

## **APPENDICES**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mustafa Ali,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Judge Jeffrey Minehart;	:	
Philadelphia Court of Common Pleas,	:	
Respondents	:	No. 406 M.D. 2022

**PER CURIAM**

**ORDER**

NOW, February 1, 2023, upon consideration of Respondents' Application for Relief to Transfer this Case to the Supreme Court of Pennsylvania for Lack of Jurisdiction (Application), and it appearing that Petitioner seeks mandamus against a court of the of the Unified Judicial System and that no ancillary appeal is pending before this Court, the Application is GRANTED.

This matter is transferred to the Supreme Court of Pennsylvania for consideration under its superintendency powers. *See Mun. Publ'ns, Inc. v. Ct. of Common Pleas, Appeal of Edgehill*, 489 A.2d 1286 (Pa. 1985); 42 Pa.C.S. § 5103.

The Prothonotary shall transmit this matter to the Eastern District Prothonotary of the Supreme Court.

Order Exit  
02/01/2023

APPENDIX A

: No. 10 EM 2023

## APPENDIX B

**§ 1102. Sentence for murder, murder of unborn child and murder of law enforcement officer.**

**(a) *First degree.***

(1) Except as provided under section 1102.1 (relating to sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer), a person who has been convicted of a murder of the first degree or of murder of a law enforcement officer of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with 42 Pa.C.S. § 9711 (relating to sentencing procedure for murder of the first degree).

(2) The sentence for a person who has been convicted of first degree murder of an unborn child shall be the same as the sentence for murder of the first degree, except that the death penalty shall not be imposed. This paragraph shall not affect the determination of an aggravating circumstance under 42 Pa.C.S. § 9711(d)(17) for the killing of a pregnant woman.

**(b) *Second degree.*** — Except as provided under section 1102.1, a person who has been convicted of murder of the second degree, of second degree murder of an unborn child or of second degree murder of a law enforcement officer shall be sentenced to a term of life imprisonment.

**(c) *Attempt, solicitation and conspiracy.*** — Notwithstanding section 1103(1) (relating to sentence of imprisonment for felony), a person who has been convicted of attempt, solicitation or conspiracy to commit murder, murder of an unborn child or murder of a law enforcement officer where serious bodily injury results may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years. Where serious bodily injury does not result, the person may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 20 years.

**(d) *Third degree.*** — Notwithstanding section 1103, a person who has been convicted of murder of the third degree or of third degree murder of an unborn child shall be sentenced to a term which shall be fixed by the court at not more than 40 years.

of the evidence.

(iv) The verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance specified in subsection (d) and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprisonment in all other cases.

(v) The court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment.

(2) The court shall instruct the jury that if it finds at least one aggravating circumstance and at least one mitigating circumstance, it shall consider, in weighing the aggravating and mitigating circumstances, any evidence presented about the victim and about the impact of the murder on the victim's family. The court shall also instruct the jury on any other matter that may be just and proper under the circumstances.

(d) *Aggravating circumstances.* — Aggravating circumstances shall be limited to the following:

(1) The victim was a firefighter, peace officer, public servant concerned in official detention, as defined in 18 Pa.C.S. § 5121 (relating to escape), judge of any court in the unified judicial system, the Attorney General of Pennsylvania, a deputy attorney general, district attorney, assistant district attorney, member of the General Assembly, Governor, Lieutenant Governor, Auditor General, State Treasurer, State law enforcement official, local law enforcement official, Federal law enforcement official or person employed to assist or assisting any law enforcement official in the performance of his duties, who was killed in the performance of his duties or as a result of his official position.

(2) The defendant paid or was paid by another person or had contracted to pay or be paid by another person or had conspired to pay or be paid by another person for the killing of the victim.

(3) The victim was being held by the defendant for ransom or reward, or as a shield or hostage.

(4) The death of the victim occurred while defendant was engaged in the hijacking of an aircraft.

(5) The victim was a prosecution witness to a murder or other felony committed by the defendant and was killed for the purpose of preventing his testimony against the defendant in any grand jury or criminal proceeding involving such offenses.

- (6) The defendant committed a killing while in the perpetration of a felony.
- (7) In the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense.
- (8) The offense was committed by means of torture.
- (9) The defendant has a significant history of felony convictions involving the use or threat of violence to the person.
- (10) The defendant has been convicted of another Federal or State offense, committed either before or at the time of the offense at issue, for which a sentence of life imprisonment or death was imposable or the defendant was undergoing a sentence of life imprisonment for any reason at the time of the commission of the offense.
- (11) The defendant has been convicted of another murder committed in any jurisdiction and committed either before or at the time of the offense at issue.
- (12) The defendant has been convicted of voluntary manslaughter, as defined in 18 Pa.C.S. § 2503 (relating to voluntary manslaughter), or a substantially equivalent crime in any other jurisdiction, committed either before or at the time of the offense at issue.
- (13) The defendant committed the killing or was an accomplice in the killing, as defined in 18 Pa.C.S. § 306(c) (relating to liability for conduct of another; complicity), while in the perpetration of a felony under the provisions of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and punishable under the provisions of 18 Pa.C.S. § 7508 (relating to drug trafficking sentencing and penalties).
- (14) At the time of the killing, the victim was or had been involved, associated or in competition with the defendant in the sale, manufacture, distribution or delivery of any controlled substance or counterfeit controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act or similar law of any other state, the District of Columbia or the United States, and the defendant committed the killing or was an accomplice to the killing as defined in 18 Pa.C.S. § 306(c), and the killing resulted from or was related to that association, involvement or competition to promote the defendant's activities in selling, manufacturing, distributing or delivering controlled substances or counterfeit controlled substances.
- (15) At the time of the killing, the victim was or had been a nongovernmental informant or had otherwise provided any investigative, law enforcement or police agency with information concerning criminal activity and the defendant committed the killing or was an accomplice to the killing as defined in 18 Pa.C.S. § 306(c), and the killing was in retaliation for the victim's activities as a nongovernmental informant or in providing information concerning criminal

