

APPENDIX "A"

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
ALFRED MEANS,	:	No. 2498 EDA 2016
	:	
Appellant	:	

Appeal from the PCRA Order, July 13, 2016,
in the Court of Common Pleas of Philadelphia County
Criminal Division at Nos. CP-51-CR-0100912-1997,
CP-51-CR-1006612-1996

BEFORE: BOWES, J., DUBOW, J. AND FORD ELLIOTT, P.J.E.

JUDGMENT ORDER BY FORD ELLIOTT, P.J.E.: **FILED MARCH 16, 2017**

Alfred Means appeals *pro se* from the July 13, 2016 order dismissing his serial petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

Following a bench trial, appellant was found guilty of first-degree murder, criminal conspiracy, possessing instruments of crime, two counts of robbery, and three counts of aggravated assault.¹ On November 15, 2002, appellant was sentenced to an aggregate term of life imprisonment without the possibility of parole. Appellant filed a timely direct appeal, and this court affirmed the judgment of sentence on February 13, 2004. **See *Commonwealth v. Means*, 849 A.2d 607 (Pa.Super. 2004), *appeal***

¹ 18 Pa.C.S.A. §§ 2502, 903, 907, 3701, and 2702, respectively.

denied, 851 A.2d 142 (Pa. 2004) (unpublished memorandum). On May 28, 2004, our supreme court denied appellant's petition for allowance of appeal.

Id. Appellant did not file a petition for writ of **certiorari** with the United States Supreme Court.

Appellant filed the instant PCRA petition, his third, on March 23, 2016, claiming that his sentence of life imprisonment without the possibility of parole is unconstitutional pursuant to **Miller v. Alabama**, 132 S.Ct. 2455 (2012).² Following the issuance of a Pa.R.Crim.P. 907(1) notice, the PCRA court dismissed appellant's instant petition without a hearing on July 13, 2016.

Appellant's judgment of sentence became final for PCRA purposes on August 26, 2004, when the 90-day period for seeking discretionary review in the United States Supreme Court expired. **See** 42 Pa.C.S.A. § 9545(b)(3). As such, the instant petition is manifestly untimely, unless appellant can plead and prove that one of the three statutory exceptions to the one-year jurisdictional time-bar applies. Appellant claims that he is entitled to be re-sentenced because his sentence is unconstitutional as violative of the Eighth Amendment under **Miller**. (Appellant's brief at 7-15.) However,

² In **Miller**, the Supreme Court recognized a constitutional right for juveniles, holding that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition against 'cruel and unusual punishments.'" **Miller**, 132 S.Ct. at 2460. The Supreme Court recently held that **Miller** applies retroactively. **Montgomery v. Louisiana**, 136 S.Ct. 718, 736 (2016).

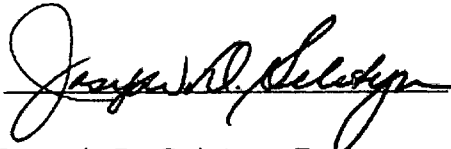
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appellant was **19 years old** at the time he committed the crimes in question, and therefore, **Miller** is inapplicable. **Miller**, 132 S.Ct. at 2460; **see also Commonwealth v. Cintora**, 69 A.3d 759, 764 (Pa.Super. 2013), **appeal denied**, 81 A.3d 75 (Pa. 2013) (rejecting 19 and 22-year-old petitioners' claims as untimely and holding that **Miller** could not "serve as the basis for relief" to invoke the PCRA time-bar exception set forth in Section 9545(b)(1)(iii)).

Accordingly, we discern no error on the part of the PCRA court in dismissing appellant's PCRA petition.

