

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

SHANTE BRUCE RICE

Appellant : No. 1111 MDA 2019

Appeal from the PCRA Order Entered June 12, 2019
In the Court of Common Pleas of Cumberland County Criminal Division at
No(s): CP-21-CR-0003481-2012

BEFORE: OLSON, J., MURRAY, J., and COLINS, J.*

MEMORANDUM BY OLSON, J.:

FILED MAY 15, 2020

Appellant, Shante Bruce Rice, appeals from an order entered June 12, 2019, which dismissed his petition for collateral relief filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The facts and procedural history of this case are as follows. On October 31, 2012, Appellant and an accomplice "broke a window and entered 1 Shiloh Court in Mechanicsburg, Pennsylvania, wherein they took a number of items from the residence, including jewelry, pocket knives, jars full of coins, alcohol, and three pistols. Two of the pistols from the Shiloh Court property were sold, but [Appellant] maintained possession of the third firearm, a Smith & Wesson revolver." ***Commonwealth v. Rice***, 2017 WL 1655573, at *1 (Pa. Super. May 2, 2017) (citation omitted). Thereafter, on November 18, 2012,

* Retired Senior Judge assigned to the Superior Court.

Appendix A

Appellant and "three other accomplices conspired and attempted to rob a Hess Express[in Carlisle, Pennsylvania]." Trial Court Opinion, 6/12/19, at 2. During the course of the robbery, one of Appellant's cohorts, Tyler Mitchell Bradshaw ("Bradshaw") fatally shot Linda Ness ("Ness"), the cashier, with the Smith & Wesson revolver stolen from the Shiloh Court property. ***Id.*** At the time of the aforementioned incidents, Appellant was 19-years-old.

The Commonwealth ultimately charged Appellant with various crimes related to the incidents at Shiloh Court and Hess Express.¹ On September 11, 2014, the jury convicted Appellant of second-degree murder, criminal conspiracy to commit criminal homicide, robbery, criminal conspiracy to commit robbery, burglary, and criminal conspiracy to commit burglary. "On December 16, 2014, [Appellant] received a lifetime sentence of incarceration as a result of his conviction for [s]econd-[d]egree [c]riminal [h]omicide, with all lesser sentences imposed running concurrently therewith." ***Id.*** at 1. No direct appeal followed.

On June 1, 2015, [however,] Appellant filed a *pro se* [PCRA] petition[.] The trial court appointed counsel, who filed an amended PCRA petition. On December 10, 2015, the trial court held a hearing on Appellant's amended PCRA petition. The trial court determined that trial counsel was ineffective for failing to file a direct appeal as directed by Appellant. Accordingly, by order entered on December 11, 2015, the trial court reinstated Appellant's direct appeal rights *nunc pro tunc*.

Rice, 2017 WL 1655573 at *3.

¹ Appellant also committed two additional burglaries but these crimes are not at issue on the present appeal. Trial Court Opinion, 6/12/19, at 2.

Appellant then filed a direct appeal to this Court. On May 2, 2017, a panel of this Court vacated Appellant's conviction and sentence for the charge of criminal conspiracy to commit criminal homicide, but otherwise affirmed Appellant's judgment of sentence. *Id.* Our Supreme Court subsequently denied *allocatur* on November 22, 2017. **Commonwealth v. Rice**, 174 A.3d 1025 (Pa. 2017).

Thereafter, Appellant filed a *pro se* PCRA petition on September 28, 2018. The PCRA court then appointed counsel, who filed an amended PCRA petition on Appellant's behalf. In his PCRA petition, Appellant raised various claims of trial counsel's ineffectiveness. In addition, Appellant claimed that his sentence of life without parole violated the Eighth Amendment of the United States' Constitution in view of the United States Supreme Court's decision in **Miller v. Alabama**, 567 U.S. 460 (2012) and the Equal Protection Clause of the Fourteenth Amendment. The PCRA court held an evidentiary hearing on January 14, 2019 during which trial counsel, Allen C. Welch, Esq., testified. On June 12, 2019, the PCRA court dismissed Appellant's petition. This timely appeal followed.²

Appellant raises the following issues on appeal:

² Appellant filed a notice of appeal on July 10, 2019. On August 9, 2019, the PCRA court entered an order directing Appellant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b)(1). Appellant timely complied. The PCRA court issued an opinion pursuant to Pa.R.A.P. 1925(a) on October 8, 2019, expressly incorporating its opinion dated June 12, 2019.

