

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

RENDERED: OCTOBER 23, 2008  
NOT TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**

2007-SC-000904-MR

DATE 11-13-08 EIA Grant, D.C.

LOUIS LEE ANDERSON

APPELLANT

V. ON APPEAL FROM MERCER CIRCUIT COURT  
HONORABLE DARREN PECKLER, JUDGE  
NO. 06-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

**VACATING AND REMANDING**

The underlying facts of this case, though tragic, are simple and uncontested. Appellant, Louis Lee Anderson, who was seventeen (17) at the time of his crimes, was charged with murder and first degree robbery in connection with the death of Louise Pulliam. Appellant pled guilty to these charges and was sentenced to life in prison without the possibility of probation or parole. He now appeals to this Court as a matter of right. Ky Const. § 110(2)(b).

**I. BACKGROUND**

On the evening of January 13, 2006, Pulliam had been on the phone with her daughter when Appellant appeared at the door of her residence claiming he needed fuel and a drink of water. Pulliam was familiar with Appellant and told her daughter that "one of the Anderson boys who used to live across the street" was at the door. Pulliam then ceased the telephone conversation, ostensibly to assist Appellant.

Pulliam's daughter tried to contact her mother later that night and became alarmed when she did not answer her calls. The police were ultimately summoned and, when they arrived at Pulliam's residence, found her dead in the front hallway. Based upon information given to police by Pulliam's daughter, a search immediately ensued for Appellant. Appellant was subsequently located in a motel room with blood on his clothing and missing items from Pulliam's home.

Though initially detained at a juvenile detention facility, Appellant was later transferred to the Mercer Circuit Court to be proceeded against as a youthful offender. On February 10, 2006, Appellant was indicted in circuit court for murder and first degree robbery. Thereafter, Appellant filed a motion *in limine* asserting that life without the possibility of parole was not a sentencing option. The trial court denied Appellant's motion, holding that life without parole was a proper sentencing option.

Appellant ultimately entered an open guilty plea, with no recommended sentence given by the Commonwealth, conditioned on a reservation of his right to appeal the denial of his prior motion regarding life without parole as a sentencing option. RCr 8.09. Thereafter, Appellant was, in fact, sentenced to life without parole by the trial judge.

Appellant's sentence serves as the sole basis of his appeal. He argues that he was improperly sentenced and should have been sentenced pursuant to the juvenile provisions of KRS 640.040. Because of our recent decision in Shepherd v. Commonwealth, 251 S.W.3d 309 (Ky. 2008), we agree.

## II. ANALYSIS

Appellant asserts that a sentence of life without parole is an impermissible sentence by virtue of his classification as a youthful offender. Likewise, Appellee concedes that Appellant's sentence was improper and agrees that a new sentencing hearing is in order in this instance.

Appellant was charged with, and pled guilty to murder, a capital offense, and robbery. Because Appellant had been designated a youthful offender and transferred to circuit court, he was subject to adult sentencing provisions. KRS 640.010. It appears that the trial court, in reliance upon KRS 640.030,<sup>1</sup> sentenced Appellant according to the adult public offender penalty provisions of KRS 532.030(1), which indicate

[w]hen a person is convicted of a capital offense, he shall have his punishment fixed at death, *or at a term of imprisonment for life without benefit of probation or parole*, or at a term of imprisonment for life without benefit of probation or parole until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life, or to a term of not less than twenty (20) years nor more than fifty (50) years.

(emphasis added).

However, KRS 640.040 of the juvenile code operates in conjunction with the adult sentencing provisions of KRS 532.030 and serves to supplement these provisions in certain prescribed circumstances. See KRS 640.010(2)(c). For youthful offenders convicted of capital offenses, KRS 640.040(1) provides

[n]o youthful offender who has been convicted of a capital offense who was under the age of sixteen (16) years at the time of the commission of the offense shall be sentenced to capital punishment. A youthful offender may be sentenced to capital punishment if he was sixteen (16) years of age or older at the time

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<sup>1</sup> "A youthful offender, if he is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the *same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense.*" Gourley v. Commonwealth, 37 S.W.3d 792, 794 (Ky. App. 2001) (quoting KRS 640.030) (emphasis in original).

of the commission of the offense. A youthful offender convicted of a capital offense regardless of age may be sentenced to a term of imprisonment appropriate for one who has committed a Class A felony and may be sentenced to life imprisonment without benefit of parole for twenty-five (25) years.<sup>2</sup>

This Court recently examined this issue in Shepherd, 251 S.W.3d at 320-321, and it is dispositive of the present matter. In Shepherd, we held that the youthful offender statute governed the sentencing dispositions of the youthful offender to the extent that KRS 532.030 and KRS 640.040 were in conflict. Therein, we noted

[a]lthough KRS 532.030(1) does allow a person convicted of a capital offense to also be sentenced to life without parole, the trial court classified Shepherd as a youthful offender pursuant to KRS 640.010. Thus, the youthful offender chapter governs his appropriate sentencing considerations. According to KRS 640.040, Shepherd's statutorily authorized penalties were twenty to fifty years, life in prison, or life without parole for twenty-five years. Since the trial court included the fourth option of life without the possibility of parole, it erred in the penalty phase jury instructions.

Shepherd, 251 S.W.3d at 9. Thus, because this Court has determined that a youthful offender may not be sentenced to life without parole, the trial court erred in so sentencing Appellant.

### III. CONCLUSION

Therefore, Appellant's sentence must be reversed and the case remanded to the trial court for a new hearing on sentencing with the applicable sentencing provisions as set forth in KRS 640.040.

All sitting. All concur.

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<sup>2</sup> The United States Supreme Court has ruled that imposition of the death penalty on persons convicted of crimes while under the age of eighteen violates the Eighth Amendment prohibition against cruel and unusual punishment. Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (abrogating Stanford v. Kentucky, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989)); see also Bowling v. Commonwealth, 224 S.W.3d 577, 580 (Ky. 2006) (for a discussion on Roper).

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