

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	NO. 046-CR-1998
	:	
KAQUWAN MILLIGAN,	:	
Defendant	:	
Gary F. Dobias, Esquire		Counsel for the Commonwealth
Special Asst. District Attorney		
Albert V.F. Nelthropp, Esquire		Counsel for the Defendant

**MEMORANDUM OPINION**

Serfass, J. - January 9, 2017

Defendant, Kaquwan Milligan, (hereinafter "Defendant"), has taken this appeal from the Order of Court entered on October 7, 2016 denying his "Petition for Post-Conviction Relief Pursuant to 42 Pa.C.S. Section 9543". We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid Order of Court be affirmed for the reasons set forth hereinafter.

**FACTUAL AND PROCEDURAL HISTORY**

The facts surrounding the murder of Tyrone Hill, when viewed most favorably to the Commonwealth as verdict winner, find their genesis in turf wars between drug dealers.<sup>1</sup> Five (5)

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<sup>1</sup> Reference to the trial transcripts is to the original first three volumes filed on April 20, 1999 and the amended remaining volumes, filed on July 26, 1999. The amendments to Volumes IV through VII were made due to a problem with page numbering and in no way changed the content of these volumes.

individuals were charged with the Murder of Hill: Miles Ramzee; Defendant; Dennis Boney; Cetewayo Frails; and Verna Russman.

During 1997, the prosecution's primary witness, Verna Russman, was a crack cocaine addict, selling drugs for Ramzee and Anthony Cabey. N.T., 3/11/99, pp. 136-141. The drugs were sold primarily in Monroe County, Pennsylvania, Id., and generated approximately ten thousand dollars (\$10,000.00) per week, which was shared by Ramzee, Cabey, and the others involved in the drug trade, including Defendant, Frails and Boney. Id. at 164. For her part, Russman received a place to stay and crack cocaine to support her habit. Id. at 164-165.

In the spring of 1997, Russman began selling drugs for Terrell Owens, whom Ramzee had brought into the drug operation after Cabey's arrest and incarceration. Id. at 139-140; N.T., 3/17/99, pp. 685-687. In October of 1997, Owens planned to leave the state and brought in Hill as his replacement. N.T., 3/11/99, pp. 141-142. Ramzee admitted his involvement in the drug sales, but claimed to have quit the operation prior to the murder and, thus, denied knowing or killing Hill. N.T., 3/17/99, pp. 685-693.

On October 25, 1997, the day before the murder, Russman and Defendant spent the day selling drugs in Monroe County, where they eventually met with Frails, Ramzee and Boney. N.T., 3/11/99, pp. 44, 147-150; N.T., 3/12/99, pp. 332-333. During the

visit, Russman smoked crack cocaine and listened to Ramzee, Frails, Boney and Defendant plan to rob Hill of his money and drugs in order to cut into his drug territory. Id. at 150-151.

Thereafter, Russman and Defendant returned to their apartment in Palmerton, Carbon County, which they shared with several people, including Owens and Hill. Id. at 141-142. She and Hill then bagged drugs he had purchased earlier that day. Id. at 44, 152. Later, Russman took Hill's vehicle to sell more drugs, while Defendant remained in Palmerton. Id. at 142, 153.

During her trip, Russman was paged to bring Frails, Ramzee and Boney to the Palmerton apartment to rob Hill as planned. Id. at 172. The group arrived in two (2) vehicles in the early morning hours of October 26, 1997. Id. at 154-156, 177. Russman roused Hill, telling him she needed an eight ball to sell. Id. at 156. Boney sat down to play a video game while Frails stood guard by the door. Id. at 157-158. Ramzee greeted Hill and then exited the room for a few seconds. Id. at 157. Upon returning, Ramzee walked up behind Hill, who was leaning down to retrieve his clothes, and shot him in the back of the head. Id. As Hill started to fall, Frails pushed him backward, causing him to fall face up on the floor. Id. Frails and Ramzee then rifled through Hill's pockets and stole his drugs. Id. at 159.