- I. Whether the PCRA court erred in denying Appellant relief based upon Appellant's claim that trial counsel was ineffective for failing to object to the trial court's jury instruction on second[-]degree murder which failed to define "in furtherance" [for] the jury?
- II. Whether the PCRA court erred in denying Appellant relief based upon Appellant's claim that trial counsel was ineffective for failing to contest at sentencing the constitutionality of Appellant's life without parole sentence given the [United States] Supreme Court's decision in ***Miller***[?]
- III. Whether the PCRA court erred in denying Appellant relief based upon Appellant's claim that [his] sentence of life without parole is unconstitutional and constitutes disproportionate punishment in violation of the Eighth Amendment of the United States Constitution pursuant to ***Miller*** and ***Montgomery v. Louisiana***, 136 S.Ct. 718 (2016)?
- IV. Whether the PCRA court erred in denying Appellant relief based upon Appellant's claim that [his] sentence of life without parole constitutes a violation of the Equal Protection Clauses of the United States and Pennsylvania Constitutions?

Appellant's Brief at 5.

As a general matter, we "review a denial of PCRA relief to determine whether the PCRA court's findings are supported by the record and free of legal error." ***Commonwealth v. Albrecht***, 994 A.2d 1091, 1093 (Pa. 2010). "The court's scope of review is limited to the findings of the PCRA court and the evidence on the record of the PCRA court's hearing, viewed in the light most favorable to the prevailing party." ***Commonwealth v. Hammond***, 953 A.2d 544, 556 (Pa. Super. 2008).

In Appellant's first two appellate issues, he argues that trial counsel provided ineffective assistance. As this Court previously explained,

To prevail on a claim that counsel was constitutionally ineffective, the [petitioner] must overcome the presumption of competence by showing that: (1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the challenged proceedings would have been different. A failure to satisfy any prong of the test for ineffectiveness will require rejection of the claim.

Id. at 556 (citations and quotations omitted).

Appellant first argues that trial counsel was ineffective for failing to object to the trial court's jury instruction for second-degree murder. Appellant's Brief at 11. Specifically, Appellant claims that the trial court's "jury charge as to murder in the second degree, taken as a whole, was inadequate as it failed to define [the term] 'in furtherance.'" ***Id.*** at 15. Per Appellant, "the omission of this definition amounted to a fundamental error because it failed to define an essential element of proof required for a jury to return a verdict of guilty." ***Id.*** Appellant's claim lacks merit.

Generally, a court's jury instructions must be read in their entirety to determine if they are fair and complete. The trial court has broad discretion in phrasing the charges. ***Commonwealth v. Daniels***, 963 A.2d 409, 410 (Pa. 2009). Jury instructions will not be found in error if, taken as a whole, they adequately and accurately set forth the applicable law. ***Id.***

A trial court, however, "should not instruct a jury on legal principles which bear no relationship to the evidence presented at trial." **Commonwealth v. Arrington**, 86 A.3d 831, 850 (Pa. 2014). Rather, there "must be some relationship between the evidence presented and the law upon which an instruction is requested." **Commonwealth v. Taylor**, 876 A.2d 916, 923 (Pa. 2005) (citation omitted). "The reason for this rule is that, 'instructing the jury on legal principles that cannot rationally be applied to the facts presented at trial may confuse them and place obstacles in the path of a just verdict.'" **Id.** (citation omitted).

Herein, Appellant contends that the trial court needed to include the following definition in its jury instructions for second-degree murder.

[The meaning of the "in furtherance" element is as follows]:

A partner's act that kills is not in furtherance of the felony if the partner does the act for his or her own personal reasons that are independent of the felony.

A partner's act that kills is in furtherance of the felony if he or she does the act while fleeing from the scene and if there is no break in the chain of events between the felony and the act. However, even though the partner's act that kills may seem to meet these requirements, it is not in furtherance of the felony if the partner does the act for his or her own personal reasons that are independent of the felony and the effort to flee.

Pa.S.S.J.I. §15.2502B. Upon review, however, the definition as set forth in Section 15.2502B is inapplicable because, at trial, no evidence was presented that Bradshaw killed Ness for reasons unrelated to the robbery. To the contrary, the evidence demonstrated that

Bradshaw brandished the weapon at [Ness to] induce her to hand over the money, and whether or not the gun was discharged purposefully or accidentally after that (as the defense contended), the slaying was in furtherance of the felony as the use of the gun was a vital part of the scheme to rob the store. The evidence also showed that [Appellant] knew that the gun was loaded and operational, [that] he gave the gun to [Bradshaw] for the purpose of using it in the robbery, and [that Appellant] knew that [Bradshaw] took it into the Hess Express[.]

Trial Court Opinion, 6/12/19, at 6-7. Because no evidence was presented to show that Bradshaw killed Ness for personal reasons, trial counsel was not ineffective for failing to object to the trial court's jury instructions. Thus, Appellant's claim lacks merit.

