

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CRIMINAL DIVISION**

**COMMONWEALTH OF
PENNSYLVANIA**

vs.

QU'EEED BATTS,

Defendant.

No.: C-48-CR-1215-2006

**PENNSYLVANIA RULE OF APPELLATE PROCEDURE
1925(a) STATEMENT**

AND NOW, this 27th day of August, 2014, the court issues the following statement:

Following resentencing upon remand from the Pennsylvania Supreme Court and denial of post-sentence motions, on June 10, 2014, Defendant Qu'eed Shareef Batts ("Batts") filed and served upon this court a timely Notice of Appeal to the Superior Court of Pennsylvania. On July 1, 2014, pursuant to our request under Pa.R.A.P. 1925(b), we received Batts's Statement of Matters Complained of on Appeal. For the reasons that follow, we respectfully suggest that Batts's appeal lacks merit and should be dismissed.

BACKGROUND

I. Batts's Crimes

In the early evening hours of February 7, 2006, Batts, a member of a criminal street gang known as the "Bloods," was travelling in Easton in a car with four other Bloods gang members. See Notes of Testimony, Trial, July 30, 2007, at 27, 45, 52-53, 56-59, *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. July 30, 2007) ("N.T. Trial"). They approached a house at 713 Spring Garden Street, where they saw two teenaged boys, Clarence Edwards and Corey Hilario, standing on a ladder and helping Edwards's father install a video camera on the front porch of the house. See *id.* at 59, 63; N.T. Trial, July 24, 2007, at 105-09. Batts did not know the two boys but was told that they had stolen money and drugs from another gang member. See N.T. Trial, July 30, 2007, at 63. The senior gang member in the car, Vernon Bradley, asked who in the car would like to "put in some work," which Batts interpreted as a directive to kill the two boys on the front porch of the house. See *id.* at 64-65. No one else in the car responded. See *id.* Batts agreed to do the job. See *id.* at 65-66.

The car pulled over, and Bradley gave Batts a mask and a handgun. See *id.* at 65-66. Batts exited the car, put on the mask and a glove, took the handgun, and walked up the front steps of the house. See *id.* at 66.

Batts ordered the three people on the porch to get down. See N.T. Trial, July 24, 2007, at 110-12. Upon seeing him, they ran toward the front

door. See N.T. Trial, July 30, 2007, at 68; N.T. Trial, July 24, 2007, at 112-13. Edwards's father was the first to reach the door and managed to escape into the house. See N.T. Trial, July 30, 2007, at 68; N.T. Trial, July 24, 2007, at 113. As Hilario tried to enter the house, Batts shot him in the back. See N.T. Trial, July 30, 2007, at 68; N.T. Trial, July 24, 2007, at 113. Batts then turned toward Edwards, who had fallen down and was lying on the porch. See N.T. Trial, July 30, 2007, at 68. Batts walked over to Edwards and looked down at him. See Notes of Testimony, Resentencing Hrg., May 1, 2014, at 144, *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. May 1, 2014) ("N.T. Resentencing Hrg."). Edwards looked up at Batts's face. See *id.* Batts pointed the gun at Edwards and fired two bullets into his head at point blank range. See N.T. Trial, July 30, 2007, at 68. Batts returned to the car, and the group drove away. See *id.* at 68-70.

Police and emergency workers arrived at Edwards's house. See N.T. Trial, July 24, 2007, at 44-46, 51, 67, 89-91, 180-82. Edwards's grandmother, Delores Howell, who had raised Edwards from the time he was six years old, opened the front door and saw Edwards lying on the porch with two bullet wounds in his head. See *id.* at 99, 101-02, 129; N.T. Resentencing Hrg., May 1, 2014, at 87. The police would not allow anyone to touch Edwards, because it was necessary to transport him to the hospital immediately. See N.T. Trial, July 24, 2007, at 70, 95.

Hilario, who was eighteen years old, suffered a serious injury from the bullet wound in his back but ultimately survived. *See id.* at 103-04, 124-29, 184-85; N.T. Trial, July 25, 2007, at 95. The bullet fractured Hilario's rib and scapula, but because the bullet was lodged deep in muscle tissue, doctors decided to leave the bullet in his body. *See id.* at 96-99.

One of the bullets Batts had fired at Edwards entered the top of his head on the left side, struck the top part of his skull, and exited through the other side of his head. N.T. Trial, July 27, 2007, at 25. The other bullet entered Edwards's left temple, crossed from one side of his head to the other on a downward trajectory, tearing his brain from left to right through the center, and came to rest in the right side of his skull. *See* N.T. Trial, July 25, 2007, at 102; N.T. Trial, July 27, 2007, at 23-26. Edwards died at the hospital. *See* N.T. Trial, July 25, 2007, at 13-14, 17-20, 103-04. He was sixteen years old and his mother's only child. *See* N.T. Trial, July 24, 2007, at 95-96, 101; N.T. Resentencing Hrg., May 1, 2014, at 87, 89.

