

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
LARRY MARKLE,	:	
	:	
Appellant	:	No. 513 MDA 2014

Appeal from the PCRA Order February 12, 2013
In the Court of Common Pleas of York County
Criminal Division No(s): CP-67-CR-0001337-1975

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, and FITZGERALD,* JJ.

JUDGMENT ORDER BY FITZGERALD, J.: **FILED FEBRUARY 19, 2016**

Appellant, Larry Markle, appeals from the order dismissing as untimely his third Post Conviction Relief Act¹ (“PCRA”) petition seeking relief, in light of **Miller v. Alabama**, 132 S. Ct. 2455 (2012), from a mandatory sentence of life imprisonment without parole imposed on October 29, 1979. This Court previously denied Appellant’s counsel petition to withdraw and directed him to submit an amended **Turner/Finley**² letter or an advocate’s brief to address whether the retroactive application of **Miller** could be considered

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

² **See Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988); **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*).

J. S71035/14

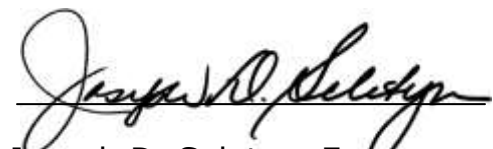
outside the framework of the PCRA. Appellant's counsel has filed an advocate's brief and the Commonwealth has filed a supplemental responsive brief.

While this appeal was pending, the United States Supreme Court decided **Montgomery v. Louisiana**, ___ S. Ct. ___, 2016 WL 280758 (U.S. Jan. 25, 2016), and held "that when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule." **Montgomery**, 2016 WL 280758 at *7. The **Montgomery** Court concluded that **Miller** "announced a substantive rule of constitutional law" under **Teague v. Lane**, 489 U.S. 288 (1989). **Id.** at *15. Moreover, this Court, in **Commonwealth v. Secreti**, ___ A.3d ___, 2016 WL 513341 (Pa. Super. Feb. 9, 2016), has recently held that **Miller** and **Montgomery** afford relief to petitioners whose PCRA petitions seeking relief under **Miller** were on appeal when **Montgomery** was announced.

In light of the foregoing, we reverse the order dismissing Appellant's PCRA petition and remand for resentencing.

Order reversed. Case remanded. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/19/2016