

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
TERRELL COSTNER,	:	No. 1223 EDA 2012
	:	
Appellant	:	

Appeal from the Judgment of Sentence, April 2, 2012,
in the Court of Common Pleas of Philadelphia County
Criminal Division at No. CP-51-CR-0014032-2007

BEFORE: FORD ELLIOTT, P.J.E., BENDER AND WECHT, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED MAY 03, 2013**

Appellant, Terrell Costner, appeals from the judgment of sentence entered on April 2, 2012 in the Court of Common Pleas of Philadelphia County. We vacate the judgment of sentence and remand for resentencing.

Appellant was 15 years old when he shot and killed a man during a botched robbery attempt on April 1, 2005. Appellant was not arrested until August 15, 2007. Following a jury trial on April 2, 2012, appellant was convicted of second degree murder, robbery and criminal conspiracy. Appellant was sentenced to life imprisonment without the possibility of parole the same day. This appeal followed.

Appellant argues his mandatory sentence of life imprisonment without the possibility of parole is unconstitutional on the ground that, at the time he shot and killed the victim, he was a juvenile. Approximately three months

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after appellant was sentenced, the United States Supreme Court held that imposing a mandatory sentence of life imprisonment without the possibility of parole upon a juvenile violates the Eighth Amendment's prohibition of cruel and unusual punishment. **Miller v. Alabama**, ___ U.S. ___, ___, 132 S.Ct. 2455, 2460 (2012). This court, in **Commonwealth v. Knox**, 50 A.3d 732 (Pa.Super. 2012) and **Commonwealth v. Knox**, 50 A.3d 749 (Pa.Super. 2012), held that on direct appeal resentencing was appropriate for a defendant who was a juvenile when he committed second degree murder and was given an automatic sentence of life without the possibility of parole. **See also Commonwealth v. Lofton**, 57 A.3d 1270, 1275-1276 (Pa.Super. 2012) (where this court agreed with both appellant, who was a juvenile when he committed second degree murder, and the Commonwealth that based on **Miller, supra** and **Knox, supra** a remand for resentencing was required). The **Lofton** decision also emphasized that a new statute had been passed, 18 Pa.C.S. § 1102.1, applying to convictions after June 24, 2012. Recently, in **Commonwealth v. Batts**, ___ A.3d ___, 2013 WL 1200252 (Pa. March 26, 2013), our supreme court held that juveniles subject to non-final judgments of sentence for murder prior to **Miller's** issuance, should be resentenced based upon their individual circumstances to a maximum of life imprisonment either without the possibility of parole or with the possibility of parole "accompanied by a minimum sentence determined by the common pleas court upon resentencing." **Id.** at *10.

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Instantly, the Commonwealth agrees that appellant is entitled to a remand for resentencing. In accordance with the above case law, appellant's judgment of sentence is vacated. Case remanded for resentencing.¹ Jurisdiction relinquished. Appellant's Application for Relief is denied as moot.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 5/3/2013

¹ Appellant also argues that the trial court failed to advise him of his right to file a motion for reconsideration. The Commonwealth concedes that assertion is supported by the record. (N.T., 4/2/12 at 16-17.) However, because appellant is entitled to resentencing, this claim is moot.