II. Pretrial Proceedings

Batts was charged with one count of Criminal Homicide, 18 Pa.C.S.A. § 2501; one count of Criminal Attempt to Commit Criminal Homicide, 18 Pa.C.S.A. §§ 901, 2501; one count of Aggravated Assault, 18 Pa.C.S.A. § 2702(a)(1); and two counts of Conspiracy to Commit Criminal Homicide, 18 Pa.C.S.A. §§ 903(a)(1), 2501, 2702. *See* Criminal Complaint,

Commonwealth v. Batts, No. C-48-CR-1215-2006 (C.P. Northampton Co. Feb. 8, 2006).

On March 13, 2006, Batts filed a motion to transfer his case to the juvenile justice system pursuant to section 6322(a) of the Juvenile Act, 42 Pa.C.S.A. § 6322(a). See "Motion to Transfer Case to Juvenile Division of Common Pleas Court," *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. Mar. 13, 2006). Under the Juvenile Act, 42 Pa.C.S.A. § 6301 *et seq.*, murder is excluded from the category of "delinquent acts" that are automatically tried in the juvenile justice system. See 42 Pa.C.S.A. § 6302. The court may not transfer a murder case to the juvenile justice system unless the defendant proves, by a preponderance of the evidence, that the transfer will serve the public interest. See 42 Pa.C.S.A. § 6322(a) ("In determining whether to transfer a case charging murder or any of the offenses excluded from the definition of "delinquent act" in section 6302, the child shall be required to establish by a preponderance of the evidence that the transfer will serve the public interest.").

In making its determination whether transfer will serve the public interest, the court is required to consider several factors, including the nature and circumstances of the offense; the degree of the defendant's culpability; the impact of the offense on the victims and the community; the threat to the safety of the public posed by the defendant; the adequacy and duration of dispositional alternatives in the adult and juvenile criminal justice systems;

and whether the defendant is amenable to treatment, supervision or rehabilitation as a juvenile given the defendant's age, mental capacity, maturity, degree of criminal sophistication, the success or failure of any previous attempts at rehabilitation, and whether the defendant can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. See 42 Pa.C.S.A. § 6355(a)(4)(iii).

On January 29, 2007, the court held an evidentiary hearing on Batts's motion to transfer. See Notes of Testimony, Decertification Hrg., *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. Jan. 29, 2007) ("N.T. Decertification Hrg.") (Hon. William F. Moran, J.). The Commonwealth and the defense presented fact and expert witnesses, including mental health professionals who had evaluated Batts. See *id.* The Commonwealth presented the testimony of forensic psychologist Steven E. Samuel, Ph.D. and forensic psychiatrist Timothy J. Michals, M.D. The defense presented testimony by forensic psychologist Allan Tepper, Ph.D. See *id.*

Dr. Samuel's report stated: "It is my opinion that the type of anger and rage necessary to commit the crimes of which Qu'eed is charged has been evident in him since his childhood, and that it is very unlikely that either could be tempered or distilled from his personality within the time frame permitted by the juvenile system within the facilities of the juvenile justice system." Report of Steven E. Samuel, Ph.D. dated Jan. 12, 2007, at

8 ("Samuel Rept."). Dr. Michals's report stated: "Given the assassination nature of this killing, it is my opinion that Mr. Batts, as a result of his underlying personality, is not amenable to care, treatment, and rehabilitation within the Juvenile Justice System. . . . He lacks sympathy for the weak and oppressed and is often contemptuous of those who express compassion and concern for the underdog. By denying the legitimacy of tender and caring feelings, he may make the entire therapeutic enterprise hostage to his antagonism." Report of Timothy J. Michals, M.D. dated Jan. 16, 2007, at 10 ("Michals Rept. I").

On February 21, 2007, the court denied Batts's transfer motion, holding that Batts would be tried as an adult on all charges. See *Commonwealth v. Batts*, No. C-48-CR-1215-2006, slip op. (C.P. Northampton Co. Feb. 21, 2007).

This case involves allegations of a horrendous crime. The execution of an individual without any justification. This crime occurred in a residential neighborhood on the front porch of the victim's house. The facts available to this court are derived chiefly from the juvenile defendant's own description in his confession, which indicate that this crime was gang related. We find the impact of the crime on the victim is obvious. One victim is dead, the other is seriously injured. The impact on the community is equally clear. The immediate neighborhood is impacted in a negative manner. The community of Easton as a whole is also negatively impacted. The impact of this crime is simple to understand. The citizens of the City of Easton are not safe in their own neighborhood or in their own homes from gang activity, including a senseless, brutal, cold-blooded murder. We find that under his own account of the criminal activity, Qu'eed Batts poses a severe threat to the public as he has demonstrated a total lack of respect for human life. He is willing to take a life simply to fulfill the direction of the superior in a criminal gang. He

has demonstrated no remorse and no sense of the magnitude of his criminal activity. He is, and in all likelihood will remain, a clear danger to the community as he has no regard for the norms of society.