activity to an investigative, law enforcement or police agency.

(16) The victim was a child under 12 years of age.

(17) At the time of the killing, the victim was in her third trimester of pregnancy or the defendant had knowledge of the victim's pregnancy.

(18) At the time of the killing the defendant was subject to a court order restricting in any way the defendant's behavior toward the victim pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or any other order of a court of common pleas or of the minor judiciary designed in whole or in part to protect the victim from the defendant.

(e) **Mitigating circumstances.** — Mitigating circumstances shall include the following:

(1) The defendant has no significant history of prior criminal convictions.

(2) The defendant was under the influence of extreme mental or emotional disturbance.

(3) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(4) The age of the defendant at the time of the crime.

(5) The defendant acted under extreme duress, although not such duress as to constitute a defense to prosecution under 18 Pa.C.S. § 309 (relating to duress), or acted under the substantial domination of another person.

(6) The victim was a participant in the defendant's homicidal conduct or consented to the homicidal acts.

(7) The defendant's participation in the homicidal act was relatively minor.

(8) Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense.

(f) **Sentencing verdict by the jury.**

(1) After hearing all the evidence and receiving the instructions from the court, the jury shall deliberate and render a sentencing verdict. In rendering the verdict, if the sentence is death, the jury shall set forth in such form as designated by the court the findings upon which the sentence is based.

(2) Based upon these findings, the jury shall set forth in writing whether the sentence is death or life imprisonment.

(g) **Recording sentencing verdict.** — Whenever the jury shall agree upon a sentencing

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verdict, it shall be received and recorded by the court. The court shall thereafter impose upon the defendant the sentence fixed by the jury.

**(h) *Review of death sentence.***

(1) A sentence of death shall be subject to automatic review by the Supreme Court of Pennsylvania pursuant to its rules.

(2) In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate the sentence of death and remand for further proceedings as provided in paragraph (4).

(3) The Supreme Court shall affirm the sentence of death unless it determines that:

(i) the sentence of death was the product of passion, prejudice or any other arbitrary factor; or

(ii) the evidence fails to support the finding of at least one aggravating circumstance specified in subsection (d).

(4) If the Supreme Court determines that the death penalty must be vacated because none of the aggravating circumstances are supported by sufficient evidence, then it shall remand for the imposition of a life imprisonment sentence. If the Supreme Court determines that the death penalty must be vacated for any other reason, it shall remand for a new sentencing hearing pursuant to subsections (a) through (g).

**(i) *Record of death sentence to Governor.*** — Where a sentence of death is upheld by the Supreme Court, the prothonotary of the Supreme Court shall transmit to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence, opinion and order by the Supreme Court within 30 days of one of the following, whichever occurs first:

(1) the expiration of the time period for filing a petition for writ of certiorari or extension thereof where neither has been filed;

(2) the denial of a petition for writ of certiorari; or

(3)



**§ 3301. Arson and related offenses.**

**(a) Arson endangering persons.**

(1) A person commits a felony of the first degree if he intentionally starts a fire or causes an explosion, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or on that of another, and if:

(i) he thereby recklessly places another person in danger of death or bodily injury, including but not limited to a firefighter, police officer or other person actively engaged in fighting the fire; or

(ii) he commits the act with the purpose of destroying or damaging an inhabited building or occupied structure of another.

(2) A person who commits arson endangering persons is guilty of murder of the second degree if the fire or explosion causes the death of any person, including but not limited to a firefighter, police officer or other person actively engaged in fighting the fire, and is guilty of murder of the first degree if the fire or explosion causes the death of any person and was set with the purpose of causing the death of another person.

**(a.1) Aggravated arson.**

(1) A person commits a felony of the first degree if he intentionally starts a fire or causes an explosion, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or on that of another, and if:

(i) he thereby attempts to cause, or intentionally, knowingly or recklessly causes bodily injury to another person, including, but not limited to, a firefighter, police officer or other person actively engaged in fighting the fire; or

(ii) he commits an offense under this section which is graded as a felony when a person is present inside the property at the time of the offense.

(2) A person who commits aggravated arson is guilty of murder of the second degree if the fire or explosion causes the death of any person, including, but not limited to, a firefighter, police officer or other person actively engaged in fighting the fire.