In the meantime, Defendant dragged an upset Russman from the room, while all four (4) men appeared calm. Id. When allowed

to return, Russman saw Hill's body covered with blankets on the floor. Id. at 160. Ramzee then ordered Russman to drive Hill's car, while Frails, Defendant and Boney followed in another vehicle. Id. at 160-161. They eventually left Russman at an apartment in Monroe County. Id. at 162; N.T., 3/12/99, pp. 336-339.

The crime scene was discovered by the landlord on the morning of the murder and was consistent with Russman's description. Id. at 100-106. A subsequent police investigation and autopsy revealed that Hill died of a gunshot wound to the back of his head, consistent with the victim being in a bent over position. Id. at 52, 82-86. Hill's vehicle was eventually found in Brooklyn, New York, containing microscopic hairs similar to those of Boney. N.T., 3/12/99, pp. 393-397; N.T., 3/16/99, pp. 564-571.

The day following the murder, Russman contacted the police to tell them about the killing. She was subsequently arrested. N.T., 3/11/99, p. 164. At the time of trial, Russman had been in jail for approximately fifteen (15) months, charged with the same crimes as her co-defendants. Id. at 134, 163. No promises had been made in exchange for her testimony. Id. at 163. She testified because she believed the killing should not have occurred and the truth needed to be told. Id.

During Defendant's trial, he and Frails each claimed that they were not present in this state when Hill was killed. Their evidence on this point was contradicted by several witnesses, including Russman. The prosecution presented Russman's testimony placing Defendant at the scene of the crime. Additionally, five (5) other witnesses placed him in Pennsylvania, in an adjacent county, on the day the conspiracy developed and/or the day of the murder.

On April 21, 1999, Defendant was convicted of second degree murder, robbery, criminal conspiracy, and aggravated assault<sup>2</sup> for his role in the October 26, 1997, drug-related shooting and death of Tyrone Hill. Thereafter, Defendant was sentenced to life imprisonment on the murder charge, followed by a sentence of not less than five nor more than ten years for criminal conspiracy; the convictions for robbery and aggravated assault merged for sentencing purposes. Defendant's conviction and sentence were upheld on direct appeal and became final when the United States Supreme Court denied his petition for *writ of certiorari* on November 26, 2001.

On March 26, 2002, Defendant filed his first petition pursuant to the Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. §§ 9541-9546. Following the appointment of counsel and the filing of an amended petition on September 6, 2002, the petition

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<sup>2</sup> 18 Pa.C.S.A. §§ 2502(b), 3701 (a)(1), 903 (a)(1), and 2702 (a)(1), respectively.

was denied on April 21, 2003, after a hearing held on January 24, 2003. The Pennsylvania Superior Court affirmed this Court's ruling on September 22, 2004. Subsequently, the Pennsylvania Supreme Court denied Defendant's petition for allowance of appeal on April 5, 2005.

Defendant filed his second PCRA petition on August 5, 2005. Counsel was again appointed to represent Defendant and an amended petition was filed on April 6, 2006. In this petition, Defendant raised two primary issues: (1) whether the Commonwealth failed to disclose exculpatory evidence in the nature of an alleged plea agreement with one of Defendant's co-conspirators, Verna Russman, in exchange for her cooperation and favorable testimony against the Defendant; and (2) whether the Commonwealth coerced perjured testimony from a Commonwealth witness, Kadias Murdaugh, to refute Defendant's alibi defense. A hearing on the amended petition was held on June 9, 2006. Defendant's second PCRA petition was dismissed on November 22, 2006 because it failed to meet any of the exceptions to the PCRA's timeliness requirements and was, therefore, time-barred. The Pennsylvania Superior Court affirmed this dismissal on August 14, 2007. Ultimately, the Pennsylvania Supreme Court denied Defendant's petition for allowance of appeal on May 20, 2008.