The crimes of murder and aggravated assault with a deadly weapon are obviously serious. The circumstances of the crime indicate the danger posed by the defendant to the community. This was a murder and aggravated assault essentially ordered by a gang superior. The crime required the defendant to take a gun, cover his face with a mask, use a glove to avoid detection by fingerprint identification, walk one half of a block while considering the crime, walk up a flight of steps, and then voluntarily and without hesitation shoot one victim in the head twice and the second in the back as that victim fled. From the testimony, he clearly had the time and the intellectual ability to understand the nature of his actions and to form the intent required to commit murder, as well as the willingness to carry out that intention. His criminal culpability and the nature of the offense make it clear that the adult court system is the appropriate place for the trial of this matter.

While Dr. Allan Tepper argued passionately that Mr. Batts could be rehabilitated within the juvenile justice system by age 21, we believe that the testimony of Dr. Michals and Dr. Samuel is far more persuasive. Both of the Commonwealth's expert witnesses opine that rehabilitation, if it ever occurs, will occur only after years of treatment and a willingness on the part of Mr. Batts to seek treatment and rehabilitation, something that their clinical evaluations indicate Mr. Batts is not ready to accept.

We recognize that the defendant's age is a factor in favor of bringing him into the juvenile system. However, while he is chronologically 15 years of age, he has demonstrated that he is both streetwise and has a well-developed criminal mentality and the degree of maturity necessary to commit audacious criminal acts. While he lacks a prior juvenile record, the magnitude of this offense makes it clear that the juvenile justice system does not possess the necessary programs or time to rehabilitate him, nor would the public be served by allowing him to return to society at age 21.

. . . .

Based upon our analysis of the evidence presented and all of the other factors we are required to consider, this court determines that the Defendant Petitioner has not met its burden of proof to establish by a preponderance of the evidence that the public interest would be served by transferring this case to the juvenile court system.

Id. at 5-7.

III. Batts's Convictions and Sentencing

At trial, Batts told the jury that he had committed his crimes because he feared that if he did not carry out Bradley's orders, Bradley would kill him. See Report of Frank M. Dattilio, Ph.D. dated Nov. 21, 2013 at 9 ("Dattilio Rept."); Michals Rept. I at 4, 8; Report of Timothy J. Michals, M.D. dated Mar. 12, 2014 at 14 ("Michals Rept. II"); N.T. Trial, July 26, 2007, at 151-52; N.T. Trial, July 27, 2007, at 98-99.

Despite Batts's defense that he committed his crimes out of fear for his own life, on July 31, 2007, the jury convicted him of first-degree murder for the killing of Edwards and attempted murder and aggravated assault for the shooting of Hilario. See N.T. Trial, July 31, 2007, at 112-16. Batts was acquitted of the two charges of conspiracy to commit criminal homicide. See *id.* at 113.

Batts was sentenced on October 22, 2007. See Notes of Testimony, Sentencing Hrg., *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. Oct. 22, 2007) ("N.T. Sentencing Hrg."). For the charge of first-degree murder, the court sentenced Batts to life in prison. See *id.* at 28. The life sentence was mandatory. See *id.* at 5; 18 Pa.C.S.A.

§ 1102(a)(1) ("[A] person who has been convicted of a murder of the first degree . . . shall be sentenced to death or to a term of life imprisonment") (superseded, relative to juvenile offenders, by 18 Pa.C.S.A. § 1102.1).

The fact that Batts had received a life sentence made him ineligible for parole. See N.T. Sentencing Hrg. at 5; 61 Pa.C.S.A. § 6137(a)(1) ("The [Pennsylvania Board of Probation and Parole] . . . may release on parole any inmate to whom the power to parole is granted to the board by this chapter, except an inmate condemned to death or serving life imprisonment"). For the conviction of attempted murder, the court sentenced Batts to a minimum term of six years to a maximum term of twenty years, to be served concurrently with the life sentence for first-degree murder. See *id.* at 28. The conviction of aggravated assault merged with the conviction of attempted murder for purposes of sentencing. See *id.* at 7.

Following denial of his post-sentence motion, on March 13, 2008, Batts appealed his conviction to the Superior Court of Pennsylvania. See Notice of Appeal, *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. Mar. 13, 2008). On April 7, 2009, the Superior Court affirmed Batts's conviction. See *Commonwealth v. Batts*, 974 A.2d 1175 (Pa. Super. 2009).