**(a.2) Arson of historic resource.** — A person commits a felony of the second degree if the person, with the intent of destroying or damaging a historic resource of another, does any of the following:

(1) Intentionally starts a fire or causes an explosion, whether on the person's own

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property or that of another.

(2) Aids, counsels, pays or agrees to pay another to cause a fire or explosion.

**(b) Sentence.**

(1) A person convicted of violating the provisions of subsection (a)(2), murder of the first degree, shall be sentenced to death or life imprisonment without right to parole; a person convicted of murder of the second degree, pursuant to subsection (a)(2), shall be sentenced to life imprisonment without right to parole. Notwithstanding provisions to the contrary, no language herein shall infringe upon the inherent powers of the Governor to commute said sentence.

(2) A person convicted under subsection (a.1) may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years if:

(i) bodily injury results to a firefighter, police officer or other person actively engaged in fighting the fire; or

(ii) serious bodily injury results to a civilian.

**§ 6503. Right to apply for writ.**

(a) **General rule.** — Except as provided in subsection (b), an application for habeas corpus to inquire into the cause of detention may be brought by or on behalf of any person restrained of his liberty within this Commonwealth under any pretense whatsoever.

(b) **Exception.** — Where a person is restrained by virtue of sentence after conviction for a criminal offense, the writ of habeas corpus shall not be available if a remedy may be had by post-conviction hearing proceedings authorized by law.

**§ 9542. Scope of subchapter.**

This subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief. The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis. This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence, to provide a means for raising issues waived in prior proceedings or to provide relief from collateral consequences of a criminal conviction. Except as specifically provided otherwise, all provisions of this subchapter shall apply to capital and noncapital cases.

**§ 9543. Eligibility for relief.**

**(a) General rule.** — To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

**(1)** That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

**(i)** currently serving a sentence of imprisonment, probation or parole for the crime;

**(ii)** awaiting execution of a sentence of death for the crime;

**(iii)** serving a sentence which must expire before the person may commence serving the disputed sentence; or

**(iv)** has completed a sentence of imprisonment, probation or parole for the crime and is seeking relief based upon DNA evidence obtained under section 9543.1(d) (relating to postconviction DNA testing).

**(2)** That the conviction or sentence resulted from one or more of the following:

**(i)** A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

**(ii)** Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

**(iii)** A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.

**(iv)** The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

**(vi)** The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

**(vii)** The imposition of a sentence greater than the lawful maximum.

(viii) A proceeding in a tribunal without jurisdiction.

• (3) That the allegation of error has not been previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

**§ 9711. Sentencing procedure for murder of the first degree.**

**(a) Procedure in jury trials.**

(1) After a verdict of murder of the first degree is recorded and before the jury is discharged, the court shall conduct a separate sentencing hearing in which the jury shall determine whether the defendant shall be sentenced to death or life imprisonment.

(2) In the sentencing hearing, evidence concerning the victim and the impact that the death of the victim has had on the family of the victim is admissible. Additionally, evidence may be presented as to any other matter that the court deems relevant and admissible on the question of the sentence to be imposed. Evidence shall include matters relating to any of the aggravating or mitigating circumstances specified in subsections (d) and (e), and information concerning the victim and the impact that the death of the victim has had on the family of the victim. Evidence of aggravating circumstances shall be limited to those circumstances specified in subsection (d).

(3) After the presentation of evidence, the court shall permit counsel to present argument for or against the sentence of death. The court shall then instruct the jury in accordance with subsection (c).

(4) Failure of the jury to unanimously agree upon a sentence shall not impeach or in any way affect the guilty verdict previously recorded.

**(b) Procedure in nonjury trials and guilty pleas.** — If the defendant has waived a jury trial or pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose unless waived by the defendant with the consent of the Commonwealth, in which case the trial judge shall hear the evidence and determine the penalty in the same manner as would a jury as provided in subsection (a).

**(c) Instructions to jury.**

(1) Before the jury retires to consider the sentencing verdict, the court shall instruct the jury on the following matters:

(i) The aggravating circumstances specified in subsection (d) as to which there is some evidence.

(ii) The mitigating circumstances specified in subsection (e) as to which there is some evidence.

(iii) Aggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt; mitigating circumstances must be proved by the defendant by a preponderance

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of the evidence.

(iv) The verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance specified in subsection (d) and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprisonment in all other cases.

(v) The court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment.

(2) The court shall instruct the jury that if it finds at least one aggravating circumstance and at least one mitigating circumstance, it shall consider, in weighing the aggravating and mitigating circumstances, any evidence presented about the victim and about the impact of the murder on the victim's family. The court shall also instruct the jury on any other matter that may be just and proper under the circumstances.

(d) *Aggravating circumstances.* — Aggravating circumstances shall be limited to the following:

(1) The victim was a firefighter, peace officer, public servant concerned in official detention, as defined in 18 Pa.C.S. § 5121 (relating to escape), judge of any court in the unified judicial system, the Attorney General of Pennsylvania, a deputy attorney general, district attorney, assistant district attorney, member of the General Assembly, Governor, Lieutenant Governor, Auditor General, State Treasurer, State law enforcement official, local law enforcement official, Federal law enforcement official or person employed to assist or assisting any law enforcement official in the performance of his duties, who was killed in the performance of his duties or as a result of his official position.

