

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

MICHAEL GIBBS

Appellant

No. 1336 EDA 2015

Appeal from the PCRA Order April 15, 2015
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0709961-1993

BEFORE: BENDER, P.J.E., SHOGAN, J., and JENKINS, J.

JUDGMENT ORDER BY JENKINS, J.:

FILED MARCH 02, 2016

Pursuant to our Supreme Court's recent orders in ***Commonwealth v. Jones***, 947 MAL 2015 (Pa., 2/12/16), and related cases, and this Court's recent decision in ***Commonwealth v. Secreti***, 578 WDA 2015 (Pa.Super., 2/9/16), the PCRA court's order is reversed, Appellant Michael Gibbs' judgment of sentence is **VACATED**, and this case is remanded for further proceedings.

We explain our decision briefly. On January 25, 2016, the United States Supreme Court held in ***Montgomery v. Louisiana***, ___ U.S. ___, 2016 WL 280758 *12 (filed January 25, 2016, as revised on January 27, 2016), that its decision in ***Miller v. Alabama***, ___ U.S. ___, 132 S.Ct. 2455 (2012), applies retroactively. ***Miller*** held that it is unconstitutional for state courts to impose an automatic life sentence without possibility of parole

upon a homicide defendant for a murder committed while the defendant was a juvenile.

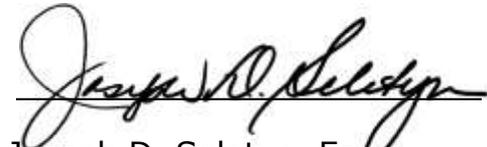
Shortly after **Montgomery's** issuance, this Court entered a published opinion in **Secreti**. There, Secreti was sentenced to automatic life imprisonment without possibility of parole for committing first degree murder as a juvenile. On June 25, 2012, the United States Supreme Court issued its decision in **Miller**. On August 15, 2012, Secreti filed a timely PCRA petition seeking relief under **Miller**. On February 9, 2016, following **Montgomery**, this Court held that (1) **Miller** applied retroactively to Secreti's sentence under the PCRA's retroactivity provision, 42 Pa.C.S. § 9545(b)(1)(iii); (2) Secreti's sentence was unconstitutional under **Miller**, and (3) Secreti was entitled to a new sentencing hearing. Moreover, on February 11 and 12, 2016, our Supreme Court granted relief to multiple PCRA petitioners under **Miller** and **Montgomery** and remanded their cases for further proceedings. **See, e.g., Jones, supra**.

Secreti squarely applies to this case. In 1994, Gibbs was convicted of second degree murder for a murder that he committed as a 17 year old juvenile. He was also convicted and given concurrent sentences for other felonies. On July 16, 2012, Gibbs timely filed a PCRA petition seeking relief under **Miller**. As in **Secreti**, (1) **Miller** applies retroactively to Gibbs' sentence under 42 Pa.C.S. § 9545(b)(1)(iii); (2) Gibbs' sentence is

unconstitutional under **Miller**, and (3) Gibbs is entitled to a new sentencing hearing.

The PCRA court's order denying relief to Gibbs under **Miller** is reversed; Gibbs' judgment of sentence is vacated; the case is remanded to the court of common pleas for further proceedings consistent with **Miller** and **Montgomery**; jurisdiction is relinquished.¹

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/2/2016

¹ The court also may impose new sentences for any other counts of conviction, because the original sentencing scheme may be disrupted by a new sentence on the first degree murder conviction. **See Commonwealth v. Goldhammer**, 507 A.2d 1280 (Pa.1986).