

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JOSEPH T. GAINER

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1708 WDA 2011

Appeal from the Judgment of Sentence April 20, 2011  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0017534-2009

BEFORE: BOWES, J., DONOHUE, J., and MUNDY, J.

JUDGMENT ORDER BY MUNDY, J.:

FILED: May 2, 2013

Appellant, Joseph T. Gainer, appeals from the April 20, 2011 judgment of sentence of life imprisonment without the possibility of parole imposed after he was found guilty of second-degree murder.<sup>1</sup> After careful review, we vacate the judgment of sentence and remand for proceedings consistent with this judgment order.

On April 20, 2011, Appellant was sentenced to a mandatory term of life imprisonment without the possibility of parole in connection with a crime that he committed prior to his 18<sup>th</sup> birthday. The United States Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), recently held that such a sentence is unconstitutional. *Id.* at 2469. Accordingly, we agree with the

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<sup>1</sup> 18 Pa.C.S.A § 2502(b).

trial court's conclusion that Appellant must be resentenced.<sup>2</sup> Trial Court Opinion, 7/23/12, at 2; **see also Commonwealth v. Batts**, \_\_\_ A.3d \_\_\_, 2013 WL 1200252, \*8-9 (Pa. 2013) (concluding that the appropriate remedy is to remand for resentencing, at which time the trial court may consider the factors detailed in **Miller** and impose a life sentence, either with or without parole); **Commonwealth v. Knox**, 50 A.3d 732, 745 (Pa. Super. 2012) (concluding that a mandatory life sentence without the possibility of parole for a juvenile offender in Pennsylvania violates the Eighth Amendment of the United States Constitution pursuant to **Miller**, as well as Article I, Section 13 of the Pennsylvania Constitution).

Based on the foregoing, we vacate the judgment of sentence and remand for resentencing in accordance with **Miller** and **Knox**. The balance of Appellant's issues are preserved should he file a direct appeal from his new sentence, and we strongly advise that the trial court address said issues.<sup>3</sup>

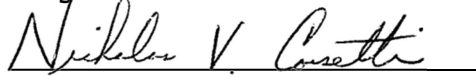
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<sup>2</sup> We note that the Commonwealth concedes that Appellant is entitled to resentencing based on **Miller**. **See** Commonwealth Brief at 11.

<sup>3</sup> Instantly, Appellant's counsel briefed these issues and appeared for oral argument before this Court, travelling to a special session held in Beaver County, Pennsylvania. However, counsel's efforts, and this Court's ability to review the issues, were undermined by the trial court's failure to provide an on-the-record statement of findings of fact and conclusions of law as required by Pennsylvania Rule of Criminal Procedure 581. **See** Pa.R.Crim.P. 581(I). Nor has the trial court otherwise memorialized its reasoning in the record for our review. **See** Pa.R.A.P. 1925(a). Consequently, we are *(Footnote Continued Next Page)*

Judgment of sentence vacated. Case remanded. Jurisdiction Relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Nicholas V. Casetti", is written over a horizontal line.

Deputy Prothonotary

Date: 5/2/2013

*(Footnote Continued)* \_\_\_\_\_

constrained to vacate the judgment of sentence and remand for resentencing without reaching the merits of Appellant's remaining claims. If further appeal is undertaken, we urge the trial court to comply with Pa.R.Crim.P. 581 and Pa.R.A.P. 1925 to avoid further duplication of effort.