(2) The defendant paid or was paid by another person or had contracted to pay or be paid by another person or had conspired to pay or be paid by another person for the killing of the victim.

(3) The victim was being held by the defendant for ransom or reward, or as a shield or hostage.

(4) The death of the victim occurred while defendant was engaged in the hijacking of an aircraft.

(5) The victim was a prosecution witness to a murder or other felony committed by the defendant and was killed for the purpose of preventing his testimony against the defendant in any grand jury or criminal proceeding involving such offenses.



- (6) The defendant committed a killing while in the perpetration of a felony.
- (7) In the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense.
- (8) The offense was committed by means of torture.
- (9) The defendant has a significant history of felony convictions involving the use or threat of violence to the person.
- (10) The defendant has been convicted of another Federal or State offense, committed either before or at the time of the offense at issue, for which a sentence of life imprisonment or death was imposable or the defendant was undergoing a sentence of life imprisonment for any reason at the time of the commission of the offense.
- (11) The defendant has been convicted of another murder committed in any jurisdiction and committed either before or at the time of the offense at issue.
- (12) The defendant has been convicted of voluntary manslaughter, as defined in 18 Pa.C.S. § 2503 (relating to voluntary manslaughter), or a substantially equivalent crime in any other jurisdiction, committed either before or at the time of the offense at issue.
- (13) The defendant committed the killing or was an accomplice in the killing, as defined in 18 Pa.C.S. § 306(c) (relating to liability for conduct of another; complicity), while in the perpetration of a felony under the provisions of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and punishable under the provisions of 18 Pa.C.S. § 7508 (relating to drug trafficking sentencing and penalties).
- (14) At the time of the killing, the victim was or had been involved, associated or in competition with the defendant in the sale, manufacture, distribution or delivery of any controlled substance or counterfeit controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act or similar law of any other state, the District of Columbia or the United States, and the defendant committed the killing or was an accomplice to the killing as defined in 18 Pa.C.S. § 306(c), and the killing resulted from or was related to that association, involvement or competition to promote the defendant's activities in selling, manufacturing, distributing or delivering controlled substances or counterfeit controlled substances.
- (15) At the time of the killing, the victim was or had been a nongovernmental informant or had otherwise provided any investigative, law enforcement or police agency with information concerning criminal activity and the defendant committed the killing or was an accomplice to the killing as defined in 18 Pa.C.S. § 306(c), and the killing was in retaliation for the victim's activities as a nongovernmental informant or in providing information concerning criminal

activity to an investigative, law enforcement or police agency.

(16) The victim was a child under 12 years of age.

(17) At the time of the killing, the victim was in her third trimester of pregnancy or the defendant had knowledge of the victim's pregnancy.

(18) At the time of the killing the defendant was subject to a court order restricting in any way the defendant's behavior toward the victim pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or any other order of a court of common pleas or of the minor judiciary designed in whole or in part to protect the victim from the defendant.

(e) **Mitigating circumstances.** — Mitigating circumstances shall include the following:

(1) The defendant has no significant history of prior criminal convictions.

(2) The defendant was under the influence of extreme mental or emotional disturbance.

(3) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(4) The age of the defendant at the time of the crime.

(5) The defendant acted under extreme duress, although not such duress as to constitute a defense to prosecution under 18 Pa.C.S. § 309 (relating to duress), or acted under the substantial domination of another person.

(6) The victim was a participant in the defendant's homicidal conduct or consented to the homicidal acts.

(7) The defendant's participation in the homicidal act was relatively minor.

(8) Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense.

(f) **Sentencing verdict by the jury.**

(1) After hearing all the evidence and receiving the instructions from the court, the jury shall deliberate and render a sentencing verdict. In rendering the verdict, if the sentence is death, the jury shall set forth in such form as designated by the court the findings upon which the sentence is based.

(2) Based upon these findings, the jury shall set forth in writing whether the sentence is death or life imprisonment.

(g) **Recording sentencing verdict.** — Whenever the jury shall agree upon a sentencing

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verdict, it shall be received and recorded by the court. The court shall thereafter impose upon the defendant the sentence fixed by the jury.

**(h) *Review of death sentence.***

(1) A sentence of death shall be subject to automatic review by the Supreme Court of Pennsylvania pursuant to its rules.

(2) In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate the sentence of death and remand for further proceedings as provided in paragraph (4).

(3) The Supreme Court shall affirm the sentence of death unless it determines that:

(i) the sentence of death was the product of passion, prejudice or any other arbitrary factor; or

(ii) the evidence fails to support the finding of at least one aggravating circumstance specified in subsection (d).

(4) If the Supreme Court determines that the death penalty must be vacated because none of the aggravating circumstances are supported by sufficient evidence, then it shall remand for the imposition of a life imprisonment sentence. If the Supreme Court determines that the death penalty must be vacated for any other reason, it shall remand for a new sentencing hearing pursuant to subsections (a) through (g).

