

The Only Statutorily Authorized and Individualized
Sentence for Second Degree Murder since 1974

In accordance with these new sentencing statutes enacted in response to Furman, courts were required by 18 Pa.C.S. §1102(b), 42 Pa.C.S. §9721(a)(4), and 42 Pa.C.S. §9756(a) to specify life imprisonment as the mandatory maximum period of total confinement authorized by law for cases of second degree murder and impose a required individualized minimum sentence of total confinement not exceeding one-half of the maximum sentence of life imposed with the right to parole in accordance with the unambiguous mandates of 42 Pa.C.S. §9721(e) and 42 Pa.C.S. §9756(b). This is all so clear and simple. There is nothing to be debated. Nothing.

This is especially so since, unlike 42 Pa.C.S. §9714 for second and subsequent offences or 18 Pa.C.S. §3301 for arson murder, 18 Pa.C.S. §1102(b) for second degree murder does not contain a without parole provision. Also, under "Prohibition of parole", the sentencing provisions of 42 Pa.C.S. §9756(c) drive this point home when they clearly and concisely "Except" only cases of first degree murder, summary offences, and other minor cases from having minimum sentences imposed with the right to parole. To top all of this off, 1 Pa.C.S. §1924 plainly mandates, "Exceptions expressed in a statute shall be construed to exclude all others", so cases of second degree murder were mandatorily excluded from this "Prohibition of parole" provision at 42 Pa.C.S. §9756(c) in exactly the same manner and just as certainly as cases of third degree murder, robbery, and burglary were excluded. Persons convicted of a second degree murder are just as entitled to the required minimum sentence with the right to parole as every other person sentenced under statutes that do not include a without parole provision. It's just this simple.

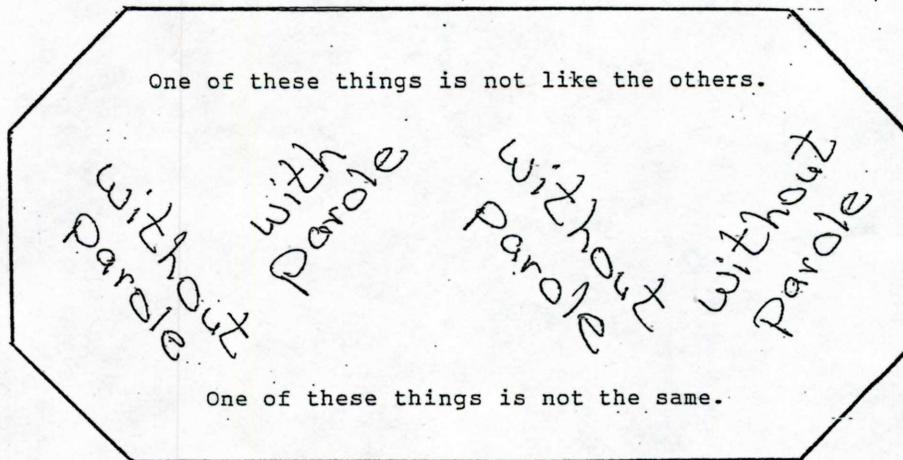
McDonalds

McDonalds and Sesame Street are as American as hot dogs and apple pie, so please bear with me as I take you to McDonalds and Sesame Street. "Two all beef patties, special sauce, lettuce, cheese, pickles, onions on a sesame seed bun." Do you remember this slogan? More importantly, if you get a Big Mac at McDonalds, will it come with onions or without onions? According to their slogan, a Big Mac naturally comes with onions. The only way to get one without onions is to order it without onions.

Likewise, the only way to get a sentence without parole is to order it without parole. According to our laws, a maximum sentence of life imprisonment for second degree murder naturally comes with parole (18 Pa.C.S. §1102(b), 42 Pa.C.S. §9721(a)(4)(b)(e), and 42 Pa.C.S. §9756(a)(b)) unlike sentences to life imprisonment for first degree murder (18 Pa.C.S. §1102(a) and 42 Pa.C.S. §9756(a)(b)(c)), arson murder (18 Pa.C.S. §3301), or a second and subsequent offence (42 Pa.C.S. §9714) which were all authorized and ordered to be without parole albeit mandatory only in cases of arson murder. This is all so very plain and simple.

Sesame Street

On Sesame Street, this same point might be illustrated in the following way.



A sentence of life imprisonment with parole for the lesser offence of second degree murder is not like the other sentences of life imprisonment "without parole" for first degree murder, arson murder, or a second and subsequent offence. It is not the same. It's just this simple.