IV. The United States Supreme Court's Decision in *Miller v. Alabama*

On June 25, 2012, while Mr. Batts's case was on appeal to the Pennsylvania Supreme Court, the United States Supreme Court decided *Miller v. Alabama*, 132 S. Ct. 2455 (2012). In *Miller*, the United States Supreme

Court held that a mandatory sentence of life without parole for a juvenile violates the Eighth Amendment of the United States Constitution. See 132 S. Ct. at 2469. The Court did not impose a categorical ban on life without parole for juveniles but held that such a sentence cannot be mandatory but may be imposed only after the trial court has considered mitigating factors, particularly those related to the defendant's age and level of maturity at the time of the offense. See *id.*

V. Remand for Resentencing

Applying *Miller*, on March 26, 2013, the Pennsylvania Supreme Court vacated the Superior Court's decision affirming Batts's conviction and remanded the case to this court for resentencing in accordance with the principles announced in *Miller*. See *Commonwealth v. Batts*, 66 A.3d 286, 295 (Pa. 2013). The Pennsylvania Supreme Court held that because Batts was fourteen years old at the time of the commission of his crimes, this court must perform an individualized sentencing determination, giving particular consideration to the age-related factors outlined by the United States Supreme Court in *Miller*. See *id.*

When the case was remanded to this court, Judge Moran had retired from the bench. The President Judge of this court at the time of remand, the Honorable F.P. Kimberly McFadden, assigned the case to the undersigned for disposition.

VI. The Resentencing Hearing

On May 2, 2014, following a two-day hearing, the court resentenced Batts. See N.T., Resentencing Hrg., May 2, 2014. At the resentencing hearing, the court reviewed the applicable law governing the sentencing determination; detailed the written materials the court had reviewed prior to the hearing; and received testimony and written statements from witnesses for the Commonwealth and the defense. See *id.*

A. The Court's Discussion of the Governing Law

The court set forth a detailed review of the law governing its sentencing determination. See *id.* at 3-8.

While Mr. Batts's case was on appeal, the United States Supreme Court decided the case of Miller versus Alabama. In Miller versus Alabama, the Court held that a mandatory sentence of life without parole for a juvenile violates the Eighth Amendment of the United States Constitution. The United States Supreme Court did not impose a categorical ban on life without parole for juveniles. It held only that such a sentence cannot be mandatory but may be imposed only after the trial court has considered mitigating factors, particularly those related to the defendant's age and level of maturity at the time of the offense.

Although the Court left open the possibility that a court might still conclude, after considering all relevant factors, that the harshest penalty is warranted, the Court stated that life without parole for a juvenile should be uncommon. The Court noted that there may be a further distinction between juvenile defendants, that is, defendants under the age of 18, and defendants age 14 and younger.

The Supreme Court of the United States stated:

Because our holding is sufficient to decide these cases, we do not consider [the] alternative argument that the Eighth Amendment requires a categorical

ban on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.

End quote.

Mr. Batts was 14 years old at the time he committed the crimes at issue in this case. Applying *Miller versus Alabama* in this case, on March 26, 2013, the Pennsylvania Supreme Court remanded the case to us and held that we must resentence Mr. Batts and give consideration to the factors outlined in *Miller versus Alabama*. Because Judge Moran has since retired from the bench, this matter was assigned to me for disposition by then President Judge Kimberly McFadden. The Pennsylvania Supreme Court held that Mr. Batts remains subject to a mandatory life sentence but that, upon consideration of the specified factors, the court may impose that sentence with or without the possibility of parole.

The Pennsylvania Supreme Court stated:

[T]he Commonwealth [contends] that the unconstitutional portion of the sentencing scheme is the statute governing parole eligibility, which does not distinguish juvenile offenders when stating that parole may not be granted to those serving a life sentence. . . . Because this portion of the statute is severable, the Commonwealth continues, the remaining unaltered statutory sentencing provisions, including Section 1102(a) of the Criminal Code, still require that the court impose a sentence of life imprisonment for a juvenile convicted of first-degree murder. . . . [T]he Commonwealth reasons that the appropriate remedy for [Mr. Batts's] unconstitutionally mandatory life-without-parole

sentence is for this court to remand for a new sentencing hearing at which the trial court may consider the factors detailed in *Miller* and impose a life sentence, either with or without parole. . . . We find the Commonwealth's construction of the applicable statutes to be the best supported.

End quote.

Justice Max Baer wrote a concurring opinion suggesting that this court, in exercising its discretion, should be guided by a new statute passed by the state legislature in 2012 in response to *Miller versus Alabama*. Under the new statute, defendants such as Mr. Batts who were under the age of 15 at the time of the offense are subject to a minimum sentence of 25 years to life and a maximum sentence of life without parole.

Although the new statute does not apply to Mr. Batts because it applies only to defendants convicted on or after the date of the decision in *Miller versus Alabama*, Justice Baer reasoned that the statute is the legislature's expression of policy and, therefore, should be given due consideration. This court agrees with Justice Baer and will be guided by both the majority opinion by the Pennsylvania Supreme Court in *Commonwealth versus Batts* as well as by the new statute.