**(i) *Record of death sentence to Governor.*** — Where a sentence of death is upheld by the Supreme Court, the prothonotary of the Supreme Court shall transmit to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence, opinion and order by the Supreme Court within 30 days of one of the following, whichever occurs first:

(1) the expiration of the time period for filing a petition for writ of certiorari or extension thereof where neither has been filed;

(2) the denial of a petition for writ of certiorari; or

(3)

the disposition of the appeal by the United States Supreme Court, if that court grants the petition for writ of certiorari.

Notice of this transmission shall contemporaneously be provided to the Secretary of Corrections.

**(j) *Issuance of warrant.*** — (Repealed).

- (k) *Terms of confinement.* — (Repealed).
- (l) *Witnesses to execution.* — (Repealed).
- (m) *Certification of superintendent.* — (Repealed).
- (n) *Postmortem examination.* — (Repealed).
- (o) *Costs of execution and examination.* — (Repealed).

**§ 9714. Sentences for second and subsequent offenses.**

**(a) *Mandatory sentence.***

(1) Any person who is convicted in any court of this Commonwealth of a crime of violence shall, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence, be sentenced to a minimum sentence of at least ten years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).

(2) Where the person had at the time of the commission of the current offense previously been convicted of two or more such crimes of violence arising from separate criminal transactions, the person shall be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Proof that the offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required. Upon conviction for a third or subsequent crime of violence the court may, if it determines that 25 years of total confinement is insufficient to protect the public safety, sentence the offender to life imprisonment without parole.

**(a.1) *Mandatory maximum.*** An offender sentenced to a mandatory minimum sentence under this section shall be sentenced to a maximum sentence equal to twice the mandatory minimum sentence, notwithstanding 18 Pa.C.S. § 1103 (relating to sentence of imprisonment for felony) or any other provision of this title or other statute to the contrary.

**(b) *Presumption of high risk dangerous offender.*** (Deleted by amendment).

**(c) *High risk dangerous offender.*** (Deleted by amendment).

**(d) *Proof at sentencing.*** Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The sentencing court, prior to imposing sentence on an offender under subsection (a), shall have a complete record of the previous convictions of the offender, copies of which shall be furnished to the offender. If the offender or the attorney for the Commonwealth contests the accuracy of the record, the court shall schedule a hearing and direct the offender and the attorney for the Commonwealth to submit evidence regarding the previous convictions of the offender. The court shall then determine, by a preponderance of the evidence, the previous convictions of the

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offender and, if this section is applicable, shall impose sentence in accordance with this section. Should a previous conviction be vacated and an acquittal or final discharge entered subsequent to imposition of sentence under this section, the offender shall have the right to petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.

**(e) Authority of court in sentencing.** There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsections (a) and (a.1) or to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

**(f) Appeal by Commonwealth.** If a sentencing court shall refuse to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for the imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

**(g) Definition.** As used in this section, the term “crime of violence” means murder of the third degree, voluntary manslaughter, manslaughter of a law enforcement officer as defined in 18 Pa.C.S. § 2507(c) or (d) (relating to criminal homicide of law enforcement officer), murder of the third degree involving an unborn child as defined in 18 Pa.C.S. § 2604(c) (relating to murder of unborn child), aggravated assault of an unborn child as defined in 18 Pa.C.S. § 2606 (relating to aggravated assault of unborn child), aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), assault of law enforcement officer as defined in 18 Pa.C.S. § 2702.1(a)(1) (relating to assault of law enforcement officer), use of weapons of mass destruction as defined in 18 Pa.C.S. § 2716(b) (relating to weapons of mass destruction), terrorism as defined in 18 Pa.C.S. § 2717(b)(2) (relating to terrorism), strangulation when the offense is graded as a felony as defined in 18 Pa.C.S. § 2718 (relating to strangulation), trafficking of persons when the offense is graded as a felony of the first degree as provided in 18 Pa.C.S. § 3011 (relating to trafficking in individuals), rape, involuntary deviate sexual intercourse, aggravated indecent assault, incest, sexual assault, arson endangering persons or aggravated arson as defined in 18 Pa.C.S. § 3301(a) or (a.1) (relating to arson and related offenses), ecoterrorism as classified in 18 Pa.C.S. § 3311(b)(3) (relating to ecoterrorism), kidnapping, burglary as defined in 18 Pa.C.S. § 3502(a)(1) (relating to burglary), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), or robbery of a motor vehicle, drug delivery resulting in death as defined in 18 Pa.C.S. § 2506(a) (relating to drug delivery resulting in death), or criminal attempt, criminal conspiracy or criminal solicitation to commit murder or any of the offenses listed above, or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction.