The Three Statutorily Authorized and Individualized Sentences for First Degree Murder since 1974

In accordance with the requirements of these new sentencing statutes enacted in response to Furman, courts were authorized by 18 Pa.C.S. §1102(a), 42 Pa.C.S. §9711(death penalty), 42 Pa.C.S. §9721(a)(4)(b), and 42 Pa.C.S. §9756(a)(b)(c) to specify a sentence to (1) death, (2) life imprisonment without the right to parole and therefore without imposing a minimum sentence, or (3) life imprisonment with the right to parole and therefore with a minimum sentence imposed in cases of first degree murder.

The use of the word "may" instead of shall by our General Assembly at 42 Pa.C.S. §9756(c) put these three options on the table for cases of first degree murder in response to Furman.

Also, when a jury does not return a verdict of death, life imprisonment with the right to parole and therefore with a minimum sentence imposed not exceeding one-half of the maximum sentence of life imposed is now mandatory for cases of first degree murder in accordance with 42 Pa.C.S. §9721(b) and 42 Pa.C.S. §9756(b) since the "Prohibition of parole" provision at 42 Pa.C.S. §9756(c) for first degree murder was removed in 2000.

However, since the enactment of 42 Pa.C.S. §9714 in 1982, anyone convicted of a first or second degree murder may now be sentenced to life imprisonment without the right to parole if that conviction is for a third or subsequent crime of violence.

Forget the Pudding
The Proof is in Arson Murder

In the early 1980's, after some first responders tragically died battling fires set by arsonists, the same lawmakers who passed §2502, §1102, §9721, and §9756 back in 1974 were joined by new members of our General Assembly in enacting 18 Pa.C.S. §3301 in 1982 to enhance the penalty for non-capital first and second degree arson murders to mandatory life imprisonment without the right to parole. Now, please ask yourself, how on earth was this an enhancement if the penalty for all non-capital first and second degree murders was already mandatory life imprisonment without the right to parole? It's impossible. As I will show, our cruel courts have been obstructing justice with their tyrannical tripe, pretentious poppycock, and barefaced lies in the patently erroneous Castle Court decision and its progeny.

Some of our legislators are too harsh, but they're not a bunch of nincompoops. Do you recall our lawmakers enhancing the penalty for third degree murder? Did they enhance it from a maximum of 20 years to a maximum of 20 years? Absolutely not. That would have been utterly ridiculous. It wouldn't have been an enhancement. Although harsh, our lawmakers actually enhanced the penalty for third degree murder from 20 years to 40 years.

Likewise, the one and only way a mandatory sentence to life imprisonment **without** the right to parole for non-capital first and second degree arson murders could possibly be an enhancement is if 18 Pa.C.S. §1102 already authorized the penalty of life imprisonment **with** the right to parole for all other non-capital first and second degree murders. In accordance with the clear and concise sentencing requirements of 18 Pa.C.S. §1102, 42 Pa.C.S. §9721, and 42 Pa.C.S. §9756, this has been the authorized and mandatory penalty for second degree murder since 1974 and one of the authorized penalties for first degree murder since 1974 along with death and life imprisonment without the right to parole.

In cases of second degree murder since 1974, 18 Pa.C.S. §1102(b), 42 Pa.C.S. §9721(a)(4)(b), and 42 Pa.C.S. §9756(a)(b) taken together required our courts to (a) specify the mandatory maximum period of total confinement to be life imprisonment and (b) impose the mandatory individualized minimum sentence of confinement not exceeding one-half of the maximum sentence of life imposed with the right to parole. It's just that simple.

In cases of non-capital first degree murder since 1974, 18 Pa.C.S. §1102(a), 42 Pa.C.S. §9721(a)(4)(b), and the use of the word "may" in (c) of 42 Pa.C.S. §9756(a)(b)(c) gave our courts discretionary authorization to (a) specify the mandatory maximum sentence of life imprisonment **without** the right to parole and therefore without imposing a minimum sentence or (b) specify the mandatory maximum sentence of life imprisonment **with** the right to parole and therefore with a minimum sentence imposed just as certainly as it gave them discretionary authorization to impose a maximum sentence with or without the right to parole and therefore with or without imposing a minimum sentence in summary offences and other minor cases. It's just this simple.

Individualized Indefinite Sentences

Ever since the enactment of 19 P.S. §1057 over a century ago in 1911, our sentencing scheme here in Pennsylvania has mandated individualized indefinite sentences consisting of both a definite maximum term and a definite minimum term of total confinement with the right to parole as our General Assembly reiterated in 1974 by enacting 42 Pa.C.S. §9756(a)(b).

Since 42 Pa.C.S. §9721(e) also requires the imposition of a definite maximum term and a definite minimum term of total confinement, our lawmakers actually doubled-down on this mandate with 42 Pa.C.S. §9756(a)(b) making the with parole intent of these two sentencing statutes all the more certain. So, since 1974, the one and only exception to this twice-repeated and long-standing rule of law for the imposition of both a maximum and minimum term of confinement is when an optional or mandatory without parole provision exists in a statute for a given offence prohibiting the imposition of the otherwise mandatory individualized minimum sentence.

