

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

ROLAND BROWN , pro se — PETITIONER  
(Your Name)

VS.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The SUPERIOR COURT OF PENNSYLVANIA  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roland Brown (inmate # mm-3326)  
(Your Name)

1600 Walters Mill Road  
(Address)

Somerset, Pennsylvania 15510  
(City, State, Zip Code)

n/a  
(Phone Number)

### QUESTION(S) PRESENTED

1. Do special and important reasons exist and should writ be granted because petitioner presented a substantial question relating to an abuse of discretion relating to the petitioner's excessive sentence leaving petitioner with a potential life sentence?
2. Do special and important reasons exist and should writ be granted because petitioner's conviction for conspiracy for case CP-51-CR-0013836-2014 should be vacated because it is insufficient as a matter of law due to the fact that there was no conspiracy since there was no agreement with the codefendant, there was no meeting of the minds, and the codefendant did not act as a coconspirator but under duress?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Court of Common Pleas of Philadelphia Trial Division court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was May 12, 2017.  
A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: September 19, 2017, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The same considerations which are involved in imposing a single sentence should also be the basis for determining the appropriateness of consecutive terms of imprisonment rather than concurrent.

It is clear that the court focused on the nature of the crimes rather than the totality of the requirements mandated by Commonwealth v. Riggins, 474 Pa. 115, 377 A.2d 140 (1977) and the Sentencing Code, 42 Pa. C.S.A. § 9722-9725. At § 9725, Total confinement, the Sentencing Code provides:

The court shall impose a sentence of total confinement if, having regard to the nature and circumstances of the crime and the history, character, and condition of the defendant, it is of the opinion that the total confinement of the defendant is necessary because:

- (1) there is undue risk that during a period of probation or partial confinement the defendant will commit a crime;
- (2) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- (3) a lesser sentence will depreciate the seriousness of the crime of the defendant.

Unquestionably the court was justified, under this section, to impose a sentence of total confinement, and pursuant to section 9725, consecutive sentences were also permissible. However, in the language of the statute above, in addition to the nature and circumstances of the crime(s), the court must also consider the history, character and condition of the defendant.

These observations were pertinent as to the need for incarceration but also require a balanced consideration as to the potential for rehabilitation and the minimum sentence feasible to accomplish that result.

42 Pa.C.S. § 9721 (b) that is the protection of the public, gravity of offense in relation to impact on victim and community, rehabilitative needs of defendant and it must impose an individual sentence. It should be the minimum confinement consistent with the gravity of the offense.

Courts are to look, at a minimum, for an indication on the record that the sentencing court understood the suggested sentencing range, 42 Pa.C.S. § 9721 (b). The judge must state of record the factual basis and specific reasons which compelled him to deviate from the guideline range.

See Appendix "D" for § 3553 - Imposition of a Sentence

## STATEMENT OF THE CASE

Petitioner was arrested on the current docketed matters on April 23, 2014 and was charged with, inter alia, numerous counts of Robbery as a felony in the first-degree, Conspiracy to commit same, and related offenses.

On November 24, 2015, Petitioner was adjudicated guilty as to a majority of the above offenses following a bench trial before the Honorable Judge Charles A. Ehrlich.

On April 22, 2016, Judge Ehrlich sentenced Petitioner to an aggregate sentence of 45 to 90 years state incarceration. Notes of Testimony (NT), 4/22/2016, at 29.

Petitioner was sentenced to four terms of 10 to 20 years mandatory minimum, to run consecutively and a term of 5 to 10 years for Conspiracy to run consecutive.

At sentencing, a post-sentence Motion was presented orally in relation to discretionary aspects of sentencing and was denied. (NT), 4/22/2016, at 31-32.

The trial court filed its Opinion on September 21, 2016. APPENDIX ("App") B.

The Superior Court filed its Opinion and Order of Affirmance on May 12, 2017. App. A.

The Pennsylvania Supreme court filed an Order for Denial of allowance of appeal on September 19, 2017. App. C.