Under Pennsylvania's sentencing code, Title 42, Section 9721(b), the court is required to consider four broad factors when imposing sentence:

One, the protection of the public; two, the gravity of the offense as it relates to the impact on the life of the victim and on the community; three, the rehabilitative needs of the defendant; and four, the sentencing guidelines.

In considering these four broad factors for Mr. Batts, the court must examine, among other things, the nature and circumstances of the offense, the extent to which the evidence supports the defendant's justification, the impact of the crime on the victims and the community, the extent to which the victims were peculiarly vulnerable, the need to avoid minimizing the seriousness of the crime, and the history and characteristics of the defendant, including his age, character, family environment, education, employment history, mental health history, drug and

alcohol use, prior criminal record and level of cooperation with the authorities, the extent to which the defendant poses a danger to society, the extent to which the defendant has taken responsibility for his actions, his expressions of remorse, his potential for rehabilitation, the recommendations of the Presentence Investigation, and the recommendations of experts, character witnesses, victims, community members, and attorneys for both the Commonwealth and the defendant.

Because Mr. Batts is a juvenile, under Miller versus Alabama and the Pennsylvania Supreme Court's opinion in Commonwealth versus Batts, this court must give particular attention to Mr. Batts's age at the time of his offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorneys, his mental health history, and his potential for rehabilitation.

Id.

B. Written Materials Reviewed By the Court

The court noted that, in preparation for the hearing, the court had reviewed the record, the trial transcripts, the parties' sentencing memoranda, and the following additional documents:

- 1) the October 11, 2013 presentence investigation report, prepared at the court's request by the Northampton County Department of Adult Probation and Parole, which included sentencing guideline forms for each of the charges for which Batts had been convicted ("PSI");

- 2) a July 26, 2013 report by forensic psychologist Susan E. Kraus, Ph.D., who had performed a psychological evaluation of Batts on behalf of Northampton County in connection with the PSI ("Kraus Rept.");
- 3) the January 16, 2007 report by Dr. Michals submitted in connection with the February 21, 2007 decertification hearing;
- 4) a March 12, 2014 report by Dr. Michals, who had performed a second psychological evaluation of Batts in connection with the resentencing hearing;
- 5) the January 12, 2007 report by Dr. Samuel submitted in connection with the February 21, 2007 decertification hearing;
- 6) a November 21, 2013 report by forensic psychologist Frank M. Dattilio, Ph.D., a defense expert, who had performed a psychological evaluation of Batts in connection with the resentencing hearing;
- 7) a December 31, 2013 sentencing memorandum by Dana Cook, M.S., Deputy Director of the Atlantic Center for Capital Representation, a defense expert, who had reviewed records and conducted interviews of Batts and his family members in connection with the resentencing hearing ("Cook Mem."); and
- 8) an October 29, 2013 letter from Howell ("Howell Letter").

See N.T. Resentencing Hrg., May 2, 2014, at 8-10.

Prior to the resentencing hearing, these written materials were shared with Batts, his counsel, and the attorney for the Commonwealth. *See id.* at 10. At the hearing, the court reviewed each of the sentencing guideline forms in detail. *See id.* at 10-12. The court noted that the sentencing guideline form for the charge of first-degree murder incorrectly stated that the charge carries a mandatory minimum sentence of three hundred months, a provision that is part of a new sentencing statute passed in 2012, which does not apply to Batts. *See id.* at 10. The court further noted that because Batts was a juvenile at the time of his convictions, and because the statutory provision prohibiting parole for inmates serving a life sentence was held unconstitutional as applied to juveniles, there is no mandatory minimum sentence applicable to Batts. *See id.* at 11. The defense and the Commonwealth agreed with the court that the reference to the mandatory minimum sentence in the sentencing guideline form was incorrect and that there is no mandatory minimum sentence applicable to Batts for the charge of first-degree murder. *See id.* The defense and the Commonwealth acknowledged that they had reviewed all of the written materials reviewed by the court and that, other than the one correction noted by the court, they did not wish to make any corrections to any of the materials. *See id.* at 10-12. All of the written materials, in addition to the record and the transcripts of the decertification hearing, were made a part of the record for purposes of Batts's resentencing. *See id.* at 163.

C. Batts's Motion *in limine* or for a Continuance

On the first morning of the resentencing hearing, the Commonwealth advised the defense that it planned to present the testimony of Thomas M. Serbin, a lieutenant with the Pennsylvania Department of Corrections employed in the security office at State Correctional Institution ("SCI") Retreat, where Batts is an inmate. *See id.* at 7, 27. The Commonwealth advised that Lieutenant Serbin would testify that Batts has continued to associate with members of the Bloods gang since he has been in prison. *See id.* The Commonwealth provided the defense with approximately sixty pages of documents and photographs relating to Lieutenant Serbin's proposed testimony. *See id.* at 37.

