

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ANTHONY JOHNSON

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1377 EDA 2015

Appeal from the PCRA Order April 29, 2015
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0209251-1985

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and JENKINS, J.

JUDGMENT ORDER BY JENKINS, J.:

FILED FEBRUARY 19, 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 Anthony Johnson's 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.

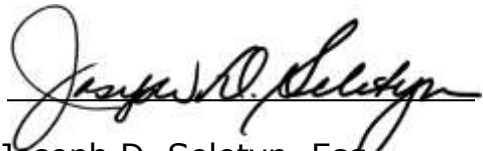
Shortly after **Montgomery's** issuance, this Court entered a published opinion in **Secreti**. There, Secreti was sentenced to automatic life imprisonment without possibility of parole for committing first degree murder as a juvenile. On June 25, 2012, the United States Supreme Court issued its decision 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 1985, Johnson was convicted of first degree murder for a murder that he committed as a 17 year old juvenile. Johnson was also convicted and given concurrent sentences for conspiracy and firearms offenses. On July 30, 2012, Johnson filed a timely PCRA petition seeking relief under **Miller**. As in **Secreti**, (1) **Miller** applies retroactively to Johnson's sentence under 42 Pa.C.S. § 9545(b)(1)(iii); (2)

Johnson's sentence is unconstitutional under **Miller**, and (3) Johnson is entitled to a new sentencing hearing.

The PCRA court's order denying relief to Johnson under **Miller** is reversed; Johnson's judgment of sentence is vacated; the case is remanded to the court of common pleas for further proceedings consistent with **Miller** and **Montgomery**; Johnson's motion for leave to submit supplemental notice of authority relevant to an issue on appeal is **DENIED** as moot; jurisdiction is relinquished.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/19/2016