On December 27, 2012, Defendant filed his third PCRA petition. In that petition, Defendant raised two (2) arguments as to why the United States Supreme Court decision in Miller v. Alabama, 132 S. Ct. 2455 (2012), should apply in his case. First, Defendant claimed that he had not physically matured to the point of adulthood at the time he committed his crime and, as a result, his situation was akin to that of the juvenile defendant in Miller. Second, Defendant argued that, pursuant to the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, all persons with immature brains must be treated similarly and therefore, he should have been considered a juvenile for the purposes of sentencing. Upon review of the Commonwealth's answer to Defendant's petition, on April 8, 2013, this Court issued a notice of intent to dismiss that petition without a hearing pursuant to Pennsylvania Rule of Criminal Procedure 907. Defendant failed to file a response to our notice and his third PCRA petition was denied and dismissed on May 8, 2013.

On March 18, 2016, Defendant filed his fourth PCRA petition arguing that, based on Miller v. Alabama, 132 S. Ct. 2455 (2012), he was a juvenile at the time Tyrone Hill was murdered. On April 5, 2016, Albert V.F. Nelthropp, Esquire, was appointed as counsel to represent Defendant in connection with the aforesaid petition.

Attorney Nelthropp filed an amended PCRA petition on behalf of Defendant on May 27, 2016, titled, "Petition for Post-Conviction Relief Pursuant to 42 Pa.C.S. Section 9543". In addition to the Miller-based argument previously advanced, Defendant also contends that since he lacked the intent to kill, he is categorically less culpable pursuant to Edmund v. Florida, 102 S.Ct. 3368 (1982).

After oral argument was held on the matter<sup>3</sup>, this Court denied and dismissed Defendant's PCRA petition on October 7, 2016, for the following reasons: 1. Defendant's petition was untimely filed depriving this Court of jurisdiction; 2. the issues presented were previously litigated; and 3. Defendant was nineteen (19) years old at the time of Tyrone Hill's murder, rendering Montgomery v. Louisiana, 136 S.Ct. 718 (2016), and Miller v. Alabama, 132 S.Ct. 2455, inapposite to the instant case.

On November 7, 2016, Defendant filed a Notice of Appeal and the following day this Court ordered Defendant to file a concise statement of the matters complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b).

On November 30, 2016, Defendant filed his concise statement in compliance with our Order essentially raising the following six (6) issues on appeal:

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<sup>3</sup> By agreement of counsel, Defendant's petition was scheduled for oral argument as opposed to an evidentiary hearing.



1. Whether this Court erred in finding that Defendant did not meet the jurisdictional filing requirements for a PCRA petition;
2. Whether this Court erred by determining that the issues raised by Defendant have been previously litigated;
3. Whether this Court erred in determining that Defendant's sentence did not violate the Eighth Amendment of the United States Constitution by not applying Miller v. Alabama, 132 S. Ct. 2455 (2012);
4. Whether, in light of Miller, a rational basis exists for 18 Pa.C.S.A. §1102(b) permitting a sentence of life imprisonment without parole;
5. Whether this Court erred in not applying Edmund v. Florida, 102 S.Ct. 3368 (1982) and determining that Defendant's lack of intent to kill made him categorically less culpable; and
6. Whether this Court erred in not finding that the issues raised in the present PCRA petition meet the Lawson standard for a second or subsequent PCRA petition.

## **DISCUSSION**

### **I. Jurisdictional Filing Requirements for a PCRA Petition**

Pursuant to 42 Pa.C.S.A. §9543(a), in order to make out a claim under the PCRA, a petitioner must plead and prove by a preponderance of the evidence that he has been convicted of a criminal offense under the laws of this Commonwealth and is currently serving a term of imprisonment, probation or parole for that crime, awaiting execution of a sentence of death for

the crime, or serving another sentence which must expire before the disputed sentence begins, and that the conviction 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; and/or
- 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.