[1] Commonwealth vs. Ali  
[2] be convinced of a mitigator.  
[3] Let me see Counsel at sidebar.  
[4] ---  
[5] (Whereupon, the sidebar  
[6] conference was held, as follows:)  
[7] ---  
[8] **THE COURT:** I know you will  
[9] renew your objection but before you do  
[10] that, is there anything I missed?  
[11] **MR. BARRY:** I would ask that  
[12] you make clear that it doesn't have to  
[13] be one of the mitigators listed on the  
[14] sheet. It can be anything.  
[15] **MR. SCHWARTZ:** I don't know  
[16] what that means.  
[17] **MR. BARRY:** It can be  
[18] anything. It doesn't have to be the  
[19] mitigators that were on your chart. It  
[20] can be anything.  
[21] **THE COURT:** I will say you are  
[22] not restricted to that. That is a good  
[23] point.  
[24] **MR. BOOKMAN:** We are renewing  
[25] all of our objections, Your Honor. I

[1] Commonwealth vs. Ali  
[2] know it is your charge but I am asking  
[3] you to change the wording to say the  
[4] aggravator must outweigh all mitigators.  
[5] You said any, I think. I am just making  
[6] an objection.  
[7] **THE COURT:** Excuse me.  
[8] **MR. BOOKMAN:** The aggravators  
[9] outweigh any mitigators.  
[10] **THE COURT:** I said that.  
[11] **MR. BOOKMAN:** I didn't think  
[12] so. Maybe I heard wrong.  
[13] **THE COURT:** I will say any  
[14] mitigator they find must outweigh.  
[15] **MR. BOOKMAN:** My final thing  
[16] is you told us you would instruct them  
[17] that a life sentence and death sentence  
[18] would result in a death sentence. I  
[19] don't think you instructed.  
[20] **THE COURT:** I didn't do that.  
[21] **MR. BARRY:** I don't  
[22] understand.  
[23] **THE COURT:** That was the Marty  
[24] Graham situation.  
[25] **MR. BARRY:** Okay.

[1] Commonwealth vs. Ali  
[2] ---  
[3] (Whereupon, the sidebar  
[4] conference concluded and the proceedings  
[5] continued, at this time.)  
[6] ---  
[7] **THE COURT:** Just a couple  
[8] points, ladies and gentlemen, any  
[9] aggravator that you may find must  
[10] outweigh any mitigator and you are not  
[11] limited to what they put on the board  
[12] and they argued a number of them. You  
[13] can find a mitigator. You can find a  
[14] mitigator based on the evidence from  
[15] this hearing, based on the evidence from  
[16] trial and that could be brought before  
[17] the jury, as well.  
[18] Finally, I have just gone over  
[19] the verdict slip with you and they will  
[20] collect those sheets from you because  
[21] you are only going to get one full  
[22] package of a verdict slip when you go  
[23] back. You are going to have two of  
[24] those slips because there are two  
[25] decedents in this matter and you will

[1] Commonwealth vs. Ali  
[2] make a decision on those charges  
[3] individually. We are asking that you  
[4] return two separate sentencing verdicts,  
[5] one for each of the victims.  
[6] If the jury decides to return  
[7] a verdict of life imprisonment on one of  
[8] the decedents without the possibility of  
[9] parole and death on the other decedent's  
[10] case involving one of the other  
[11] decedents, I will instruct you that the  
[12] sentence will be death. The sentence  
[13] will be death if you have a mixed  
[14] verdict on the life and death sentence.  
[15] With that, we will send the  
[16] jury out and, once again, I know you get  
[17] along. Just leave those slips on your  
[18] chair. I know your deliberation, you  
[19] will keep them free from acrimony and we  
[20] will await any questions you may have  
[21] and any assistance we may give you and  
[22] we do, of course, appreciate your time  
[23] and patience in this matter.  
[24] ---  
[25] (Whereupon, the jury panel

[1] Commonwealth vs. Ali  
[2] leave the courtroom, at this time.)  
[3] ---  
[4] (Whereupon, a recess was taken  
[5] from the proceedings.)  
[6] ---  
[7] (Whereupon, all concerned  
[8] parties returned, and the proceedings  
[9] continued, at this time.)  
[10] ---  
[11] (Whereupon, the jury panel  
[12] enter the courtroom, at this time.)  
[13] ---  
[14] **COURT CRIER:** Your Honor, the  
[15] jury and all parties are present. May I  
[16] take the penalty verdict?  
[17] **THE COURT:** You may.  
[18] **COURT CRIER:** In the case of  
[19] Commonwealth of Pennsylvania versus  
[20] Mustafa Ali, will the Defendant, Mustafa  
[21] Ali, please rise and face the jury.  
[22] Mr. Foreperson, has the jury  
[23] reached a verdict on the penalty on  
[24] Count 1?  
[25] **THE FOREPERSON:** Yes, we have.

[1] Commonwealth vs. Ali  
[2] **COURT CRIER:** Do all 12 jurors  
[3] agree?  
[4] **THE FOREPERSON:** Yes, we do.  
[5] **THE COURT:** On Bill of  
[6] Information number 0000683, 2008, which  
[7] the jury has found the Defendant,  
[8] Mustafa Ali, guilty of murder in the  
[9] first degree, victim, Joseph Alullo,  
[10] Count 1, have you found at least one  
[11] aggravating circumstance?  
[12] **THE FOREPERSON:** Yes, we have.  
[13] **COURT CRIER:** Please state  
[14] them.  
[15] **THE FOREPERSON:** The Defendant  
[16] committed a killing while in the  
[17] perpetration of a felony. The Defendant  
[18] has a significant history of felony  
[19] convictions involving the use or threat  
[20] of violence. The Defendant has been  
[21] convicted of a state offense committed  
[22] either before or at the time of the  
[23] offense at issue for which a sentence of  
[24] life imprisonment or death was  
[25] impossible.