## Factual History:

Petitioner was convicted of robbing Erin Norton on August 11, 2013 in the area of 1200 Leopard Street in Philadelphia. NT, 11/23/2015 at 55-58 (CP-51-CR-0013836-2014)

Petitioner was convicted of robbing Jennifer Gallo on August 13, 2013 at 6600 Castor Avenue in Philadelphia. NT, 11/23/2015, at 135 (CP-51-CR-0013828-2014)

Petitioner was convicted of robbing Tysheia Parker and conspiracy to commit same on August 20, 2013, at C and Loudon Streets in Philadelphia NT, 11/23/2015, at 31-32 (CP-51-CR-0013834-2014)

Petitioner was convicted of stealing the car of Richmond Jackson III, on August 22, 2013 from a 7-Eleven store. NT, 11/23/2015, at 140-141 (CP-51-CR-0013829-2014)

Petitioner was convicted of robbing Sam Chen on August 22, 2013 in the area of 1100 Knorr Street in Philadelphia. NT, 11/23/2015, at 51, 53 (CP-51-CR-0013830-2014)

Petitioner was convicted of robbing Richard Kauffman and Megan Matuzak on September 2, 2013, in the area of Front and Girard Avenue in Philadelphia. NT, 11/23/2015, at 71-74 (CP-51-CR-0013837-2014)

Petitioner was convicted of robbing Erin Burke and William Conroy on September 16, 2013 in the area of 7000 Bross Avenue in Philadelphia NT, 11/24/2015, at 32-36 (CP-51-CR-0013831-2014).

## REASONS FOR GRANTING THE PETITION

A. Special and important reasons exist and writ should be granted because petitioner presented a substantial question relating to an abuse of discretion relating to the petitioners excessive sentence in addition to the cumulative life sentence. Special and important reasons exist and writ should be granted to establish sentencing standards when individuals, such as petitioner, are sentenced to effective life sentences for non-homicide crimes. Petitioner argues that the trial court's sentencing was manifestly excessive in that it sentenced petitioner to an aggregate sentence of 45 to 90 years when petitioner did not use a firearm, did not cause any serious injuries, has a work history, takes care of his children with his wife, has family support, and the sentence does not properly show propensity for rehabilitation with the protection of the community [NT, 4/22/2016, at 31-32 (oral post-sentence Motion for Reconsideration of Sentence.)]

This sentence is inconsistent with 42 Pa.C.S.A. 9721 (b) and contrary to the fundamental norms which underlie the sentencing process generally.

The sentencing court did not properly explain how the sentence imposed was consistent with the protection of the public or how the sentence would serve Petitioner's rehabilitative needs.

Petitioner's prior record score was a 5, and the gravity score for F1 Robbery was 10. This meant that the guideline sentence was 78 to 90 months +/- 12 for when a deadly weapon was used. [NT, 4/22/2016, at 5-6].

Petitioner also faced a mandatory sentence of 10 to 20 years for a second strike conviction. However, the consecutive running of the strike offenses, along with Conspiracy sentences, was excessive in that it constitutes an effective life sentence without any justification. The life sentence imposed is excessive and unreasonable and shocks the conscience.

In this Commonwealth, discretionary aspects of sentencing are challengeable. See, e.g. Commonwealth v. Dodge, 859 A.2d 771 (Pa. Super. 2004);

Commonwealth v. Mouzon, 812 A.2d 617 (Pa.2002). Even when a guideline sentence is imposed, a claim alleging that the application of the guidelines is clearly unreasonable under the circumstances of the case, requires that the sentence be vacated and the matter remanded for resentencing. 42 Pa.C.S.A. §. 9781 (c)(2); Mouzon, 812 A.2d at 625.

Generally, sentences must be reviewed to "ensure not only a fair and impartial sentence under the circumstances, but also to protect against grossly disparate treatment of like offenders throughout the Commonwealth." Commonwealth v. Smart, 564 A.2d 512, 514 (Pa. Super. 1989). It is not enough for sentencing courts to give reasons for sentencing outside the guidelines; instead, sentencing courts should fashion sentences in light of the factors set out in the guidelines and the purposes of the penal system. Dodge, 859 A.2d at 777.

In turn, the purpose of the penal system is "protection of society, general deterrence, individual deterrence, rehabilitation and retribution (punishment, vengeance, desserts)." Id., n.6 (quoting Commonwealth v. Walls, 846 A.2d 152 (Pa. Super. 2004)).

With regard to running sentences consecutively, as seen in petitioner's case, a determination must be made as to whether consecutive sentences within or outside of the guidelines range are unreasonable. Dodge, 859 A.2d at 778.

In assessing unreasonableness, one must consider the circumstances of the case or cases as well as petitioner's background. Commonwealth vs. Moore, 617 A.2d 8 (Pa. Super. 1992).

The court was justified, under section § 9725, to impose a sentence of total confinement, consecutive sentences were also permissible, however, in the language of the statute, in addition to the nature and circumstances of the crimes, the court must also consider the history, character and condition of the defendant. It was also necessary to weigh the effect of a cumulative minimum sentence. The same considerations which are involved in imposing a single sentence should also be the basis for determining the appropriateness of consecutive terms of imprisonment rather than concurrent. Commonwealth v. S. Simpson, 510 A.2d 760 (Pa. Super. 1986)

Finally, in assessing the reasonableness of a sentence, a reviewing court must consider the maximum length of a sentence rather than the earliest possible parole date. Commonwealth v. Coulverson, 2011 Pa. Super 255, at 18 (2011).