Without Parole Provisions

Where no statutory without parole provision exists, a minimum sentence is mandated by both 42 Pa.C.S. §9756(b) and 42 Pa.C.S. §9721(b)(e). The mandate of 42 Pa.C.S. §9721(b) for the court to consider "the rehabilitative needs of the defendant" also shows clear legislative intent for the imposition of an individualized minimum sentence with the right to parole. It "shall" be imposed. There simply is no getting around the unambiguous mandates of these tandem statutes enacted in response to Furman. There is just no getting around the due process requirements of our U.S. Constitution for fair notice and individualized sentencing. Disregarding statutory requirements and constitutional mandates as if they were mere suggestions courts need not obey to cruelly and arbitrarily turn all life with parole sentences into life without parole sentences from the bench is as unconstitutional as a 37 dollar bill is fake. Only our General Assembly can legislate without parole provisions. Only lawmakers can make laws.

If anyone, including our courts, thinks any offence should contain a without parole provision prohibiting the imposition of the required minimum sentence, they may express those concerns to Members of our General Assembly. Nobody else, not even our courts, may legislate. This is just basic constitutional law.

Our elected leaders are individually and collectively bound by duty to check this cruel and unconstitutional imbalance after taking an Oath of Office and swearing to uphold the Constitution and duly enacted laws of our Commonwealth. But, where are the true American patriots in our Executive and Legislative branches of government with the courage and moral fortitude to do their duty by checking this unconstitutional imbalance created by our cruel Judicial branch obstructing justice with such pretentious nonsense and tyrannically usurping legislative powers? Again, this isn't a miscarriage of justice. It's an abortion.

The Castle Court Decision

Our repeatedly-rebuked-for-cruelty courts have lost all credibility and legitimacy on this issue by deviating from reality and our rule of law since 1974 when imposing sentences for non-capital first and second degree murders. For Pennsylvania lifers whose very lives depend on the truth, this is like being caught up in an incredibly eerie episode of The Twilight Zone where everyone insists our earth is flat and at the center of our universe. It's so unbelievable.

Incredibly, Pennsylvania courts actually tried to justify the unconstitutional cruelty of their one-size-fits-all sentence of mandatory life imprisonment without the possibility of parole with the Castle Court decision. Incredibly, at the behest of our Parole Board and based on their barefaced lies, the Castle Court ruled life imprisonment is a "minimum" sentence and that any person sentenced to life imprisonment "will never be eligible for parole". This tyrannical tripe and pretentious poppycock is as incredible as all the tall tales ever told about Santa Claus and the Easter Bunny. Still, this incredible and cruel nonsense has unjustly kept Pennsylvania lifers in prison without parole reviews for decades on end.

The Castle Court handed down this incredibly cruel, patently erroneous, wholly untenable, and clearly result-oriented decision knowing full well life imprisonment is a "maximum" sentence and that our Parole Board was supervising hundreds of lifers on parole at that very moment as they are right this very minute despite their maximum sentences of life imprisonment. It's a wonder some folks, including judges, didn't get arrested right then and there for obstructing justice with such barefaced lies.---Castle v. Pennsylvania Board of Probation and Parole, 554 A.2d 625 (Pa. Commonwealth 1989).

Our United States Supreme Court's 2012 decision in Miller at least forced Pennsylvania courts to abandon the Castle Court's incredibly cruel, patently erroneous, and wholly untenable result-oriented decision. Pennsylvania courts want so badly to sweep the cruel injustice of their tyrannical tripe, pretentious poppycock, and barefaced lies under the rug, but I'm here to help make sure that never happens. Never.

Pennsylvania's unconscionably cruel treatment of over 5,000 lifers, both juveniles and adults, continues to this very day. It must be fully exposed. Here in these United States where we have all repeatedly pledged "...justice for all" to one another as fellow Americans, Pennsylvania courts must not be allowed to so inhumanely, arbitrarily, unstatutorily, and unconstitutionally strip thousands of Pennsylvania citizens of life, liberty, and the pursuit of happiness with incredible decisions that forever deny them all the fundamental fairness of justice. This wholly untenable, incredibly cruel, and unconscionable abortion of justice must be redressed.

In our Declaration of Independence, our forefathers famously wrote, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness...". Obviously inherent "among these" "unalienable Rights" is the inalienable right to justice and the human dignity-derived right to redemption, and this is especially so when our constitutions and the duly enacted laws of Pennsylvania have provided for both by authorizing individualized sentences to life imprisonment with the right to parole reviews for cases of non-capital first and second degree murder since 1974. The truth is so plain and simple.