PCRA claims must be filed within one (1) year of the date the judgment becomes final. 42 Pa.C.S.A. §9545(b)(1). A judgment becomes final for purposes of the PCRA when either the direct review is completed or the time for direct review has passed. 42 Pa.C.S.A. §9545(b)(3). In order to file a petition under the PCRA beyond that one-year limitation, 42 Pa.C.S.A. §9545(b)(1) sets forth the following three (3) exceptions:

- i. the failure to raise the claim previously was the result of interference by government officials with the 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.

Any petition invoking an exception pursuant to 42 Pa. C.S.A. §9545(b)(1) must be filed within sixty (60) days of the date the claim could have been presented. 42 Pa.C.S.A. §9545(b)(2). When the merits of an issue have been ruled upon by the highest appellate court in which the petitioner, as a matter of right, could have had review, or where the petitioner could have raised the issue in a prior proceeding but failed to do so, the issue is considered waived. 42 Pa.C.S.A. §9544.

The time limitations of the PCRA are jurisdictional in nature. As such, when a PCRA petition is not filed within one (1) year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within sixty (60) days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner's PCRA claims. Commonwealth v. Gamboa-Taylor, 753 A.2d 780, 783 (Pa. 2000).

Defendant was convicted by a Carbon County jury on April 21, 1999 and he was sentenced to life imprisonment without parole by the Honorable Richard W. Webb on May 18, 1999. Defendant's conviction and sentence were upheld on direct appeal and became final when the United States Supreme Court denied his petition for *writ of certiorari* on November 26, 2001. Therefore, Defendant's ability to request PCRA relief under his allotted one-year time limitation expired on November 26, 2002. Defendant's current PCRA petition was filed on March 18, 2016, more than thirteen (13) years beyond the expiration of his filing deadline. Accordingly, in order for this Court to have jurisdiction over Defendant's current PCRA petition, at least one of the exceptions set forth in 42 Pa.C.S.A. §9545(b)(1) would have to apply. However, Defendant has failed to demonstrate the applicability of any of the PCRA's three (3) statutory exceptions to the timeliness requirement set forth in 42 Pa.C.S.A. §9545(b)(1), which would allow him to extend the one-year time limitation. Therefore, the deadline for Defendant to file a timely PCRA petition was properly calculated. Accordingly, because we lacked jurisdiction to consider the merits of Defendant's fourth Amended Petition for Post-Conviction Relief, said petition was properly denied.

## **II. Issues Have Been Previously Litigated**

In his third PCRA petition, Defendant advanced multiple arguments as to why he should be considered a juvenile for the purposes of sentencing. Defendant maintained that, due to his brain having not fully developed at the time he committed his crime, and based on the fact that all defendants with similarly developed brains must be treated equally, the United States Supreme Court's ruling in Miller should be applied to this case. Defendant failed to file a response to our Rule 907 notice of April 8, 2013. Accordingly, Defendant waived his right to have these issues addressed by this Court pursuant to 42 Pa.C.S.A. §9544(b). Even though Defendant may have used slightly different language in framing these issues for his fourth PCRA petition, they are still essentially the same issues raised in his third PCRA. Consequently, this Court need not address these issues pursuant to 42 Pa.C.S.A. §9544(b). Nevertheless, we will dispose of Defendant's arguments hereinbelow.

## **III. Applicability of *Miller v. Alabama***

Defendant maintains that his sentence of life imprisonment without parole is a violation of the Eighth Amendment of the United States Constitution. As previously noted, in order to make a timely appeal on such grounds, Defendant must file his petition invoking the exception set forth at 42 Pa.C.S.A. §9545(b)(1)(iii) and demonstrate that the United States Supreme