The defense advised the court that (1) this documentation had never been produced to the defense, despite the court's issuance of an Order requiring the Department of Corrections to provide the defense with all of its materials relating to Batts; (2) production of the materials on the morning of the resentencing hearing constituted unfair surprise; and (3) the defense would be prejudiced by presentation of the evidence at the resentencing hearing, because the Commonwealth would use the evidence to impeach the defense's expert, Dr. Dattilio, whose opinion was based in part upon Batts's assertion that he had ceased any involvement with the Bloods gang while in prison. *See id.* at 4-6. The defense made a motion *in limine* to preclude Lieutenant Serbin's testimony or, in the alternative, for a continuance of the

hearing to permit defense counsel and Dr. Dattilio to review the new evidence, interview any witnesses to the events, discuss the information with Batts, and prepare to cross examine Lieutenant Serbin. *See id.* at 9-15.

Lieutenant Serbin told the court that the materials he had provided to the Commonwealth concerning Batts's gang associations in prison were maintained by the security office at SCI Retreat and would not have been part of Batts's official file. *See id.* at 23-24 ("We have a policy that dictates what we keep and what we look for in people under a security threat group monitoring process which isn't an official -- it wouldn't be kept in a personal record file. It's kept in our custody.").

The court denied the defense's motion *in limine* and its request for a continuance. *See id.* at 33. However, the court directed that Dr. Dattilio's testimony would be deferred until the afternoon in order to give Dr. Dattilio and defense counsel time to review the new evidence, discuss it with Batts, and prepare to cross examine Lieutenant Serbin. *See id.* at 36-40.

D. Testimony and Written Statements Presented at the Hearing

1. Lieutenant Thomas M. Serbin

Lieutenant Serbin testified that he interviewed Batts when Batts was transferred to SCI Retreat in 2009. *See id.* at 184. In the interview, Lieutenant Serbin asked Batts whether he was a Blood, and Batts said he was. *See id.* Lieutenant Serbin said that on several occasions since the interview, he has seen Batts talking with Bloods gang members in the prison

and using Bloods gestures and handshakes. *See id.* at 180, 188, 191-92. Lieutenant Serbin identified several surveillance photographs in which Batts could be seen talking to other inmates who, according to Lieutenant Serbin, were Bloods members. *See id.* at 180-200. In addition, Lieutenant Serbin said that on several occasions, prison officials have found gang paraphernalia in Batts's cell, including a list of Bloods slang words, a list of Bloods "rules," and a red bandana, a signature article of Bloods clothing. *See id.* at 202-04.

2. Frank M. Dattilio, Ph.D.

Dr. Dattilio testified that Batts was peculiarly vulnerable to gang influence because he had never been able to form healthy attachments during his "fractured" childhood. *See id.* at 100 ("[H]e never had a chance to really bond with anybody for a significant period of time before it was taken away from him or evaporated or he was violated by that person."). Dr. Dattilio said that Batts understood that killing was wrong but that he suffered from poor judgment due to his youth and inexperience and his need for acceptance by the Bloods gang. *See id.* at 101-02.

He didn't know which way was up. To him it was something secure. His decision making was poor because he really never had any significant role models, he didn't know how to weigh out options, he didn't have any guidance, so this looked good, he was vulnerable, they took him in and it became his family, it became some guidance.

Id.

Dr. Dattilio described scientific research on brain development indicating that fourteen-year-olds lack mature judgment and therefore may not have robust decision-making abilities. *See id.* at 107.

We know that anatomically the brain still doesn't stop developing until an individual is sometimes beyond 21 years of age, so there's a lot of things with regard to his ability to use judgment, to use reason, assertiveness, a sense of balancing out risks versus rewards, so on and so forth, so he was very, very vulnerable at that point.

Id. at 107-08.

Dr. Dattilio said that as a result of Batts's immature judgment, he failed to appreciate the consequences of joining a gang. *See id.* at 108-09.

DR. DATTILIO. I mean, he had been, you know, on the street, so to speak, but he had been around a lot and placed a lot and so his ability to use any form of sophistication was still very crude, so he was very vulnerable and I think that that made him vulnerable and malleable. He gets into a gang and I really don't think he truly understood what he was getting into. He was looking at the arm candy aspect of being part of a crowd, having his back watched, having him be accepted and I don't think he realized the shortcomings of having to put work in and doing what he was told or the consequences are serious, so I think --

THE COURT: Wasn't his -- the friend who got him into the Bloods, wasn't he arrested and put in jail prior to Mr. Batts committing this crime?

DR. DATTILIO: Yes.

THE COURT: Wouldn't that have given him an indication if you join the Bloods you could go to jail?

DR. DATTILIO: You would think.

THE COURT: You would think.

Id.