In addition, the age of the convict must be assessed in order to determine whether the sentence and the maximum sentence date is suitable given a convict's age and whether it is legitimate to impose an effective life sentence in light of these considerations.

With regard to Petitioner, the sentencing court imposed an effective life sentence on petitioner because he would be 80 years old at his minimum date and 125 years old at his maximum, the date that must be considered. *Id.* (holding that when assessing the reasonableness of a sentence, a reviewing court must consider the maximum length of a sentence rather than the earliest possible parole date): cf. Dodge, 859 A.2d 771 (holding that it can be an abuse of discretion to sentence a defendant to consecutive, statutory maximum sentences for non-violent property crimes) (vacated on other grounds).

The sentencing court failed to state any adequate reason for the lengthy sentence, the means by which the sentence would protect the public, and how it would serve to meet petitioner's rehabilitative needs. See Walls, 846 A.2d 152 (Pa. Super. 2004). The trial court mentions protection not rehabilitation and the court's summary is not enough to justify the excessive life sentence imposed. See [NT, 4/22/2016, at 26-27.] Petitioner was given no consideration for his apology and his plea for mercy [NT, 4/22/2016, at 24-26].

The Superior Court notes that the trial court did not specifically address Petitioner's rehabilitative needs. App. A, at 9. But the issue of life sentences for non-homicide crimes is not addressed and the appropriate retributive aspects of sentencing are not addressed in a substantive manner.

Of course Petitioner's crimes were egregious in nature, but the effective life sentence imposed is excessive and fails to consider petitioner's background and the unfortunate frequency of such crimes in Philadelphia and elsewhere.

Courts must consider the protection of society and the criminal justice system cannot solve all of society's or petitioner's ills. Nevertheless, the trial court did not fashion a sentence that was directed towards petitioner's

rehabilitative needs. It is unreasonable that Petitioner was sentenced to such a degree when there were no firearms used, limited or no injury to victims, and family support for Petitioner.

Therefore, writ of certiorari should be granted and this matter should ultimately be remanded for sentencing.

B. Special and important reasons exist and writ should be granted because petitioner's conviction for Conspiracy for case CP-51-CR-0013836-2014 should be vacated because it is insufficient as a matter of law due to the fact that there was no conspiracy since there was no agreement with the codefendant, there was no meeting of minds, and the codefendant did not act as a coconspirator but under duress.

Special and important reasons exist and writ should be granted in order to distinguish Conspiracy from duress.

With regard to case CP-51-CR-0013836-2014, codefendant asserts she was threatened by petitioner so that she, Mary Jeffries, would accompany him on the Robbery. [NT, 11/23/2015, at 129-130]. There was no meeting of the minds, only duress. As such there was no conspiracy.

Our legislature defines criminal conspiracy as follows:

(a) Conspiracy-- a person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(b) Scope of conspiratorial relationship-- If a person guilty of conspiracy, as defined by subsection (a) of this section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other

person or persons, to commit such crime whether or not he knows their identity.

(e) Overt act -- No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

(g) Duration of conspiracy -- For purposes of 42 Pa.C.S. §5552(d) (relating to commission of offense):

(1) conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired;

(2) such abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and

(3) if any individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

All theories of vicarious responsibility for criminal conduct require the existence of a shared criminal intent. Commonwealth v. Bachert, 412 A.2d 580, 583 (Pa. Super. 1979). The nexus which renders all members of a criminal conspiracy responsible for the acts of any of its members is the unlawful agreement. Commonwealth v. Cox, 353 A.2d 844, 846 (Pa. 1976); Commonwealth v. Yobbagy, 188 A.2d 750 (Pa. 1963). The law in Pennsylvania is settled that each conspirator is criminally responsible for the actions of his co-conspirator, provided it is accomplished in the furtherance of the common design. Commonwealth v. Robinson, 505 A.2d 997, 1001 (Pa. Super. 1986).

With regard to case CP-51-CR-0013836-2014, there was no shared intent or common design between Petitioner and his codefendant.

There was duress only and duress does not encompass the requisite meeting of the minds for conspiracy. The Superior Court implies that petitioner has no standing to raise duress argument. App. A, at 12. But this cannot be correct because conspiracy requires a meeting of minds of two people and is required of both petitioner and Jeffries in the present context.

Therefore, writ of certiorari should be granted and the sentence of 5 to 10 years as of case CP-51-CR-0013836-2014 should be vacated.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

W.D. Brown

Date: March 15, 2018