

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
v.	:	
	:	
DAVID M. FREEMAN	:	
	:	
Appellant	:	No. 1852 EDA 2014

Appeal from the PCRA Order May 23, 2014
In the Court of Common Pleas of Lehigh County
Criminal Division No(s): CP-39-CR-0001078-1995

BEFORE: BOWES, SHOGAN, and FITZGERALD,* JJ.

JUDGMENT ORDER BY FITZGERALD, J.: **FILED APRIL 18, 2016**

Appellant, David M. Freeman, appeals from the order entered in the Lehigh County Court of Common Pleas dismissing his first Post Conviction Relief Act¹ (“PCRA”) petition as untimely. This case returns to us after the Pennsylvania Supreme Court granted Appellant’s petition for allowance of appeal, vacated our prior decision affirming the dismissal of his first PCRA petition, and remanded the case for further proceedings consistent with **Montgomery v. Louisiana**, 136 S. Ct. 719 (2016). We reverse the PCRA court’s order dismissing Appellant’s first PCRA petition, vacate the judgment of sentence, and remand for resentencing.

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

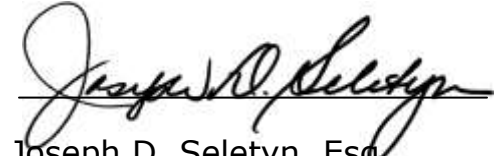
As our prior memorandum noted, Appellant was sixteen years old at the time of the underlying murder, and on December 15, 1995, he pleaded guilty to murder in the first degree. The trial court imposed a then-mandatory sentence of life imprisonment without parole. On July 7, 2010, Appellant filed the instant *pro se* PCRA petition. He alleged that ***Miller v. Alabama***, 132 S. Ct. 2455 (2012), held that a mandatory life without parole sentence for a juvenile violated the Eighth Amendment prohibition on cruel and unusual punishment, and thus his sentence should be vacated. After a lengthy procedural history, the PCRA court dismissed his petition, and this Court affirmed on February 25, 2015.

On March 16, 2015, Appellant filed a petition for allowance of appeal with our Supreme Court. On January 25, 2016, the United States Supreme Court held that ***Miller v. Alabama***, 132 S. Ct. 2455 (2012), “announced a substantive rule that is retroactive in cases on collateral review.” ***Montgomery***, 136 S. Ct. at 732. Thus, on March 8, 2016, our Supreme Court granted Appellant’s petition for allowance of appeal, vacated this Court’s February 25, 2015 decision, and remanded for further proceedings consistent with ***Montgomery***. Order, 3/8/16. Accordingly, we reverse the PCRA court’s order dismissing Appellant’s petition, vacate Appellant’s judgment of sentence, and remand for resentencing in accordance with ***Miller*** and ***Commonwealth v. Batts***, 66 A.3d 286, 297 (Pa. 2013).

J-S12044-15

Order reversed. Judgment of sentence vacated. Case remanded for resentencing. Jurisdiction relinquished.

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: 4/18/2016