Dr. Dattilio said he believes that despite Batts's violent crimes and apparent lack of compassion for his victims, he is amenable to treatment and rehabilitation, because he has now shown genuine remorse for his crimes and a desire to change. *See id.* at 110. Dr. Dattilio acknowledged that Batts has exhibited some hardened personality characteristics, including narcissism and antisocial behavior, but he said that in light of Batts's chaotic upbringing, these features are not unsurprising. *See id.* at 105 ("[W]hen you don't have anybody else that loves you the only thing left to do is to love yourself."). He said that Batts could benefit from therapy. *See id.* at 111.

A lot of insight combined with reality oriented types of therapy is very helpful and for him particularly dealing with the disruptive attachment bonds from his upbringing and how to heal and how to self-soothe rather than looking extrinsically or externally for that kind of sense, to be able to do that in a non-narcissistic but yet healthy way, find new relationships and connect.

Id.

Defense counsel asked Dr. Dattilio whether he had reviewed the documentation produced that morning by the Department of Corrections concerning Batts's alleged continuing contacts with Bloods gang members in prison. *See id.* at 113-14. Dr. Dattilio said he had thoroughly reviewed the documentation and that it had not changed his opinion. *See id.*

Q. Okay. Now in your report, sir, I recall seeing that you were told by Mr. Batts that he was not -- after these events occurred he was no longer a member of the Bloods gang, is that correct?

A. That's correct.

Q. Okay. Did that play any role in your determinations that you made here?

A. Yes.

Q. Okay. Since then we have been provided with some documentation which you and I and Mr. Batts and a number of others reviewed over the lunch hour, correct?

A. That's correct.

Q. Okay. Did you review all of that documentation?

A. Every stitch of it.

Q. And did you discuss it with Mr. Batts?

A. Yes.

Q. Okay. Having seen that documentation, is there anything in that documentation that in any way changes your opinions as you've expressed them to me?

A. No.

Q. Okay. In your -- did you see anything in those documents, sir, that indicated definitively that Mr. Batts is, in fact, a member of the Bloods gang?

A. No.

Id.

3. Letter of Gregory A. Troxell, Principal of Phillipsburg High School

The court read a letter it had received from Gregory A. Troxell, Principal of Phillipsburg High School. *See id.* at 80-82. In the letter, Troxell said that he had known Batts when Batts was a student and athlete both at Phillipsburg Middle School and at Phillipsburg High School and that he had corresponded with Batts in prison. *See id.* at 81. Troxell told the court that

Batts has taken responsibility for his crimes and worked to rehabilitate himself. *See id.* at 82 ("Qu'eed was a young boy who could have had a great high school experience and life but, truthfully, was dealt a bad hand. For a short period of time he took a very bad turn. I feel he is worthy of a shot at redemption and a second chance."). Troxell urged the court to show leniency. *See id.* ("Please consider a sentence that keeps hope in his life.").

4. Shaniqua Batts

Batts's mother, Shaniqua Batts, read a letter that she had written to the court. *See id.* at 166-67. In the letter, she told the court that she takes full responsibility for her "lack of parenting." *Id.* at 166. She said that her family recognizes the impact that Batts's crimes have had on his victims. *See id.* However, she told the court that Batts has "grown as a person over the years," that he has had a positive relationship with his siblings, and that he tries to be a role model for his siblings. *Id.* She urged the court to give her son "a second chance." *Id.* at 167.

5. Qu'eed Batts

Batts apologized to the victims' families and his own family for the crimes he committed. *See id.* at 169. He said to Howell, "I know you hate me but I can't -- I can't take back what I did. The only thing I can do is just try to be -- well, be better than what I was when I was younger." *Id.* at 170. Howell responded, "I don't hate anyone. I hate what you did, you

understand, because that was unnecessary, uncalled for. Like you said, they -- you didn't even know C.J. [Clarence Edwards]." *Id.*

Batts told the court that he takes full responsibility for his crimes. See *id.* at 170-71.

I just -- I want to accept full responsibility for what I did. I don't want to shift blame on how I grew up or who told me to do what. I did it. It was wrong. I've grown now to be a very mature

young man. I -- all -- they keep saying I'm still an active gang member. I'm not. I'm not. That's -- that's all.

Id.

6. Delores Howell

Howell testified concerning the traumatic impact of opening her front door on the night of February 7, 2006 to see her grandson, her daughter's only child, lying on her front porch bleeding from two bullet wounds to his head. See *id.* at 86-87. Because Howell was emotionally distraught, she asked the Victim's Advocate to read a letter she had written to the court. See *id.* at 88. In the letter, Howell described the anguish of watching Edwards's friends grow into men after Edwards's life had been cut short. See *id.* at 90.

[H]ere Batts sits, eight years later, because he is not to be held accountable for his crime because he was only 14 years old which for me is an accountable age for your actions, and now he is about 22 years of age. C.J. is still 16. . . . Your Honor, it is not fair that Qu'eed's family can still see, touch and talk to him whenever they want to. For us the only thing we can do is talk to

C.J. through the dirt with no reply back. . . . Please, we beg you to please let [Batts's] sentence remain the same.

