

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

MICHAEL FELDER

Appellant

No. 2148 EDA 2012

Appeal from the Judgment of Sentence March 7, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0014896-2009

BEFORE: GANTMAN, P.J., JENKINS, J., and FITZGERALD, J.\*

JUDGMENT ORDER BY GANTMAN, P.J.:

**FILED JUNE 27, 2014**

Appellant, Michael Felder, appeals from his judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his jury trial convictions for first-degree murder, possessing an instrument of crime, violations of the Uniform Firearms Act, aggravated assault, and recklessly endangering another person.<sup>1</sup> On March 7, 2012, a jury convicted Appellant of these offenses stemming from a shooting that occurred during a pick-up basketball game at the Shepard Recreation Center. The same day as the verdict, the court sentenced Appellant to "mandatory" life imprisonment without the possibility of parole for the first-degree murder. On March 15, 2012, Appellant filed a timely post-sentence motion, which the court denied

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<sup>1</sup> 18 Pa.C.S.A. §§ 2502(a); 907; 610; 6108; 2702(a); 2705, respectively.

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\*Former Justice specially assigned to the Superior Court.

on July 19, 2012. Appellant filed a timely notice of appeal on July 30, 2012. On August 1, 2012, the court ordered Appellant to file a concise statement of errors complained of on appeal per Pa.R.A.P. 1925(b), which Appellant timely filed on August 17, 2012, along with a request to submit a supplemental Rule 1925(b) statement when all notes of testimony became available. The court granted this request. On February 19, 2013, the court issued a new order to file a supplemental Rule 1925(b) statement, as all the notes of testimony were available. Appellant timely complied on March 11, 2013.

The Pennsylvania Supreme Court in ***Commonwealth v. Batts***, \_\_\_ Pa. \_\_\_, 66 A.3d 286 (2013), held that under ***Miller v. Alabama***, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.” ***Batts, supra*** at 296. The ***Batts*** Court also outlined various factors for the court’s consideration at resentencing:

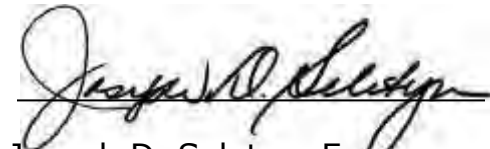
[A]t a minimum it should consider a juvenile’s age at the time of the offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation.

***Id.*** at 297 (recognizing ***Miller*** applies to all non-final judgments of sentence

for murder). Instantly, Appellant, the Commonwealth, and the trial court agree Appellant is entitled to a resentencing hearing under **Miller** because Appellant was seventeen years old on September 3, 2009, and he received “mandatory” life imprisonment without parole. Further, Appellant’s judgment of sentence was non-final on June 25, 2012, the date the U.S. Supreme Court issued **Miller**, and he properly preserved his claim on this direct appeal. Therefore, he is entitled to a resentencing hearing, including consideration of age-related factors and imposition of a minimum sentence. **See Batts, supra.** Accordingly, we vacate the judgment of sentence and remand for resentencing.

Judgment of sentence vacated; case remanded for further proceedings. Jurisdiction is relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/27/2014