Moreover, Appellant's ineffective assistance claim fails for the additional reason of lack of prejudice. Indeed, Appellant's only allegation of prejudice is that the trial court's failure to define "in furtherance" deprived the jury of an "essential element of proof required for a jury to return a verdict of guilty." Appellant's Brief at 15. Appellant does not even argue that the inclusion of the requested jury instructions would have been so influential that it would have likely changed the outcome of his trial. Consequently, Appellant's claim fails for this additional reason.

Next, Appellant argues that trial counsel provided ineffective assistance because he failed to challenge Appellant's sentence of life without parole as unconstitutional in view of the United States Supreme Court's decision in **Miller**. Appellant's claim lacks merit.

We note:

In 2012, the United States Supreme Court decided ***Miller, supra***, which held [that] mandatory life without parole sentences for those under the age of 18 at the time of their crimes violate[s] the Eighth Amendment's prohibition on "cruel and unusual punishments." ***Miller***, 567 U.S. at 465[.] The Supreme Court held that a juvenile homicide defendant could only be sentenced to life without the possibility of parole if he or she is determined to be permanently incorrigible, irreparably corrupt, or irretrievably depraved. ***[Id.]*** at 471[.]

Commonwealth v. Lee, 206 A.3d 1, 2-3 (Pa. Super. 2019), *appeal denied*, 218 A.3d 851 (Pa. 2019). As explicitly stated in ***Miller*** and repeatedly held by this Court, the ban on mandatory sentences of life without parole "applies to only those defendants who were '**under the age of 18 at the time of their crimes.**'" ***Commonwealth v. Furgess***, 149 A.3d 90, 94 (Pa. Super. 2016) (emphasis added) (citation omitted).

Herein, it is undisputed that, at the time of the commission of the crime, Appellant was 19-years-old. As such, "Pennsylvania law holds that [Appellant] is not entitled to the rights established under ***Miller*** as he was not a juvenile at the time of his offenses." Trial Court Opinion, 6/12/19, at 9. Accordingly, Appellant's ineffective assistance claim fails for lack of merit.³

Finally, Appellant argues that his sentence of life without parole violates the Equal Protection Clause of the United States' Constitution.⁴ Appellant

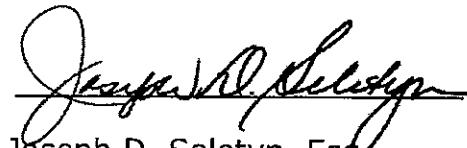
³ Due to our disposition of this claim, we need not address Appellant's third appellate issue because it sets forth the same challenge to the constitutionality of his sentence.

⁴ While Appellant stated in his question presented that his sentence violates the Equal Protection Clause of Pennsylvania's Constitution, he advances no

claims that Pennsylvania draws an “arbitrary distinction” by allowing those who are “17 years and 364 days old” to present “mitigation evidence in support of a sentence of less than life without parole” but then, prevents 18-year-old offenders from presenting the same defense. Appellant’s Brief at 25-26. Upon review, however, we conclude that Appellant waived this claim because a freestanding constitutional challenge to the disparate treatment of juvenile and adult offenders could have been raised on direct appeal, but was not. **See** 42 Pa.C.S.A. § 9544(b) (“an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state post-conviction proceeding”); **Commonwealth v. Price**, 876 A.2d 988, 992-993 (Pa. Super. 2005) (same), *appeal denied*, 897 A.2d 1184 (Pa. 2006), *cert. denied*, 549 U.S. 902 (2006). Based upon the foregoing, we affirm the order of the PCRA court.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 05/15/2020

such argument in his appellate brief and, as such, it is waived. **Commonwealth v. Freeman**, 128 A.3d 1231, 1249 (Pa. Super. 2015) (citation omitted) (“The failure to develop an adequate argument in an appellate brief may result in waiver of the claim under Pa.R.A.P. 2119.”).

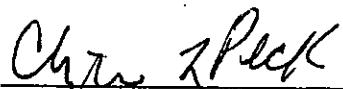
COMMONWEALTH : IN THE COURT OF COMMON PLEAS OF
v. : CUMBERLAND COUNTY, PENNSYLVANIA
SHANTE BRUCE RICE :
: CRIMINAL DIVISION
: CP-21-CR-3481-2012

OPINION PURSUANT TO PA. R.A.P. 1925

Peck, J., October 7, 2019 –

Appellant appeals¹ from this Court's June 10, 2019 Order dismissing Appellant's Amended Petition for Post-Conviction Relief on the matter following a hearing we held on same on January 14, 2019. We thereafter received and considered the parties' briefs on the matter. We note that our reasons for dismissal appear of record in this Court's June 10, 2019 Opinion which was attached to the Order dated same. We attach the Order and Opinion hereto as "Exhibit A," and offer the same in support of our judgment. We respectfully request that the Pennsylvania Superior Court affirm.