Court or the Pennsylvania Supreme Court has recognized a new constitutional right of the defendant's which has been determined to apply retroactively. We reiterate that such petitions must be filed within sixty (60) days of the date the claim, under the exception, could have been first presented. 42 Pa.C.S.A. §9545(b)(2). To this end, Defendant argues that the holdings in Miller v. Alabama, — U.S. —, 132 S.Ct. 2455, 2460, 183 L.Ed.2d 407 (2012) and Montgomery v. Louisiana, — U.S. —, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) provide him with sufficient grounds to advance a claim of unconstitutionality. The United States Supreme Court in Miller held that sentencing an individual to life imprisonment without the possibility of parole is unconstitutionally cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution when imposed upon defendants convicted of murder who were under the age of eighteen (18) at the time of their crimes. In Montgomery, the United States Supreme Court held that its decision in Miller applies retroactively to cases on state collateral review. As a result, to have filed a timely petition pursuant to 42 Pa.C.S.A. §9545(b) based upon this case law, Defendant would have had to file a petition within sixty (60) days of the final judgment in Miller which was decided on June 25, 2012. However, Defendant

filed the instant PCRA Petition on March 18, 2016, nearly four (4) years after the final judgment in Miller.

Even if Defendant had filed a timely petition pursuant to 42 Pa.C.S.A. §9545(b)(1)(iii), we would not have jurisdiction to consider that petition because he has failed to present a claim falling within the ambit of the Miller decision. See Commonwealth v. Furgess, — A.3d —, 2016 WL 5416640, (Pa. Super. 2016).

For this Court to have jurisdiction over Defendant's PCRA petition, his petition must present a claim that falls within the scope of the Supreme Court's decision in Miller. Id at 2. To reiterate, Miller only applies to defendants who were under the age of eighteen (18) at the time they committed their crime(s). Defendant was born on February 11, 1978, and committed murder in the second degree in this county on October 26, 1997. Therefore, Defendant was nineteen (19) years old at the time of the murder. Defendant is clearly not a member of the discrete class of defendants to which the substantive rule recognized by the Supreme Court in Montgomery is to be retroactively applied. Defendant's petition falls outside the ambit of Miller and, therefore, his claim must fail.

The Pennsylvania Superior Court has repeatedly declined to expand the ruling in Miller to encompass those defendants who were over the age of eighteen (18) at the time they committed

their crime(s). See Commonwealth v. Cintora, 59 A.3d 759 (Pa.Super.2013) (defendants over the age of eighteen (18) when they commit murder are not within the ambit of the Miller decision and may not rely on that decision to bring themselves within the time-bar exception in 42 Pa.C.S.A. §9545(b)(1)(iii)); and Furgess, — A.3d —, 2016 WL 5416640 (holding that Miller does not apply to non-juvenile defendants).

Defendant also advances an argument similar to the “technical juvenile” claim addressed by the Superior Court in Furgess, — A.3d —, 2016 WL 5416640. Defendant avers that this Court erred by not considering Defendant’s youth, life experience and background in evaluating his fourth PCRA petition. In Furgess, the Pennsylvania Superior Court declined to extend the ruling in Miller to Defendants whose brains may have been still developing at the time they committed a crime. The Pennsylvania Superior Court in Furgess noted that our courts have previously declined to expand the ruling in Miller to defendants who were over eighteen (18) at the time they committed their crime. Commonwealth v. Cintora, 59 A.3d 759 (Pa.Super.2013). This Court is similarly bound by the ruling in Cintora and is not inclined to extend the ruling in Miller to include defendants who were not juveniles during the commission of their crime regardless of Defendant’s relative youth, youth life experiences, or background.



Accordingly, we find Defendant's fourth Petition for Post-Conviction Collateral Relief to be untimely because it was filed more than sixty (60) days after the final judgment in Miller, and because it fails to satisfy the jurisdictional requirements of 42 Pa.C.S.A. §9545 as the petition does not present a claim falling within the scope of the Miller decision. Therefore, Defendant's petition does not fall under the "newly recognized constitutional right" exception in 42 Pa.C.S.A. §9545(b)(1)(iii) and his reliance on Miller for relief is misplaced.