[1] Commonwealth vs. Ali  
[2] **COURT CRIER:** Have you found  
[3] any mitigating circumstances?  
[4] **THE FOREPERSON:** Yes, we have.  
[5] **COURT CRIER:** Please state  
[6] them.  
[7] **THE FOREPERSON:** Evidence of  
[8] mitigation concerning the background,  
[9] character, record and life circumstances  
[10] of the Defendant and the circumstances  
[11] of his offense.  
[12] **COURT CRIER:** You have found  
[13] both aggravating and mitigating  
[14] circumstances. Do the aggravating  
[15] circumstances outweigh the mitigating  
[16] circumstances?  
[17] **THE FOREPERSON:** No, they do  
[18] not.  
[19] **COURT CRIER:** Do the  
[20] mitigating circumstances outweigh the  
[21] aggravating circumstances?  
[22] **THE FOREPERSON:** Yes, they do.  
[23] **COURT CRIER:** What is your  
[24] sentence; life imprisonment or death?  
[25] **THE FOREPERSON:** Life

[1] Commonwealth vs. Ali  
[2] imprisonment.  
[3] **COURT CRIER:** Mr. Foreperson,  
[4] has the jury reached a verdict on the  
[5] penalty on Count 8?  
[6] **THE FOREPERSON:** Yes.  
[7] **COURT CRIER:** Do all 12 jurors  
[8] agree?  
[9] **THE FOREPERSON:** Yes, they do.  
[10] **COURT CRIER:** On Bill of  
[11] Information 0000683, 2008, the jury has  
[12] found the Defendant, Mustafa Ali, guilty  
[13] of murder in the first degree, victim,  
[14] William Widmaier, Count 8, have you  
[15] found at least one aggravating  
[16] circumstance?  
[17] **THE FOREPERSON:** Yes, we have.  
[18] **COURT CRIER:** Please state  
[19] them.  
[20] **THE FOREPERSON:** The Defendant  
[21] committed a killing while in the  
[22] perpetration of a felony. The Defendant  
[23] has a significant history of felony  
[24] convictions involving the use or threat  
[25] of violence. The Defendant has been

APPENDIX I

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[1] Commonwealth vs. Ali  
[2] convicted of a state offense committed  
[3] either before or at the time of the  
[4] offense at issue for which a sentence of  
[5] life imprisonment or death was  
[6] imposable.  
[7] **COURT CRIER:** Have you found  
[8] any mitigating circumstances?  
[9] **THE FOREPERSON:** Yes, we have.  
[10] **COURT CRIER:** Please state  
[11] them.  
[12] **THE FOREPERSON:** Evidence of  
[13] mitigation concerning the background,  
[14] character, record and life circumstances  
[15] of the Defendant and the circumstances  
[16] of his offense.  
[17] **COURT CRIER:** You have found  
[18] both aggravating and mitigating  
[19] circumstances. Do the aggravating  
[20] circumstances outweigh the mitigating  
[21] circumstances?  
[22] **THE FOREPERSON:** No, they do  
[23] not.  
[24] **COURT CRIER:** Do the  
[25] mitigating circumstances outweigh the

[1] Commonwealth vs. Ali  
[2] aggravating circumstances?  
[3] **THE FOREPERSON:** Yes, they do.  
[4] **COURT CRIER:** What is your  
[5] sentence; life imprisonment or death?  
[6] **THE FOREPERSON:** Life  
[7] imprisonment.  
[8] **COURT CRIER:** Your Honor, the  
[9] jury has sentenced the Defendant,  
[10] Mustafa Ali, to life imprisonment.  
[11] Shall the penalty verdict be recorded  
[12] and jurors' notes destroyed?  
[13] **THE COURT:** Can we record the  
[14] verdict or do you want the jury polled?  
[15] **MR. BOOKMAN:** No.  
[16] **MR. BARRY:** No.  
[17] **THE COURT:** Those verdicts can  
[18] be recorded and jurors' notes destroyed.  
[19] **COURT CRIER:** Jurors, harken  
[20] to the penalty as the Court has recorded  
[21] it, you say the penalty should be life  
[22] in prison and so say you all.  
[23] ---  
[24] (Whereupon, the jury panel  
[25] collectively answer in the affirmative,

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[1] Commonwealth vs. Ali  
[2] at this time.)  
[3] ---  
[4] **THE COURT:** Very well.  
[5] Ladies and gentlemen of the  
[6] jury, on behalf of the City of  
[7] Philadelphia, on behalf of the First  
[8] Judicial District of Philadelphia, which  
[9] is the First Judicial District of  
[10] Pennsylvania, on behalf of myself as a  
[11] Judge of the Court of Common Pleas, I  
[12] want to thank for your outstanding  
[13] service, your patience and your  
[14] perseverance and thank you so much.  
[15] ---  
[16] (Whereupon, the jury panel  
[17] leave the courtroom, at this time.)  
[18] ---  
[19] **THE COURT:** I will be right  
[20] out. We will move to sentencing today.  
[21] ---  
[22] (Whereupon, a brief recess was  
[23] taken from the proceedings.)  
[24] ---  
[25] (Whereupon, all concerned