BY THE COURT,


Christylee L. Peck, J.

Courtney E. Hair LaRue, Esq.
Chief Deputy District Attorney

¹ Appellant filed a timely Notice of Appeal on July 10, 2019. On August 8, 2019, we directed Appellant to file a Concise Statement of Errors no later than 21 days thereafter. Appellant timely filed the same on August 29, 2019.

Appendix B

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EXHIBIT A

COMMONWEALTH

v.

SHANTE BRUCE RICE

: IN THE COURT OF COMMON PLEAS
: CUMBERLAND COUNTY, PENNSYLVANIA
:
: CRIMINAL DIVISION
:
: CP-21-CR-3481-2012

IN RE: AMENDED PETITION FOR POST CONVICTION RELIEF PURSUANT TO
THE POST CONVICTION RELIEF ACT

ORDER OF COURT

AND NOW, this 10th day of June, 2019, upon consideration of Petitioner's Amended Petition for Post Conviction Relief, a hearing held on January 14, 2019, the briefs filed by the parties, and for reasons stated in the accompanying Opinion of Court, the petition is hereby **DISMISSED**.

Petitioner is hereby notified of his right to appeal our decision to the Superior Court of Pennsylvania within thirty (30) days of the date of this Order.

The Clerk of Courts shall make service of this Order upon the Petitioner by certified mail, return receipt requested.

BY THE COURT,

Christy L. Peck

Christy L. Peck, J.

Courtney E. Hair LaRue, Esq.
Chief Deputy District Attorney

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FILED
CUMBERLAND COUNTY, PA
2019 JUN 12 PM 3:40

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JUN 13 2019

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COMMONWEALTH : IN THE COURT OF COMMON PLEAS
v. : CUMBERLAND COUNTY, PENNSYLVANIA
SHANTE BRUCE RICE :
: CRIMINAL DIVISION
: CP-21-CR-3481-2012

IN RE: AMENDED PETITION FOR POST CONVICTION RELIEF PURSUANT TO
THE POST CONVICTION RELIEF ACT

OPINION

Peck, J., June 10, 2019 –

I. FACTS AND PROCEDURAL HISTORY

On September 11, 2014, following a jury trial, Petitioner was convicted of Second-degree Criminal Homicide,¹ Criminal Conspiracy to Second-degree Criminal Homicide, Robbery, Burglary, Criminal Conspiracy to Robbery, and Criminal Conspiracy to Burglary.² On December 16, 2014, Petitioner received a lifetime sentence of incarceration as a result of his conviction for Second-degree Criminal Homicide, with all lesser sentences imposed running concurrently therewith.³ On January 20, 2015, Petitioner pleaded guilty to his remaining severed charges,⁴ and was sentenced on February 24, 2015 to an aggregate sentence of two to six years' incarceration, to run consecutively to his other sentences.⁵ Petitioner filed a *pro se* PCRA petition on June 1, 2015 and a counseled amended petition on July 30, 2015. Following a hearing on December 10, 2015, Petitioner's direct appeal rights were reinstated.⁶ Petitioner appealed his convictions, and on May 2, 2017, in a memorandum opinion, the Superior Court

¹ This opinion uses the terms "second-degree criminal homicide," "second-degree murder" and "felony murder" interchangeably.

² Order of Court, In Re: Verdict; Directed to Appear for Sentencing, September 11, 2014 (Peck, J.).

³ Order of Court, In Re: Sentence, December 16, 2014 (Peck, J.).

⁴ Petitioner pleaded guilty to six counts of Burglary, each a felony of the first degree. See Order of Court, In Re: Guilty Plea, January 20, 2015 (Peck, J.).

⁵ Order of Court, In Re: Sentence, February 24, 2015 (Peck, J.).

⁶ Order of Court, In Re: Petition for Post Conviction Relief Pursuant to the Post Conviction Relief Act, December 10, 2015 (Peck, J.).

vacated his conviction and sentence for Criminal Conspiracy to Second-degree Criminal Homicide but affirmed his other convictions, leaving his lifetime sentence of incarceration unaffected.⁷ Petitioner's judgment of sentence became final on November 22, 2017, following the Pennsylvania Supreme Court's denial of his petition for allowance of appeal.⁸ Petitioner filed a second *pro se* PCRA petition on September 28, 2018, and a counseled amended petition on December 10, 2018.