#### **IV. Rational Basis for 18 Pa.C.S.A. §1102(b)**

Defendant avers that 18 Pa.C.S.A. §1102(b) violates the equal protection clauses of both the Pennsylvania and the United States Constitutions because it lacks a rational basis in light of Miller. Here, it is important to note that duly enacted legislation carries a strong presumption of constitutionality. Commonwealth v. Turner, 80 A.3d 754, 759 (2013). Moreover, the party seeking to overcome the presumption must meet a formidable burden. See Commonwealth v. Haughwout, 837 A.2d 480 (Pa. Super. 2003).

"The equal protection clause of the Fourteenth Amendment provides that no State shall 'deny to any person within its jurisdiction the equal protection of the laws'." Commonwealth v. Albert, 758 A.2d 1149, 1151, (Pa. 2000) (quoting U.S. Const. Amend. XIV §1). "[T]he starting point of equal protection

analysis is a determination of whether the State has created a classification for the unequal distribution of benefits or imposition of burdens." Commonwealth v. Parker White Metal Co., 515 A.2d 1358, 1363 (Pa. 1986). "[T]he test to be applied in equal protection cases, neither implicating rights fundamental under the Pennsylvania or United States Constitutions nor involving suspect classifications, is the rational basis test" Commonwealth v. Lark, 504 A.2d 1291, 1298 (Pa. Super. 1986).

Here, Defendant does not contend that he is in a suspect class or that a fundamental right is implicated. Therefore, the Court must apply the rational basis test. The rational basis test consists of the following two-step analysis:

First, [a court] must determine whether the challenged statute seeks to promote any legitimate state interest or public value. If so, [the court] must next determine whether the classification adopted in the legislation is reasonably related to accomplishing that articulated state interest or interests.

Albert, 758 A.2d at 1152. "In undertaking its analysis, the reviewing court is free to hypothesize reasons the legislature might have had for the classification. If the court determines that the classifications are genuine, it cannot declare the classification void even if it might question the soundness or wisdom of the distinction." Id.

It goes without saying that murder is a serious crime-"It demonstrates a disregard for the life of the victim. It is a

crime of archviolence." Commonwealth v. Middleton, 467 A.2d 841, 847 (Pa. Super. 1983). The legislature has a legitimate interest in forbidding and preventing murder. Imposition of the sentence of life imprisonment under 18 Pa.C.S. §1102(b) is reasonably related to this interest. The sentence punishes those who commit murder and helps to deter others from committing murder. Therefore, the sentence is reasonably related to a legitimate public interest and Defendant's claims to the contrary are without merit.

**V. Lack of Intent to Kill**

Defendant argues that he lacked the intent to kill Tyrone Hill and, as a result, is categorically less culpable than his counterpart, Myles Ramzee, who shot and killed Mr. Hill. Based upon this distinction, Defendant avers that he is entitled to a resentencing hearing pursuant to Enmund v. Florida, 102 S.Ct. 3368 (1982) and Graham v. Florida, 569 U.S. 48 (2010).

Pennsylvania defines second degree murder as a criminal homicide that is committed while the defendant was engaged as a principal or an accomplice in the perpetration of a felony. 18 Pa.C.S.A. §2502(b). The underlying felony of the case at issue is the premeditated robbery of Tyrone Hill. There are two (2) requirements that must be satisfied in order to find that an accomplice is culpable for the murder of another which occurs in the course of the underlying felony. The principal and

accomplice must have a conspiratorial design to commit the underlying felony and the principal must perform the murder in furtherance of the felony. See Commonwealth v. Allen 379 A.2d 1335 (Pa S.Ct. 1977); Commonwealth v. Banks, 311 A.2d 576 (Pa. S.Ct. 1973); Commonwealth v. Williams, 277 A.2d 781 (Pa. S.Ct. 1971); Commonwealth v. Redline, 137 A.2d 472 (Pa. S.Ct. 1958); and Commonwealth v. Lambert, 795 A.2d 1010 (Pa. Super. 2002).

