

[J-2-99]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	198 Capital Appeal Docket
	:	
Appellee	:	
	:	Appeal from the order of the Court of
v.	:	Common Pleas of Philadelphia County,
	:	entered on October 1, 1997, denying post-
	:	conviction relief
LESLIE CHARLES X. BEASLEY,	:	
	:	
Appellant	:	SUBMITTED: January 12, 1999

CONCURRING OPINION

MR. CHIEF JUSTICE FLAHERTY

DECIDED: December 9, 1999

While I join Mr. Justice Cappy's majority opinion, I write separately to clarify my position on defining "life imprisonment" in capital cases. As I have previously stated, I would require a Simmons instruction in every capital case. Mr. Justice Nigro cogently explained the rationale for such a rule in his concurring opinion in Commonwealth v. Clark, 710 A.2d 31, 43-44 (Pa. 1998)(Nigro, J., concurring), which I joined:

However, I would suggest that the better practice and policy is to require trial courts to give a Simmons instruction in all death penalty proceedings, regardless of whether counsel raises the issue of a defendant's potential future dangerousness during the penalty phase.

Under this practice, a jury considering the death penalty would automatically be informed, before deliberations began, of what life imprisonment actually means in Pennsylvania at the time of the instruction. In my opinion, a standard Simmons instruction would, in the first instance, serve to clarify that issue for the jury. For example, . . . commutation is, at this time, a possibility in Pennsylvania for those serving life sentences, and therefore proper for the jury's consideration. . . . Moreover, I can see no prejudice that the Commonwealth would suffer if every defendant facing a sentence of death received a Simmons jury instruction explaining, as thoroughly as possible, what "life imprisonment" means in Pennsylvania.

See also Commonwealth v. Young, 120 Capital App. Dkt., 1999 Pa LEXIS 139 (Pa. 1999) (Flaherty, C.J., dissenting); Commonwealth v. Cox, 728 A.2d 923, 938 (Pa. 1999) (Flaherty, C.J., concurring); Commonwealth v. King, 721 A.2d 763, 785 (Pa. 1998) (Flaherty, C.J., concurring); Commonwealth v. Chandler, 721 A.2d 1040, 1047 n.10 (Pa. 1997); Commonwealth v. Robinson, 554 Pa. 293, 721 A.2d 344 (1998) (Flaherty, C.J., dissenting); Commonwealth v. Rompilla, 554 Pa. 378, 721 A.2d 786 (Pa. 1998) (Flaherty, C.J., dissenting).

However, in the instant case, Simmons was not decided until years after the final disposition of appellant's direct appeal. Therefore, I agree with the majority that appellant's claim of a constitutional violation does not satisfy the requirements of 42 Pa.C.S. § 9545(b)(1)(iii), as both the United States Supreme Court and this court have held that Simmons will not be given retroactive effect in a collateral attack. See O'Dell v. Netherland, 521 U.S. 151, 153 (1997); Commonwealth v. Laird, 726 A.2d 346, 360 (Pa. 1999).

Mr. Justice Nigro joins this concurring opinion.