A lengthy recitation of the facts is unnecessary. In brief, Petitioner is currently incarcerated for life based on his convictions outlined *supra* for felony murder, robbery, burglary, and conspiracies to commit burglary and robbery, which crimes were committed when the Petitioner was nineteen years old. The charges (except for burglary and conspiracy to burglary, which occurred on a different date and are not at issue here) arose out of an incident wherein the Petitioner and three accomplices conspired and attempted to rob a Hess Express at gunpoint, and the cashier was fatally shot by one of the co-defendants while Petitioner acted as a lookout. The evidence showed that the murder weapon (1) was stolen by the Petitioner and one of the co-defendants in a burglary on a previous date; (2) was stored by the Petitioner; (3) was test-fired by the Petitioner and one of the co-defendants prior to the date of the attempted robbery and murder; (4) was brought to the scene of the crime by the Petitioner; and (5) was provided to the slayer by the Petitioner immediately before the murder occurred. Other evidence showed that the Petitioner knew the gun was loaded at the time he provided it to the slayer, and that it was Petitioner's intent, along with the specific intent of the codefendants, for the weapon to be used as an integral part of the robbery that was to take place at the Hess Express.

Allen C. Welch, Esq., was appointed as defense counsel and served as trial counsel to the Petitioner at all relevant times.⁹ Jacob M. Jividen, Esq., was later appointed to represent the Petitioner on his first PCRA petition, and remained as Petitioner's

⁷ See Commonwealth v. Rice, 2017 WL 1655573, at *1 (Pa. Super. 2017).

⁸ Com. v. Rice, 174 A.3d 1025 (Table) (Pa. 2017).

⁹ See Order of Court, In Re: Appointment of Counsel, December 11, 2012 (Hess, P.J.).

counsel through his first PCRA proceedings, on direct appeal, and currently in the instant PCRA proceedings.¹⁰ There have been no allegations of ineffectiveness on the part of Mr. Jividen. In his PCRA petition, Petitioner requests relief in the form of a vacation of his conviction and sentence for felony murder and a new trial based on ineffectiveness of trial counsel and illegality of his sentence. Petitioner raises the following issues in his PCRA petition:

- (1) Trial counsel was ineffective by failing to object to the trial court's jury instruction on second degree murder which failed to define "in furtherance" to the jury;
- (2) Trial counsel was ineffective by failing to contest at sentencing the constitutionality of Petitioner's life without parole sentence given the U.S. Supreme Court's decision in Miller v. Alabama, 132 S. Ct. 2455 (2012);
- (3) Petitioner's sentence of life without parole is unconstitutional pursuant to the Supreme Court's decision in Miller v. Alabama, 132 S. Ct. 2455 (2012) and Montgomery v. Louisiana, 136 S. Ct. 718 (2016) (holding that Miller v. Alabama applies retroactively). Under Miller v. Alabama, a court must consider an offender's age and characteristics of youth prior to imposing a life without parole sentence. Although Petitioner was [nineteen] at the time of the offense, the trial court was mandated to impose a sentence of life without parole without considering the factors set forth in Miller v. Alabama, thus making Petitioner's sentence unconstitutional. In addition, also pursuant to Miller v. Alabama, Petitioner's sentence of life without parole constitutes disproportionate punishment in violation of the Eighth Amendment of the United States Constitution because Petitioner did not kill or intend to kill, which rendered Petitioner of diminished culpability for purposes of imposing a sentence of life without parole; and
- (4) Petitioner's sentence of life without parole constitutes a violation of the equal protection clauses of the United States and Pennsylvania Constitutions because the Pennsylvania law permitting mandatory imposition of disproportionate life without parole sentences upon [nineteen][-]year-olds does not

¹⁰ See Order of Court, Petition for PCRA Hearing, June 4, 2015 (Peck, J.); Order of Court, In Re: Petition for Post Conviction Relief Pursuant to the Post Conviction Relief Act, December 10, 2015 (Peck, J.); Order of Court, In Re: Petition for Post Conviction Collateral Relief, October 25, 2018 (Peck, J.).

have a rational basis in light of Miller v. Alabama's prohibition of the same sentence upon [seventeen][-]year-olds possessing the same attributes of youth.¹¹

A PCRA hearing was held on January 14, 2019, after which the evidence was closed and a briefing schedule was issued to the parties.¹² Upon this Court's receipt of the parties' briefs, and after careful review and consideration of the complete record in this matter and the applicable law thereto, Petitioner's petition is denied.

II. DISCUSSION

Petitioner claims that Attorney Welch was ineffective when representing him at trial because he failed to ask the Court for a jury instruction on second-degree murder that included an "in furtherance" definition, and because he failed to assert at sentencing that Petitioner's life without parole sentence was unconstitutional under Miller v. Alabama. We find that Attorney Welch was not ineffective on these grounds.