[1] Commonwealth vs. Ali  
[2] parties returned, and the proceedings  
[3] continued, at this time.)  
[4] ---  
[5] **THE COURT:** Does the Defendant  
[6] wish to exercise his right of  
[7] allocution?  
[8] **MR. CARMEN:** No, Your Honor.  
[9] **THE COURT:** Very well.  
[10] We will move to sentencing.  
[11] We had victim impact. We had  
[12] information concerning the Defendant.  
[13] The Court is ready to sentence this  
[14] Defendant.  
[15] Stand up, Mr. Ali.  
[16] First of all, Mr. Ali, I just  
[17] want to say that this was a heartless,  
[18] heartless act, heartless act and these  
[19] are two men who worked for their money,  
[20] who worked for the city, who served the  
[21] city as police officers honorably and  
[22] took these jobs to supplement their  
[23] pension and support a family and you  
[24] know what it is to support a family and  
[25] this was motivated purely by laziness

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[1] Commonwealth vs. Ali  
[2] and greed because you didn't want to  
[3] earn the money. You wanted to make a  
[4] quick dollar.  
[5] What you did was you destroyed  
[6] both the Alullo and Widmaier families  
[7] and you did a good job of destroying  
[8] your own family and now you will spend  
[9] the rest of your life in prison.  
[10] Mustafa Ali, on Bill of  
[11] Information 0000683, caption, 2008,  
[12] Count 1, the jury having fixed the  
[13] penalty at life imprisonment without the  
[14] possibility of parole, I sentence you to  
[15] life imprisonment for the murder of  
[16] Joseph Alullo.  
[17] On Bill of Information  
[18] 0000683, 2008, Count 8 -- that was Count  
[19] 1 -- on Count 8, the jury having fixed  
[20] the verdict for the murder of William  
[21] Widmaier at life imprisonment without  
[22] parole, I sentence you to life  
[23] imprisonment without parole. That  
[24] sentence is to be served consecutive to  
[25] the life sentence imposed on Count 1.

[1] Commonwealth vs. Ali  
[2] On the charge of robbery, the  
[3] sentence of the Court is 10 to 20 years'  
[4] state correctional facility. That is  
[5] Count 2. Count 9, robbery, you have  
[6] been found guilty. The sentence of the  
[7] Court is 10 to 20 years. On Count 7,  
[8] recklessly endangering another person,  
[9] the sentence of the Court is  
[10] 2-and-a-half to 5 years and on Count 4,  
[11] carrying a firearm without a license,  
[12] the sentence of the Court is  
[13] 3-and-a-half to 7 years. Those  
[14] sentences will run concurrent with your  
[15] consecutive life sentences.  
[16] Do you understand your  
[17] sentence?  
[18] **THE DEFENDANT:** Yes.  
[19] **THE COURT:** I hope that the  
[20] time you spend in prison, you think  
[21] about those men that you killed every  
[22] day and I hope you see their faces.  
[23] Give him his rights.  
[24] **MR. BOOKMAN:** Mr. Ali, you  
[25] have been found guilty by this jury and

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[1] Commonwealth vs. Ali  
[2] sentenced by the Judge. Do you  
[3] understand your sentence, sir?  
[4] **THE DEFENDANT:** Yes.  
[5] **MR. BOOKMAN:** Sir, you have  
[6] ten days in which to ask the Judge to  
[7] reconsider his sentence. If he takes no  
[8] action or denies your request, you then  
[9] have thirty days to appeal to the  
[10] Superior Court alleging any errors you  
[11] feel may have been made in the trial or  
[12] the sentencing by Judge Minchart. Do  
[13] you understand that, sir?  
[14] **THE DEFENDANT:** Yes.  
[15] **MR. BOOKMAN:** The Public  
[16] Defender Office will continue to  
[17] represent you for those purposes.  
[18] **THE COURT:** Thank you.  
[19] ---  
[20] (Whereupon, the proceedings  
[21] were adjourned, at this time.)  
[22] ---  
[23]  
[24]  
[25]





PHILADELPHIA COURT OF COMMON PLEAS

TRIAL DIVISION

MOTIONS UNIT

206 Criminal Justice Center

1301 Filbert Street

Philadelphia, PA 19107

(215) 683-7517

Fax (215) 683-7521

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February 5, 2010

Mustafa Ali

PP# 1042878

**Re: CP-51-CR-0000683-2008**

Dear Inmate:

Lack of Jurisdiction is an appeal issue. It cannot be raised during a trial but is applicable only if a conviction occurs.

Thank you,

Criminal Motions Unit  
Criminal Justice Center  
1301 Filbert Street, Room 206  
Philadelphia, PA 19107  
215-683-7517

~~CONFIDENTIAL~~

APPENDIX J

## Amendment 14

**Sec. 1. [Citizens of the United States.]** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Sec. 2. [Representatives—Power to reduce apportionment.]** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Sec. 3. [Disqualification to hold office.]** No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Sec. 4. [Public debt not to be questioned—Debts of the Confederacy and claims not to be paid.]** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Sec. 5. [Power to enforce amendment.]** The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.