[J-175-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 447 CAP
	:	
Appellee	:	Appeal from the Order of the Court of
	:	Common Pleas of Philadelphia County,
	:	Trial Division, Criminal Section, entered on
v.	:	April 30, 2004, at Nos. 155-166, February
	:	Term 1984, Denying PCRA Relief.
	:	
DEWITT CRAWLEY,	:	
	:	
Appellant	:	SUBMITTED: October 27, 2006
	:	
	:	

CONCURRING OPINION

MR. JUSTICE CASTILLE **DECIDED: May 31, 2007**

I join the learned Majority Opinion in its entirety. I write separately only to emphasize the mistaken assumption that gave rise to this frivolous appeal.

Appellant acknowledges, but only as a point of departure, this Court's controlling decision in Commonwealth v. Miller, 888 A.2d 624 (Pa. 2005), which addressed the collateral and practical implementation issues which arose in the wake of the Supreme Court of the United States reversing course and holding, in Atkins v. Virginia, 536 U.S. 304 (2002), that the Eighth Amendment precludes states from executing capital murderers who are mentally retarded. Miller was a decision of necessity by this Court because the General Assembly had failed to that point -- and it still has failed -- to address post-Atkins issues.

As the Majority notes, appellant here essentially asks this Court to revisit Miller and adopt a standard for evaluating mental retardation that is more to his liking. In my view,

appellant is in the wrong forum to forward such a request. The Commonwealth of Pennsylvania never embraced, as an expression of its own sovereignty, the limitation on the death penalty that was adopted in Atkins. Instead, Atkins is a federal constitutional decision, rendered by the highest court in the land, which binds the states via the Supremacy Clause, irrespective of whether the individual states agree with the interpretation as a matter of policy or constitutional history or principle. Atkins left it to the states to struggle with the practical implications of its broad decision, and it is not yet clear which state responses to the decision will be deemed to pass constitutional muster by that Court.

It obviously would be salutary for the legislatures of the states to thrash about with the definitional and implementation issues arising in the wake of Atkins, since the broad subject implicates questions of social policy and it is no easy task to devise a workable and rational standard, given the mysteries of the human mind and the litigation incentives. Moreover, although state legislatures must do the minimum that Atkins would command (vague as that command is), they are free to do more, even going so far as to insulate a broader group of marginally impaired capital murderers. In Miller, this Court stepped in because the General Assembly had not adopted responsive legislation and because the issue presented was ripe for decision. Faced with Pennsylvania legislation that did not contain **any** Atkins restriction, and obliged and authorized only to do the constitutional minimum required by Atkins, this Court rendered its considered decision on the standard to govern Atkins challenges in Pennsylvania.

Having spoken in Miller only because the issue was defaulted to us, and bound only by those federal constitutional restrictions which are clearly articulated by the U.S. Supreme Court, I would not "revisit" the Miller standard upon mere request, or because a particular defendant thinks he has conjured a better policy argument. This Court is not a legislative body, much less a super-legislature. Our role is not to tinker with the Miller test for

tinkering's sake or for policy's sake. In my view, there are only three possible cognizable challenges a capital defendant can forward in the wake of Miller: (1) I am ineligible for the death penalty under Miller; (2) the Miller standard as stated or applied to me violates the federal Constitution as articulated in the following, specific ruling of the Supreme Court of the United States (this would have to be Atkins or a post-Atkins decision of the High Court); or (3) the General Assembly has enacted a statute addressing Atkins, it constitutionally displaces Miller, and it entitles me to death ineligibility whether Miller would or not. None of these scenarios is presented here. As such, this challenge, and any like it, should be speedily and summarily denied. The only proper forums for appellant's "policy" arguments are the U.S. Supreme Court, which innovated the Atkins restriction in the first instance and imposed it against the states, or the Pennsylvania General Assembly, which certainly has the power to go further than Miller and Atkins, if it chooses to do so. The frivolous filing in this case should not be permitted to delay the administration of justice.