At trial, Russman testified that she overheard the co-defendants and Ramzee conspire to rob Hill of his money and drugs. In the early morning hours the next day, Russman received a page to bring the co-defendants to the Palmerton apartment to rob Hill as planned. Russman's testimony establishes that a clear conspiratorial design was created to rob Hill. In addition, the principal, Miles Ramzee, killed Tyrone Hill prior to the commission of the robbery making the felony and escape thereof much easier, proving that the murder was done in furtherance of the robbery.

Defendant relies on Enmund and Graham to support his contention that he is categorically less culpable for the murder because he had only a peripheral role and lacked the intent to kill. However, the legal precedent upon which Defendant relies is not applicable to his situation. The Supreme Court of the United States in Enmund determined that the death penalty was an unconstitutional punishment for an accomplice who had no

intention of committing or aiding in the murder of another during the commission of a felony. The most obvious distinction between Enmund and the case at issue is that Defendant was sentenced to life imprisonment without parole, not death. For that reason alone, Enmund is distinguishable from the instant case. Enmund also stands for the principle that a defendant's "criminal culpability must be limited to his participation in the felony, and that his punishment must be tailored to his personal responsibility and moral guilt". Enmund, 102 S.Ct. 3368, at 3378. Since there was a conspiratorial design amongst the co-defendants to rob Hill, and Hill was murdered in furtherance of the robbery, Defendant's conviction and subsequent sentence of life imprisonment without parole is entirely appropriate.

Defendant also cites Graham and Miller to suggest that Defendant was a "technical juvenile" at the time of the murder and that, as a result, his sentence of life imprisonment without parole is a violation of the Eighth Amendment of the United States Constitution. However, as previously set forth hereinabove, Defendant was over the age of eighteen (18) when the subject crime was committed and Pennsylvania courts have refused to extend the United States Supreme Court's ruling in Miller to include such individuals. Commonwealth v. Cintora, 59 A. 3d 759.

## **VI. Lawson Standard for a Second or Subsequent PCRA Petition**

Defendant contends that this Court erred in failing to find that the issues raised in the instant PCRA petition meet the standard for a second or subsequent PCRA Petition set forth in Commonwealth v. Lawson, 549 A.2d 107 (Pa. S.Ct. 1988). In Lawson, the Pennsylvania Supreme Court determined, in relevant part, that a second or subsequent PCRA petition need not be entertained unless the petitioner makes a strong *prima facie* showing that a miscarriage of justice may have occurred. Id. at 112. Defendant now seeks to compel this Court to determine whether Defendant's conviction and sentence represent a miscarriage of justice.

A petitioner makes a *prima facie* showing "if he demonstrates that either the proceedings which resulted in his conviction were so unfair that a 'miscarriage of justice' occurred which no civilized society could tolerate, or that he was innocent of the crimes charged." Commonwealth v. Morales, 701 A.2d 516, 520-521 (Pa. 1997). Despite Defendant's fourth PCRA petition being time-barred for the reasons detailed hereinabove, we do not find that Defendant suffered a miscarriage of justice with regard to the primary contention that his age, at the time he committed his crime, precludes him from being sentenced to life imprisonment without parole. In order to find that there has been a miscarriage of justice,

Defendant seeks to have this Court extend the ruling in Miller to create exceptions for certain defendants who have similar backgrounds and "youth life experience" to that of Defendant. However, the Pennsylvania Superior Court has declined to extend the ruling in Miller to include defendants who were over the age of eighteen (18) during the commission of their crime. Commonwealth v. Cintora, 69 A.3d 759. Therefore, Defendant's sentence of life imprisonment without parole cannot be characterized as a miscarriage of justice. Rather, it represents an appropriate exercise of this Court's sentencing authority.

#### **CONCLUSION**

For the foregoing reasons, we respectfully recommend that Defendant's appeal be denied and that our Order of October 7, 2016, denying Defendant's fourth Petition for Post-Conviction Collateral Relief, be affirmed accordingly.

**BY THE COURT:**

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**Steven R. Serfass, J.**