Petitioner also argues that his life without parole sentence is unconstitutional under Miller v. Alabama and Montgomery v. Louisiana, as the court did not consider mitigating factors attributable to the Petitioner's youth at sentencing, and because the imposition of such a sentence would be disproportionate to the Petitioner's culpability in the murder of the convenience store clerk as he was not the one to pull the trigger. These arguments also fail.

a. *Ineffectiveness of Counsel*

"All constitutionally-cognizable claims of ineffective assistance of counsel may be reviewed in a PCRA Petition." Commonwealth ex rel. Dadario v. Goldberg, 773 A.2d 126, 130 (Pa. 2001). An ineffectiveness claim may only provide relief where, "in the circumstances of the particular case, [ineffectiveness of counsel] so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken

¹¹ Petitioner's Amended Petition for Post Conviction Relief Pursuant to the Post Conviction Relief Act, December 10, 2018, at ¶¶19-20.

¹² Order of Court, In Re: Petition for Post Conviction Relief and Amended Petition for Post Conviction Relief, January 14, 2019 (Peck, J.).

place." 42 Pa.C.S. §9543(a)(2)(ii). Counsel is presumed to have rendered effective assistance. See Commonwealth v. Ali, 10 A.3d 282, 291 (Pa. 2010). Defendant must overcome the presumption that counsel is effective by establishing all of the following three elements by a preponderance of the evidence: (1) the underlying issue has arguable merit; (2) counsel's actions lacked an objectively reasonable basis; and (3) actual prejudice resulted from counsel's act or failure to act. See Commonwealth v. Barnett, 121 A.3d 534 (Pa. Super. 2015), *citing Commonwealth v. Pierce*, 527 A.2d 973, 975-76 (Pa. 1987). If Defendant's claim fails under any necessary element of the applicable test, the court may proceed to that element first. Commonwealth v. Fears, 86 A.3d 795 (Pa. 2014).

Petitioner first contends that counsel was ineffective for failing to object to the jury instruction on second-degree murder which failed to define "in furtherance" to the jury. Petitioner argues that trial counsel's failure to object to the second degree murder jury instruction that did not include the "in furtherance of" definition rendered the entire instruction inadequate as it failed to define an essential element of proof required for a guilty verdict. As such, Petitioner argues he was prejudiced by the omission and by the ensuing waiver of the issue on direct appeal.

At his PCRA hearing, the Petitioner admitted that he went over the jury instructions "at length" with trial counsel before the instructions were submitted to the jury. Although at that time he was satisfied with the instructions, Petitioner stated that he was so because he "didn't know nothing" and asserts that counsel's ineffectiveness in this regard lies because the instructions should have been "specifically explained" to him. Attorney Welch testified that he had substantial discussions about the jury instructions with the Petitioner at the time of trial, and that the Petitioner was very involved in the process and asked a lot of questions. He further explained that he never asked the court to define "in furtherance" to the jury because he didn't think it was necessary to do so, being that the individual word "speaks for itself," is "a common word," and the definition is "pretty simple and clear." He went on to state that he never felt the need to object to the instruction because he was comfortable with the standard charge given to the jury.

With regard to this allegation of ineffectiveness, the following instruction appears in brackets in the standard jury instruction for second-degree murder:

[5. I will now explain the meaning of the "in furtherance" element:]

[A partner's act that kills is not in furtherance of the felony if the partner does the act for his or her own personal reasons that are independent of the felony.]

[A partner's act that kills is in furtherance of the felony if he or she does the act while fleeing from the scene and if there is no break in the chain of events between the felony and the act. However, even though the partner's act that kills may seem to meet these requirements, it is not in furtherance of the felony if the partner does the act for his or her own personal reasons that are independent of the felony and the effort to flee.]

[[*reasons*]]¹³

The trial court has broad discretion in phrasing its instructions as long as the law is clearly, adequately, and accurately presented to the jury. Commonwealth v. Keaton, 45 A.3d 1050 (Pa. 2012). Furthermore, a trial court should not instruct the jury on legal principles that have no application to the evidence presented at trial. Commonwealth v. Arrington, 86 A.3d 831 (Pa. 2014).