Order affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/16/2017

PROOF OF SERVICE

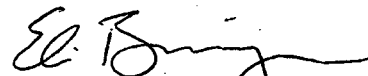
I, Eli Marc Bensignor, Esq., law clerk to the Honorable Gary S. Glazer, hereby certify that I served on August 22, 2016, by first-class mail, postage prepaid, a true and correct copy of the foregoing Opinion upon the following:

Robin Godfrey, Esquire
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Philadelphia, PA 19107-3499

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Houtzdale, PA 16698-1000



Eli Marc Bensignor, Esq.
Law Clerk

APPENDIX "B"

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
v. : CP-51-CR-0100912-1997 (PCRA)
ALFRED E. MEANS, III : CP-51-CR-01006612-1996 (PCRA)

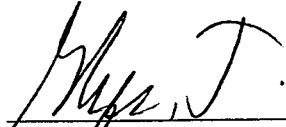
ORDER

AND NOW, this 13th day of July, 2016, pursuant to the Post Conviction Relief Act, 42 Pa. C.S.A. § 9541, et. seq., it is hereby

ORDERED

that following a review of the pleadings and record, the third petition of Alfred E. Means, III for post-conviction relief is hereby **DISMISSED** for lack of merit.

BY THE COURT:



GLAZER, J.

FILED

JUL 13 2016

Appeals/Post Trial
Office of Judicial Records

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

v. :

ALFRED E. MEANS, III :

CP-51-CR-0100912-1997 (PCRA)
CP-51-CR-01006612-1996 (PCRA)

OPINION

GLAZER, J.

July 13, 2016

PROCEDURAL HISTORY AND FACTS

The procedural history and facts of this case were previously set forth in multiple opinions by this court, including ones issued on November 24, 1997, October 26, 2006, and September 20, 2011. Those opinions are incorporated by reference herein.

On October 9, 1997, following a bench trial, defendant, Alfred E. Means, III was convicted of first degree murder, three counts of aggravated assault, two counts of robbery, criminal conspiracy and possession of an instrument of a crime. Defendant's judgment became final on May 13, 2004, ninety days after the Pennsylvania Supreme Court denied allowance of appeal and his ability to file for discretionary review in the Supreme Court of the United States had expired.¹

The instant Post Conviction Relief Act ("PCRA") petition, defendant's third, was filed on March 23, 2016.² On June 14, 2016, a 907 Notice of Intent to Dismiss was mailed to defendant. For the reasons provided below, defendant's petition is dismissed because it lacks merit.

¹ See 42 Pa.C.S.A. §9545(b)(3); U.S. Sup. Ct. Rule 13.

² A copy of the petition was not received in chambers until June 8, 2016.

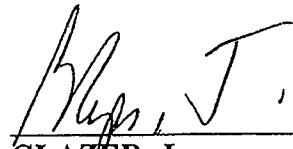
DISCUSSION

In his current petition, defendant attempts to assert a newly-recognized constitutional right based on the United States Supreme Court decision in Miller v. Alabama, wherein the Court held that “mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments.’” 132 S.Ct. 2455, 2460 (2012). While Miller was decided in 2012, it was not clear that it applied to juveniles who were sentenced to life without parole prior to the Miller decision until the Court’s January 25, 2016 opinion in Montgomery v. Louisiana, 136 S.Ct. 718, 744 (2016). Therefore, the defendant’s March 22, 2016 petition meets the 60 day timeliness requirement of 42 Pa.C.S.A. § 9545(b)(2).

Nevertheless, defendant is not entitled to relief because the constitutional right recognized in Miller and Montgomery does not apply to him. The Miller decision applies only to those defendants who were “under the age of 18,” at the time they committed their crime. Miller, 132 S.Ct. at 2460. In his petition, the defendant avers that he was 19 years old at the time he committed the crime. As such, the newly recognized constitutional right for those defendants who were “under the age of 18” at the time they committed their crime is inapplicable to the defendant.

Therefore, the petition is hereby dismissed for lack of merit.

BY THE COURT:


GLAZER, J.

APPENDIX "C"

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

ALFRED MEANS,

Petitioner

No. 163 EAL 2017

Petition for Allowance of Appeal from
the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 22nd day of August, 2017, the Petition for Allowance of Appeal
is **DENIED**.

A True Copy
As Of 8/22/2017

Attest: 
John W. Person Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania