Skeletons Part III ?

Tyranical Tripe

Disingenuous Pennsylvania courts are now abusing their power again by slicing up and severing our duly enacted statutory laws like a Thanksgiving Day turkey to unnecessarily remove the minimum height ceiling at 42 Pa.C.S. §9756(b) as if it were impossible of execution and also cut out the "life imprisonment" exception at 61 Pa.C.S. §6137(a)(1) to ostensibly provide our Parole Board with the power to parole juveniles serving life imprisonment. Why on earth would our courts do any of this when it wasn't at all necessary to severe any statutes for juvenile lifers to be resentenced (one day to life now that the Castle Court decision and its progeny have been thoroughly debunked and discarded) and paroled after serving their minimum sentence? As in Furman, Miller, and Montgomery, the answer is once again unconstitutional cruelty. It's all so plain to see.

Contrary to all the nonsense and lies being spread by our tyranical and arbitrary courts, 61 Pa.C.S. §6137(a)(1) has never prevented our Parole Board from paroling any lifer after the expiration of their minimum sentence. Never. Since the founding of our Parole Board back in 1941, hundreds of lifers have been paroled after having minimum sentences established by Executive clemency through our Board of Pardons. As former Section 21 of our 1941 Parole Act is cited today, if the exception of prisoners "serving life imprisonment" actually deprived our Parole Board of the power to parole these commuted lifers after the expiration of their minimum sentence because they were still serving life imprisonment, none of these lifers would have ever been paroled. If 61 Pa.C.S. §6137(a)(1) actually deprived our Parole Board of the power to parole these commuted lifers, it would have been necessary for our Governors to also establish maximum periods of years to replace their maximum sentences of life imprisonment in order to give our Parole Board the power to parole these commuted lifers. That never happened. Never.

That never happened because it simply was not necessary nor judicious. Regardless of whether a maximum sentence is 100 years, 1,000 years, 1,000,000 years, or life, the exception of those serving life imprisonment at 61 Pa.C.S. §6137(a)(1) has always been superseded by 61 Pa.C.S. §6137(a)(3) which prevails to provide our Parole Board with the power to parole prisoners serving a maximum sentence of life imprisonment after the service of their minimum sentence whether that minimum sentence has been fixed by our Governor through our Board of Pardons or fixed by the court in its sentence as time served, a certain number of years, or one day in accordance with our rule of law in Ulbrick. In this way, hundreds of prisoners sentenced to life imprisonment since 1941 have been granted parole in accordance with 61 Pa.C.S. §6137(a)(3) which unquestionably gives our Parole Board power to parole any prisoner after the expiration of their minimum sentence regardless of their maximum sentence. This is so clear.

Instead of unnecessarily severing statutes in line with their unconstitutional cruelty, our courts simply need to justly abide by our laws as true American patriots would have been doing all along since 1974. It's just that simple.

As our own Superior Court has noted in cases such as Com. v. Simpson, 510 A.2d 760-763 (Pa. Super. 1986) and Com. v. Ruffo, 528 A.2d 43-48 (Pa. Super. 1986), the average time served on a sentence to life imprisonment up into the 1980's was around 15 years. The success rate of these commuted lifers is remarkable. Most of these commuted lifers did so well on parole their maximum sentences of life imprisonment were commuted to time served after about 10 years with the full support of our Parole Board. It's no surprise virtually all of these commuted lifers went on to redeem themselves by living out the rest of their lives as law-abiding, tax-paying, and otherwise contributing members of our society. That's the norm for paroled lifers.

However, it would still not have been judicious to commute their maximum sentences of life imprisonment when establishing minimum sentences for parole. It has been prudent on our part to leave the maximum sentence of life imprisonment undisturbed when commuting lifers because, although it's rare, a few undeserving lifers have slipped through the cracks as they say to commit new and sometimes very serious crimes while on parole. In these rare cases, we do want our Parole Board to retain the authority to recommit such undeserving lifers to prison for the rest of their lives if necessary and not simply until the expiration of some lesser maximum period of years after which they must be released free and clear of all state control. This is all so very simple.

Our Pennsylvania Constitution and statutory laws all fit together nicely like round pegs in round holes as our lawmakers intended. Our sentencing laws for cases of non-capital first and second degree murder are not a bit confounding nor impossible of execution. Our unambiguous sentencing statutes say what they say, mean what they mean, intend what they intend, specify what they specify, and mandate what they mandate in plain English for everyone to easily understand. Confusion and discord has only come from Pennsylvania courts shuffling around, sidestepping, misapplying, misinterpreting, and outrightly disobeying the clear and concise requirements of our very own sentencing statutes and constitutional mandates to always achieve their own arbitrary and cruel without parole result when our legislature expressed no such intention with the new sentencing statutes they enacted for cases of non-capital first and second degree murder back in 1974. Absolutely none whatsoever.

Pretentious Poppycock

Our cruel courts severance of the minimum height ceiling for juveniles was disingenuously benevolent. 42 Pa.C.S. §9756(b) does not mandate a common pleas sentencing court to impose a minimum sentence **exactly** equal to one-half of the maximum sentence of life imposed. It clearly and concisely states a sentencing court shall impose a minimum sentence which "shall not exceed one-half of the maximum sentence imposed." Even without the rule of lenity at 1 Pa.C.S. §1928(b)(1) which our courts are loath to apply to lifers, this requirement is not at all absurd, unreasonable, or impossible of execution. It's as simple as 1, 2, 3 and A, B, C.

Since prisoners sentenced to life imprisonment for first degree murder were serving an average of around 15 years before being granted Executive clemency and parole up through the 1970's under Governors Shafer and Shapp as I've already noted, it would not have been absurd, unreasonable, or impossible for sentencing courts to impose individualized sentences in different cases of non-capital first and second degree murder such as 5, 10, 12, 15, 18, 20, 25, 30, or possibly even up to 35 or 40 years to life in full accordance with 18 Pa.C.S. §1102, 42 Pa.C.S. §9721, and 42 Pa.C.S. §9756. This would not only have been possible, it was unambiguously required by our 1974 General Assembly with the new sentencing statutes they deliberately enacted in direct response to the clear mandates of our United States Supreme Court's 1972 decision in Furman requiring individualized sentencing for everyone in accordance with constitutional equal protection and due process guarantees. It's just this simple.

As a much harsher General Assembly apparently reasoned about 40 years later when enacting 18 Pa.C.S. §1102.1 in response to our United States Supreme Court's 2012 decision in Miller, 35 to 40 years is fairly one-half of a life sentence since most folks generally live to be about 70 or 80 years old. It really is just this simple, and this fact is not at all new. It was recognized around three thousand years ago by the Israelite King named David who wrote at Psalms 90:10 in the Holy Bible, "In themselves the days of our years are seventy years; And if because of special mightiness they are eighty years." This is all so simple.

Of course, since 1974, if a sentencing court deemed 35 or 40 years to life an insufficient punishment after conducting an individualized sentencing safeguard hearing in accordance with equal protection, due process, and the mandates of 18 Pa.C.S. §1102(a), 42 Pa.C.S. §9721, and 42 Pa.C.S. §9756(a)(b)(c), our General Assembly also provided our courts with the discretionary authorization to impose a maximum sentence of life imprisonment without the right to parole and therefore without imposing a minimum sentence in the worst cases of non-capital first degree murder. Like 18 Pa.C.S. §1102.1 for juveniles convicted of first degree murder since 2012, our sentencing statutes between 1974 and 2000 are as plain as day on this point.

61 Pa.C.S. §6137(a)(1) does prohibit our Parole Board from paroling such prisoners sentenced to death or life imprisonment without the right to parole since they obviously don't have a minimum sentence. However, it does not prohibit our Parole Board from paroling prisoners sentenced to life imprisonment with the right to parole and therefore with a minimum sentence imposed. In accordance with our rules of statutory construction at 1 Pa.C.S. §1934, 61 Pa.C.S. §6137(a)(1) has always been superseded by 61 Pa.C.S. §6137(a)(3) which prevails to provide our Parole Board with the power to parole prisoners serving a maximum sentence of life imprisonment after the service of their minimum sentence whether that minimum sentence has been fixed by our Governor through our Board of Pardons or fixed by the court in its sentence as time served, a certain number of years, or one day in accordance with our rule of law in Ulbrick. It's so simple.

Now that the tyranical tripe, pretentious poppycock, and barefaced lies of the cruel, patently erroneous, and wholly untenable Castle Court decision have been thoroughly debunked and shown to be an incredible departure from reality and our rule of law, how are Pennsylvania's repeatedly-rebuked-for-cruelty courts now trying to justify their lawless legislation from the bench?

More Malarkey

Incredibly, despite the clear and concise requirements of the new sentencing statutes our 1974 General Assembly deliberately enacted in direct response to the mandates of Furman, our tyranical courts have ruled our General Assembly never intended for anyone being sentenced to life imprisonment to have a minimum sentence imposed with the right to parole. To the contrary, our tyranical courts have incredibly ruled our 1974 General Assembly intended, authorized, and directed our common pleas courts to use the administrative parole, not penal, statute at 61 Pa.C.S. §6137(a)(1) to impose the one-size-fits-all sentence of mandatory life imprisonment without the right to parole upon everyone convicted of non-capital first and second degree murder. When our cruel courts insist on spinning such an incredible and tangled web of deceit, it really does get tiresome to keep on debunking their tyranical tripe, pretentious poppycock, and barefaced lies.

As our courts have so often noted in cases such as Com. v. Shiffler, 583 Pa. 478, 879 A.2d 185, 190-198 (Pa. 2005), penal statutes are always to be construed strictly, and any ambiguity is to be interpreted in favor of the offender in accordance with our rule of lenity at 1 Pa.C.S. §1928(b)(1). However, when it comes to imposing sentences for non-capital first and second degree murder, Pennsylvania courts have incredibly ruled our lawmakers intended, authorized, and directed our common pleas courts to disregard the unambiguous sentencing requirements of our penal statutes at 18 Pa.C.S. §1102, 42 Pa.C.S. §9721, and 42 Pa.C.S. §9756 and discharge their sentencing obligations in accordance with the administrative parole statute at 61 Pa.C.S. §6137(a)(1). This is incredible. Simply incredible.

"When the words of a statute are clear and free from all ambiguity, the letter is not to be disregarded under the pretext of pursuing its spirit." (1 Pa.C.S. §1921(b)). Incredibly, our Pennsylvania courts have decided this simple rule of statutory construction applies to the administrative parole statute at 61 Pa.C.S. §6137(a)(1) rather than the perfectly clear and concise requirements of our duly enacted penal sentencing statutes at 18 Pa.C.S. §1102, 42 Pa.C.S. §9721, and 42 Pa.C.S. §9756 thereby mandating common pleas courts to impose the one-size-fits-all sentence of life imprisonment without the right to parole upon all persons convicted of non-capital first and second degree murder since 1974. What an incredible pretext. What an utterly absurd, arbitrary, malicious, and meritless misapplication and misinterpretation of law. This is such a departure from the truth, reality, and our rule of law as to be a textbook example of putting the cart before the horse.

Administrative parole statutes in the Executive Branch of state government simply do not apply until **after** a person is duly sentenced in accordance with the sentencing statutes of our penal code in the Judicial Branch of government. This is all so very basic and simple. What our courts have done is like someone wearing their socks and underwear over their shoes, pants, and shirt. If you saw someone dressed like that, wouldn't you wonder if they were on drugs or suffering from some mental disorder?

Just like it's a mistake to put the cart before the horse, 61 Pa.C.S. §6137(a)(1) simply does not apply until **after** a person is sentenced. 61 Pa.C.S. §6137(a)(1) is an administrative parole statute, not a sentencing statute, and it only applies to persons convicted of first degree murder, arson murder, or a second and subsequent offence **after** sentencing since they are the only ones sentenced to death or life imprisonment without parole under statutes containing without parole provisions prohibiting the imposition of the otherwise required individualized minimum sentence necessary for parole. It's just that simple.

Also, the parole papers of each and every one of the hundreds of lifers paroled since 1941 clearly show they are still serving a maximum sentence of "life". If 61 Pa.C.S. §6137(a)(3) did not supersede 61 Pa.C.S. §6137(a)(1) in accordance with 1 Pa.C.S. §1934 and prevail to provide our Parole Board with the power to parole prisoners with a maximum sentence of life imprisonment after the expiration of their minimum sentence then, as I'll say again, our Parole Board couldn't possibly be supervising even one lifer on parole let alone the hundreds of lifers under their supervision at this very moment **and in the past since 1941.** It's just that simple. All arguments to the contrary by our incredibly cruel and arbitrary courts are simply more meritless malarkey like their now debunked argument about life imprisonment being a minimum sentence.

Pennsylvania courts have lost all credibility and legitimacy on this issue by insisting life with parole means life without parole with their tyranical tripe, pretentious poppycock, and barefaced lies. They would have a better chance of convincing scientists the earth is at the center of our universe by insisting the sun revolves around us each day, and the chances of that happening are about the same as a speeding motorist convincing a State Trooper 55 mph speed limit signs designate minimum speed limits.

Cruelty Concern

Pennsylvania was soundly rebuked for unconstitutional cruelty by our United States Supreme Court's 1972 Furman decision. Our practice of automatically imposing the extreme and ultimate sentences of death or life imprisonment without the possibility of parole outside of our constitutional boundaries for equal protection and the due process of fair notice and individualized sentencing utterly failed the proportionality test and was declared to be cruel, unusual, and forbidden punishment.

More specifically, our practice of automatically imposing the extreme and ultimate sentences of death or life imprisonment without the right to parole upon individuals who accidentally, unintentionally, or otherwise inadvertently caused the death of a fellow human being during the course of a felony along with getaway drivers, lookouts, and other less morally culpable accomplices who didn't actually kill anyone themselves, yes, our practice of automatically imposing these extreme and ultimate sentences upon these less serious offenders in the same manner and with the same certainly as we imposed these extreme and ultimate sentences upon contract killers, mass murderers, and serial killers was a major cruelty concern for our legislature when deliberately enacting constitutionally sound new sentencing statutes in direct response to the mandates of Furman. The unconstitutional nature of mandatory sentences to death or life imprisonment without the possibility of parole tossed moral culpability right out the window and automatically rejected any likelihood of rehabilitation by mandatorily eliminating any possibility of parole. Such disregard of blameworthiness and the automatic extinction of hope deprived individuals of their basic human rights to justice and the dignity of redemption without even a nod to their constitutional rights to due process and equal protection. So, what did our General Assembly do about this major cruelty concern back in 1974?

Life With Parole Sentences

While our legislature intentionally retained the extreme and ultimate sentences of death or life imprisonment without the right to parole for the worst cases of first degree murder by enacting 18 Pa.C.S. §2502(a), 18 Pa.C.S. §1102(a), 42 Pa.C.S. §9711, 42 Pa.C.S. §9721, and 42 Pa.C.S. §9756 in accordance with the mandates of Furman, our General Assembly deliberately put the option of life imprisonment with the right to parole on the table for less morally culpable individuals convicted of first degree murder by using the word "may" instead of shall at 42 Pa.C.S. §9756(c). Additionally, our lawmakers intentionally removed felony murder from the greater offence of first degree murder in direct response to the mandates of Furman, deliberately relegated it to the lesser offence of second degree murder with 18 Pa.C.S. §2502(b), intentionally set the maximum period of total confinement for the lesser but still serious offence of second degree murder at life imprisonment with 18 Pa.C.S. §1102(b), and deliberately mandated an individualized minimum sentence be imposed not exceeding one-half of the maximum sentence of life imposed with the right to parole with 42 Pa.C.S. §9721 and 42 Pa.C.S. §9756(a)(b). On top of all this, just in case any other statute in existence could possibly be construed as being at all inconsistent with the establishment of life with parole sentences for second degree murder and even some cases of first degree murder, our 1974 General Assembly made sure their intent was clear by enacting 42 Pa.C.S. §9701 which states, "All acts and parts of acts are repealed in so far as they are inconsistent herewith." Well, heavens to Betsy! Do you really think they did all of this by mistake?

The intent of our General Assembly to establish life with the right to parole sentences in response to Furman is unmistakably perceived from the unambiguous mandates of these outstanding new sentencing laws they enacted in 1974. It's as plain as the intent perceived from a 55 mph speed limit sign. As young folks nowadays would say, this is a no-brainer.

Also, there is nothing soft on crime about the new sentencing statutes our General Assembly enacted in direct response to Furman back in 1974. Absolutely nothing. There is nothing soft on crime about death, life imprisonment without the possibility of parole, or life imprisonment with the possibility of parole. The least extreme of these sentences is life imprisonment with the right to parole reviews, and it was unquestionably severe enough to keep Charles Manson of Helter Skelter fame in California incarcerated with numerous parole denials until he recently died behind bars after serving about 50 years.

These new sentencing statutes enacted by our General Assembly in response to Furman back in 1974 are remarkably firm but fair. On the one hand, setting aside death and life without parole sentences for a moment, the severe sentence of life imprisonment with the right to parole is undoubtedly ample enough itself to keep anyone incarcerated until the day they die. The mere right to parole reviews does not guarantee parole will ever be granted. Despite being periodically reviewed for possible parole, people who are obviously irretrievably corrupt, depraved, and incorrigible will still spend the rest of their lives behind bars without ever obtaining parole. Sadly, however, since we're imperfect humans, even some wrongfully convicted innocent individuals will also end up dying behind bars without justice, without mercy, and therefore without parole.

On the other hand, this severe sentence of life imprisonment with the right to parole reviews is still fair enough to preserve basic human dignity, the justice of equitable discretion, and some merciful hope of a possible future release on parole and redemption for innocent people who were wrongfully convicted, getaway drivers, lookouts, and other less morally culpable individuals who age out of crime into truly remorseful and rehabilitated individuals. If, God forbid, you or someone you love were one of these unfortunate prodigal sons or daughters, would you be for or against mere parole reviews for lifers?

Whether it's a sentence to death, life without parole, life with parole, 15 to 30 years, 5 to 15 years, 3 months to 9 months, 60 days without parole, 2 years probation, 1 month work release or community service, and with or without court costs, fines, and restitution, people must rightly expect to be duly punished for their crimes in accordance with the requirements of our statutory sentencing laws and constitutional mandates. That's justice. However, people must never expect and they must never accept being unduly punished for their crimes in direct violation of the unambiguous requirements of our statutory sentencing laws and constitutional mandates. This is not justice. It's not even a simple miscarriage of justice. It's an abortion.

Since I've yet to find any true patriots in our Executive or Legislative branches of state government with the courage and moral fortitude to check the cruel and unconstitutional imbalance created by our Judicial branch of government legislating their own brand of justice from the bench and obstructing justice in outright violation of their sworn duties and our rule of law, I'm appealing to the free press for invaluable and much-needed help in having this grievous injustice redressed. Maybe my words will inspire journalists and scholars with greater minds to write critically about this egregious injustice in accordance the truth, justice, and egalitarianism of our American Dream embodied in our Declaration of Independence, Pledge of Allegiance, Constitutions, and duly enacted statutory laws.

As an honorably discharged veteran of World War II, my father Albert has often lamented this is not the kind of liberty and justice he and other family members risked their lives to defend against the Axis powers. Today, one might expect to find such cruel and patent injustice in Russia, China, or North Korea where atrocious human rights violations abound, but not here in these United States of America where we have all repeatedly pledged "liberty and justice" for one another as fellow Americans.

Echoing the sentiments of the American patriot Patrick Henry and the Biblical patriarch Job, give me liberty and justice, or give me death. Death is preferable to a miserable existence of suffering torments and tortures behind bars without liberty and justice. Let me say this again, give me the liberty and justice mandated by humanity and our rule of law, or give me death.

Post Script

Some folks still say death is the ultimate maximum penalty, but life imprisonment without the possibility of parole is a fate worse than death. This is especially so in Pennsylvanian where life imprisonment without the possibility of parole is imposed in direct violation of constitutional guarantees and statutory requiremnts mandating life imprisonment with the right to parole.

Like a death sentence, life imprisonment without the possibility of parole is a unique, extremely harsh, irrevocable, and hopeless punishment with the ultimate finality of death behind bars. As is true here in Pennsylvania, most death row and life row prisoners throughout America are growing old and dying in prison. Barring the miraculous, both groups are equally certain to leave prison in a coffin with any edge for realizing a miracle going to those sentenced to death since they have been blessed with the peace, quite, and privacy of a single cell, heightened constitutional protections, and a free legal defence team rendering life imprisonment a fate worse than death.

COMMONWEALTH of Pennsylvania v. Elmer Herman ULBRICK, Appellant
Supreme Court of Pennsylvania
462 Pa. 257; 341 A.2d 68; 1975 Pa. LEXIS 878
April 9, 1975, Submitted
July 7, 1975, Decided

Counsel Thomas F. Morgan, Public Defender, Clearfield, for appellant.
Richard A. Bell, Dist. Atty. William C. Kriner, Asst. Dist. Atty., Clearfield County, for appellee.

Judges: Jones, C. J., and Eagen, O'Brien, Roberts, Pomeroy, Nix and Manderino, JJ. Roberts, J., filed a concurring opinion. Pomeroy, J., filed a concurring opinion.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant challenged the denial of his petition filed under the Post Conviction Hearing Act, 19 Pa. Cons. Stat. § 1180-1 et seq., after his conviction and sentence for two counts of murder in the second degree. Appellant argued that the court's failure to announce a minimum sentence made his sentence illegal and justified his discharge.The post conviction hearing court did not commit error when it denied appellant's petition for relief because appellant did not incur harm where his implied minimum sentence for a second-degree murder conviction was one day.

OVERVIEW: Appellant was convicted for two counts of murder in the second degree. The trial court sentenced appellant to 20 years of imprisonment. The trial court did not state a minimum sentence, as required by 19 Pa. Cons. Stat. § 1057. Thereafter, appellant filed a petition under the Post Conviction Hearing Act, 19 Pa. Cons. Stat. § 1180-1 et seq., alleging that the failure of the trial court to announce a minimum sentence made his sentence illegal and justified his discharge. The hearing court denied the petition. The court found that imposition of a flat sentence benefitted appellant, because the minimum was presumed to be one day. The court held that because the minimum sentence was implied, the sentence was legal and appellant had incurred no harm. The court therefore affirmed the hearing court order denying appellant's petition for relief.

OUTCOME: The court affirmed the order denying appellant's petition under the Post Conviction Hearing Act. The court rejected appellant's argument that the trial court's failure to announce a minimum sentence made his sentence illegal. The court found that where no minimum sentence was stated, the minimum was then presumed to be one day. Therefore, appellant incurred no harm and the court affirmed the denial of the petition for relief.

LexisNexis Headnotes

Criminal Law & Procedure > Sentencing > Imposition > Factors
Criminal Law & Procedure > Postconviction Proceedings > Parole

Imposition of a flat sentence benefits the defendant, because the minimum is then presumed to be one day and he thus becomes immediately eligible for parole.

Opinion

Opinion by: PER CURIAM

Opinion

{462 Pa. 258} {341 A.2d 69} OPINION OF THE COURT

The appellant filed a petition under the Post Conviction Hearing Act challenging the legality of his sentence after his conviction of two counts of murder in the second degree. The petition was denied and this appeal followed.

The trial court imposed a sentence of twenty years. No minimum sentence was stated by the Court as is required by the Act of June 19, 1911, P.L. 1055, § 6, 19 P.S. § 1057. Appellant contends that the failure to announce a minimum sentence makes the sentence illegal and justifies his discharge. 1 However, imposition of a **{462 Pa. 259}** flat sentence benefits the defendant for the minimum is then presumed to be one day and he thus becomes immediately eligible for parole. *Commonwealth v. Butler*, 458 Pa. 289, 294, 328 A.2d 851, 855 (1974); *Commonwealth v. Daniel* , 430 Pa. 642, 647 n. <*> 243 A.2d 400, 462 n. 6 (1968); *Commonwealth ex rel. Kehl v. Myers*, 194 Pa. Super. 522, 169 A.2d 117 (1961); *Commonwealth ex rel. Clawges v. Claudy*, 173 Pa. Super. 410, 98 A.2d 225 (1953); and Act of Aug. 6, 1941, P.L. 861, § 21, *as amended*, 61 P.S. § 331.21. Since the minimum is implied, the sentence is legal and the appellant has incurred no harm. 2

Order affirmed.