Miller* factors is itself constitutionally infirm, irrespective of the sentence the court imposes. *See id.* at 1119–20. This conclusion ignores that, fundamentally, *Miller* proscribed a particular form of *punishment* for certain juveniles, and the sentencing hearing is merely the forum in which it is determined whether the juvenile "falls within the category of persons whom the law may no longer punish." *Montgomery*, 136 S.Ct. at 735. The "hearing does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity." *Id.*

Indeed, in *Montgomery*, the high Court explicitly allowed that "[g]iving *Miller* retroactive effect ... does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." [5] *Id.* at 736; *see also Batts II*, 163 A.2d at 440-41. If the majority's interpretation were correct – that *Miller* and *Montgomery* imposed constitutional prescriptions for juvenile sentencing *procedures*, not limitations on permissible juvenile *sentences* – the high Court logically would have mandated resentencing in every case. In any event, were Appellant's rights under *Miller* somehow violated as the majority contends, he is presently eligible for parole, thus falling within *Montgomery*'s caveat.

As a practical matter, I recognize that, for juveniles (who have not yet been sentenced) who are facing a possible sentence of LWOP, the *Miller* factors must be considered before a LWOP sentence is im-

5. The high Court explained that "[a]llowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment." *Montgomery,* 136 S.Ct. at 736.

posed – that is, it must first be determined whether the juvenile belongs to *Miller*'s "protected class" by reference to those factors. A court cannot impose sentence, of course, until it decides what sentence to impose, and since its authority to impose LWOP on a juvenile is limited to those juveniles reflecting incorrigibility under *Miller* and *Montgomery*, the court has to address the *Miller* factors before it imposes sentence. Here, however, Appellant has already been sentenced, and, thus, we know he does not fall within *Miller*'s "protected class" for the simple reason that he was not sentenced to LWOP. Notably, in this regard, Appellant is unlike the appellants who were afforded relief in *Miller*, *Montgomery*, *Batts I*, and *Batts II*, as each of those appellants were sentenced to LWOP.

In short, Appellant was sentenced to 30 years to life imprisonment – life *with* the possibility of parole – and neither *Miller* nor *Montgomery*, nor this Court's decisions in *Batts I* or *Batts II*, placed any constraints on the trial court's authority to impose such a sentence. Accordingly, I would conclude that Appellant is not entitled to resentencing.

Justice Dougherty joins this dissenting opinion.

COMMONWEALTH of Pennsylvania

v.

Mark Amos ALLEN, Appellant

No. 1203 MDA 2018

Superior Court of Pennsylvania.

Submitted December 17, 2018
Filed March 22, 2019

Background: Defendant was convicted in the Court of Common Pleas, Adams County, Criminal Division, No: CP-01-CR-0001260-2017, Shawn C. Wagner, J., of driving under the influence of alcohol (DUI). Defendant appealed.

Holding: The Superior Court, Stevens, P.J.E., No. 1203 MDA 2018, held that defendant's single car accident constituted a breach of the peace for purposes of determining whether constable had authority to detain defendant.

Affirmed.

1. Criminal Law ⚿1134.17(2)

On review of a denial of a motion to suppress evidence, an appellate court may consider only the Commonwealth's evidence and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole.

2. Criminal Law ⚿1134.49(4), 1158.12

Where the record supports the factual findings of the trial court in denying a motion to suppress evidence, an appellate court is bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

3. Criminal Law ⚿1134.49(4)

An appellate court is not bound by the suppression court's conclusions of law.

4. Arrest ⚿63.2

Constables have arrest powers for in-presence felonies or breaches of the peace.

5. Automobiles ⚿349(2.1)

Defendant's single-car accident constituted a breach of the peace for purposes of determining whether constable had authority to detain defendant as he called the proper authorities to investigate the inci-