While the above-quoted language appears in the standard jury instructions for second-degree murder, it is not part of the main jury instruction in that it appears in brackets, to be read when appropriate under the facts of the individual case. Here, giving the "in furtherance" definition in our instructions to the jury would have been inappropriate because no defense was presented at trial that co-defendant Bradshaw's actions in pulling the trigger were done for his own personal reasons independent of the robbery. Exactly the opposite is true. The evidence in this case showed that Bradshaw brandished the weapon at the clerk in order to induce her to hand over the money, and whether or not the gun was discharged purposefully or accidentally after that (as the defense contended), the slaying was in furtherance of the felony as the use of the gun was

¹³ See Def.'s Exhibit No. 1, January 14, 2019, Pennsylvania Standard Jury Instructions, Pa. SSJI (Crim) §15.2502B.

a vital part of the scheme to rob the store. The evidence also showed that the Petitioner knew that the gun was loaded and operational, he gave the gun to the slayer for the purpose of using it in the robbery, and he knew that the slayer took it into the Hess Express; therefore, it was foreseeable by the Petitioner that the murder would occur as a result of the robbery. A reading of the definition of "in furtherance" under these facts would have only served to confuse the jury as to the elements of felony murder. Instead, this Court read the "in furtherance of" language in the context of the elements of the offense so that the jury understood that it was necessary to consider it in order to convict the Petitioner of second-degree murder. Here, Petitioner has not met his burden to show that the underlying issue has any merit nor that prejudice resulted from our omission of the optional definition of "in furtherance" from the jury instruction for second-degree murder. We also find that trial counsel's explanation for not requesting the supplemental instruction was objectively reasonable, as the definition had no application to the evidence presented. Because the instruction actually given was appropriate, trial counsel was not ineffective for failing to object to it. We therefore conclude that Petitioner's argument that trial counsel was ineffective in this regard fails under each prong of the Pierce test. See Com. v. Pierce, 527 A.2d at 975-76.

Petitioner next maintains that his mandatory life without parole sentence for felony murder is unconstitutional under the Eighth Amendment to the United States Constitution and that trial counsel was ineffective for failing to assert this issue at sentencing. Petitioner cites to Miller v. Alabama, which held that mandatory life without parole sentences for juveniles who were under eighteen years of age at the time of their crime violate the Eighth's Amendment's prohibition on cruel and unusual punishment because juveniles have diminished culpability and greater prospects for reform. Miller v. Alabama, 132 S. Ct. 2455, 2463-64 (2012). The Miller court reasoned that mandatory life without parole sentences for juveniles are inappropriate because they preclude consideration of the Defendants' chronological age, immaturity, impetuosity, and failure to appreciate risks and consequences, as well as the family and home environment and possibility of rehabilitation. Id. at 2468. In 2016, the Montgomery v. Louisiana case

further held that (1) Miller applied retroactively, and that (2) Miller established a categorical bar to life without parole sentences for juveniles whose crimes reflect the “transient immaturity of youth” regardless of whether the sentence is mandatory or discretionary. Montgomery v. Louisiana, 136 S. Ct. 718, 733-34 (2016). The Montgomery court reasoned that the characteristics of youth, rather than chronological age, are determinative in assessing whether life without parole is disproportionate under the Eighth Amendment. Id. at 734.

Petitioner argues that although he was nineteen years old at the time of his crimes, he still possessed the requisite immaturity which is the hallmark of youth, and consequently Miller and Montgomery should operate to bar him from constitutionally receiving a life without parole sentence, and asserts that trial counsel was ineffective for failing to raise this issue at sentencing.

At the PCRA hearing, The Petitioner testified that he had just turned nineteen about a month before he committed his crimes, and that he felt he did not deserve to be in prison the rest of his life because he “didn’t hurt nobody.” He felt that a nineteen-year-old can be less mature than an eighteen-year-old, and that Miller’s reasoning should apply to his situation. Attorney Welch testified that he did not consider making a Miller argument to the court regarding the Petitioner at the sentencing hearing because Miller applies to juveniles, and the Petitioner was not a juvenile. Attorney Welch testified that he specifically remembered feeling “stuck” because the Petitioner had to go through the adult system, and that he and the Petitioner had many conversations to that effect throughout the court process.

Although Petitioner gives an example of another jurisdiction that has interpreted that the reasoning in Miller may apply to nineteen-year-olds,¹⁴ Pennsylvania has not, and of course, the decisions of other jurisdictions are not binding upon this Court and are only persuasive to us inasmuch as we agree. Here we are constrained to follow the line of

¹⁴ See generally People v. House, 72 N.E.3d 357 (Ill. App. Ct. 2015) (holding that a nineteen-year-old murder defendant was entitled to present mitigating evidence of his youth before he could be sentenced to life without parole).