Contrary to the incredible Castle Court decision, Article 1, Section 14 of our own Pennsylvania Constitution designates "life imprisonment" as a "maximum", not minimum, sentence.

Contrary to the Castle Court decision, from 18 Pa.C.S. §1102 and §1102.1 through 18 Pa.C.S. §3121 and §3123 to 42 Pa.C.S. §5701 and §9720.2, our own statutory laws consistently designate "life imprisonment" as a "maximum" sentence in full accordance with our Pennsylvania Constitution.

The Castle Court decision brings to mind a picture of two young children sitting on the floor with their toys appearing prouder than a couple of peacocks after one child convinced the other to pound a square peg into a round hole. With their ruling in Castle, our Commonwealth Court also pounded a square peg into a round hole at the behest of our Parole Board based on barefaced lies which brought smug smiles to their faces, but that wasn't so cute. It was downright ugly, tyrannical, arbitrary, inexcusable, and unconstitutional cruelty.

Our own Constitution and statutory sentencing laws on life imprisonment being a maximum sentence are as clear and concise as a 55 mph speed limit sign. Now, if anyone thinks a 55 mph speed limit sign is ambiguous and can be interpreted as a minimum speed limit, let them go 100 mph down that road and then try explaining their position to the State Trooper who pulls them over. It is an untenable position. Our courts are still in such an untenable position without any credibility or legitimacy on this issue.

The con job is over! The gig is up! Pennsylvania courts have unwittingly told on themselves. Since our High Court's 2012 decision in Miller, everyone, especially including judges, in every appeal dealing with life imprisonment has naturally, correctly, and repeatedly referred to life imprisonment as a maximum sentence and nothing other than a maximum sentence. In other words, the incredibly cruel, patently erroneous, wholly untenable, unstatutory, unconstitutional, and result-oriented Castle Court decision has finally been exposed along with its progeny as nothing but tyrannical tripe, pretentious poppycock, and barefaced lies. Reality is sooo refreshing.

Our Rule of Law

What should Pennsylvania have done after being so soundly rebuked again by our United States Supreme Court's 2012 Miller decision? Although it's apparently quite a novel idea here in Pennsylvania where our courts have been repeatedly rebuked for unconstitutional cruelty, we really should have shown remorse and remembered we're governed by the rule of law here in these United States of America. Then, we should have started obeying our duly enacted laws in accordance with constitutional mandates as we should have been doing all along since 1974. It's that simple.

According to our rule of law established in *Com. v. Ulbrick*, 462 Pa. 257, 341 A.2d 69 (1975), in every juvenile and adult case of non-capital first and second degree murder since 1974 wherein the court failed to state the twice-mandated minimum sentence of confinement not exceeding one-half of the maximum sentence of life imposed in accordance with 42 Pa.C.S. §9721(b)(e) and 42 Pa.C.S. §9756(b), a minimum sentence of one day is presumed and implied. It's up to one-half, or it's one day. It's just that simple. This means every juvenile sentenced to life imprisonment prior to the 2012 Miller decision who has since been resentenced to anything greater than one day to life has experienced a cruel and unconstitutional enhancement of their punishment. Again, it's just this plain and simple.

In response to our High Court's 2012 Miller decision which helped expose the biggest, cruelest, and most arbitrary injustice in Pennsylvania over the past half-century, our common pleas courts should have also started sentencing juveniles and adults convicted on non-capital first and second degree murder in accordance with the remarkably firm but fair new sentencing statutes our 1974 General Assembly enacted in response to Furman at 42 Pa.C.S. §9721(b)(e), and 42 Pa.C.S. §9756(b) which dually mandate minimum sentences not exceeding one-half of the maximum sentence of life imposed with the right to parole in cases of second degree murder and even in all cases of first degree murder now since the "Prohibition of parole" provision for first degree murder was removed from 42 Pa.C.S. §9756(c) in 2000. It really is just this simple. I'm merely pointing out the obvious.

However, our repeatedly-rebuked-for-cruelty courts didn't feel any remorse, apologize for their unconstitutional cruelty, and do their sworn duty to ensure our duly enacted sentencing laws are obeyed in accordance with constitutional mandates. Quite to the contrary, our cruel courts have abused their power, disregarded their sworn duty, usurped legislative power, and obstructed justice by continuing to pound square pegs into round holes while spinning a tangled web of deceit with their wearisome tyrannical tripe, pretentious poppycock, and barefaced lies. It's so sad, but our cruel courts know they're wrong. They know every bit of their deceitful nonsense is easily debunked even by lowly old men like me lacking any law or general college degree, but they're still hell-bent on legislating their one-size-fits-all sentence of life imprisonment without parole from the bench. They're out of control, and they must be checked.