binding case law in our own jurisdiction, which mandates the conclusion that Miller does not apply to Petitioner. In Pennsylvania, the Superior Court has held that Miller only applies to juveniles, and that collateral relief under the PCRA for a newly-recognized constitutional right is unavailable for Petitioners who were eighteen years old or older at the time their crimes were committed. See Commonwealth v. Furgess, 149 A.3d 90, 91-94 (2016); Commonwealth v. Cintora, 69 A.3d 759, 764; Commonwealth v. Lee, 206 A.3d 1, 4 (Pa. Super. 2019) (*en banc*). Attorney Welch did not seek to have mitigating evidence presented on Petitioner's behalf at sentencing based on his accurate understanding of the law as it stands in Pennsylvania, whereby the Petitioner is not entitled to the benefit of consideration of the factors outlined in Miller as he was not a juvenile at the time he committed the offenses for which he was convicted and sentenced to life without parole. As such, we cannot conclude that Attorney Welch's reasons for failing to bring these issues to the court's attention during sentencing were objectively unreasonable, nor was there prejudice to the Petitioner caused by the attorney's silence on the matter as the right to which Petitioner is seeking to avail himself does not exist in this Commonwealth. Therefore, we conclude that trial counsel was not ineffective as the Petitioner's arguments fail under the second and third prongs of the Pierce test. See Com. v. Pierce, 527 A.2d at 975-76.

b. *Illegality of Sentence*

As discussed *supra*, Petitioner herein argues that the attributes of youth, rather than chronological age, should control whether his life without parole sentence is constitutional under the Eighth Amendment pursuant to the Miller and Montgomery decisions. Petitioner asserts that he should have the opportunity for a resentencing hearing, wherein he can present mitigating evidence of his youth. As we have already addressed, this argument fails as Pennsylvania law holds that Petitioner is not entitled to the rights established under the aforementioned decisions as he was not a juvenile at the time of his offenses.

Similarly, Petitioner argues that his life without parole sentence violates the Equal Protection clauses of the United States' and Pennsylvania Constitutions because

seventeen-year-olds and eighteen-year-olds are treated unequally under Pennsylvania's reading of Miller with no rational basis. This argument was also asserted in the Lee case, and was subsequently affirmatively waived in light of our Superior Court's decision in Commonwealth v. Montgomery, which affirmed that "[n]either the Supreme Court of the United States nor our Supreme Court has held that *Miller* announced a new rule under the Equal Protection Clause. Instead, *Miller* only announced a new rule with respect to the Eighth Amendment...[thus, an] Equal Protection Clause argument is also an attempt to extend *Miller*'s holding." See Commonwealth v. Montgomery, 181 A.3d 359, 366 (Pa. Super. 2018)(*en banc*); see also Com. v. Lee, 206 A.3d at 4, n.3, n.6. The Superior Court in Lee also rejected the "rationale" argument asserted in Miller because the Miller case, in which the Defendants were fourteen years old at the time of their offenses, is not analogous to situations in which the Defendants are eighteen years old or older in order to satisfy the newly-recognized constitutional right exception to the PCRA timeliness bar. Although herein the Petitioner's PCRA is timely, his arguments are virtually identical to those already made and rejected by our Superior Court in the decisions discussed *supra*.¹⁵ Because there is no "newly recognized constitutional right" of eighteen-year-olds in Petitioner's situation sufficient to overcome the timeliness bar to the PCRA, it follows that the rights Petitioner is attempting to assert herein are not sufficient to overcome his conviction and sentence in the first instance. We thus find that Petitioner's final "rational basis" argument is also an attempt to extend the holding in Miller, and thus Petitioner is entitled to no relief on this claim.

III. CONCLUSION

In light of the foregoing, Defendant has failed to establish that defense counsel was ineffective, and has failed to persuade this Court that the mandatory life without parole sentence he received as a result of his conviction for felony murder is

¹⁵ For example, see Com. v. Lee, 2016 A.3d 1, 7-8 (Pa. Super. 2019) (stating "[t]here is no question the scientific studies and principles underlying *Miller* informed its holding...The express age limit, however, though arguably not critical to the *Miller* holding, is, in our opinion, essential to an orderly and practical application of the law...As compelling as the "rationale" argument is, we find it untenable to extend *Miller* to one who is over the age of 18 at the time of his or her offense...")

unconstitutional as applied to him. Therefore, Defendant's Amended Petition for Post Conviction Relief Pursuant to the Post Conviction Relief Act is denied.

BY THE COURT,

Christylee L. Peck

Christylee L. Peck, J.

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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA, : No. 315 MAL 2020
: Petition for Allowance of Appeal
Respondent : from the Order of the Superior Court
: v.
: Petitioner
SHANTE BRUCE RICE,

ORDER

PER CURIAM

AND NOW, this 1st day of December, 2020, the Petition for Allowance of Appeal
is **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 12/01/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

Appendix C