Id.

7. Timothy J. Michals, M.D.

Dr. Michals testified that Batts does not suffer from any mental disorder but consciously chose to commit his crimes. *See id.* at 49-53. Dr. Michals said that Batts's behavior both before and after the shootings indicated that he had acted not out of fear for his life but in order to gain acceptance in the Bloods gang. *See id.* at 52, 67. Dr. Michals acknowledged that it is possible for a young person to change over time and noted that Batts has made some efforts to educate himself in prison. *See id.* at 49-50, 59. However, Dr. Michals emphasized that changing one's essential personality profile is difficult. *See id.* at 59 ("Characteristics can change but it's very difficult to make changes to the basic structure of our personality."). He noted that the particular features of Batts's personality profile, including anger, instability, impulsivity, poor judgment, and his need to see himself as strong, have persisted over time and indicate a poor prognosis for change. *See id.* at 59 ("[T]he psychological testing . . . says that he's -- there's chronic psychological maladjustment which is resistant to personality change."). Dr. Michals concluded that Batts is not amenable to treatment and has limited potential for rehabilitation. *See id.* at 49.

So looking at all the records there seems to be a pattern of Mr. Batts, about who he is and being reluctant to change because of

how he sees himself in the world. That was my opinion when I testified in the past, that he was not amenable to treatment and the test -- this [psychological] testing seems to indicate that it's an ongoing trait of who he is.

Id.

E. The Court's Identification of Materials and Testimony Considered

When the testimony concluded and the parties completed their respective presentations, the court adjourned for the day. *See id.* at 253. The following morning, the hearing resumed. *See* N.T. Resentencing Hrg., May 2, 2014, at 1. The court reviewed the written materials and testimony it had considered. *See id.* at 12-13.

I have reviewed the presentence investigation, the written reports submitted by Dr. Kraus, Dr. Michals, Dr. Samuel, and Dr. Dattilio, and the sentencing memoranda submitted by Mr. Batts, the Commonwealth, and Ms. Cook.

I have considered all the testimony provided at yesterday's hearing by Mr. Batts, Dr. Dattilio, Dr. Michals, Delores Howell, and Lieutenant Serbin as well as the written statement read into the record from Mr. Batts -- Mr. Batts's mother. I have considered the statements made yesterday by Mr. Batts's counsel and counsel for the Commonwealth.

I have considered the written statement submitted by Delores Howell, I have considered the written statement read and submitted by Mr. Batts's mother, Ms. Shaniqua Batts, I have considered the letter I received from the Phillipsburg High School Principal, Gregory Troxell. I have also considered the sentencing guideline forms submitted to the court.

Id.

F. The Court's Identification of Information Relevant to the Sentencing Factors

The court summarized the evidence relevant to the factors it was required to consider in imposing sentence, relying on the record, the trial transcripts, the sentencing memoranda submitted by the Commonwealth and the defense, the testimony and evidence presented at the resentencing hearing, and the PSI and expert reports, which summarized an extensive body of information about Batts, including records maintained by schools, prisons, government agencies, and mental health professionals; the results of psychological testing; and interviews of Batts, his friends and family members, and people in the community who were affected by his crimes. *See id.* at 13-41.

1. The Facts of the Case

The court began by reviewing the facts of the case as set forth in Section I above. *See id.* at 13-15.

2. Batts's Background and History

The court detailed the history of Batts's life, describing his birth to unwed teenaged parents; his removal from his parents' custody due to his mother's neglect and his father's incarceration; his successive placements with relatives and foster families in multiple states; his exposure to bullying, violence, and sexual abuse; his difficulties in different schools; his return to his mother at age twelve; his initiation into the Bloods gang when he was in

eighth grade; and his ultimate decision to move out of his parents' house and make his home with the Bloods gang at age fourteen. See *id.* at 16-27.

Residence with Mother and Maternal Grandparents
in Elizabeth, New Jersey

Mr. Batts was born on April 18, 1991 in Elizabeth, New Jersey. When he was born, his mother was thirteen years old, and his father was between sixteen and eighteen years old. Mr. Batts's parents did not live together and never married. Mr. Batts was born a few months premature, but there were no reported delays in his developmental milestones. Mr. Batts's mother did not engage in substance abuse.

During Mr. Batts's early childhood, he lived in Elizabeth, New Jersey with his mother, his maternal grandparents, his mother's two sisters, and a female cousin who was a few years younger than Mr. Batts. At one point, the family moved to the Carolinas for a period of about six months but then returned to Elizabeth, New Jersey. Upon their return, Mr. Batts and his mother spent a brief time living with Mr. Batts's maternal great uncle. Mr. Batts's mother said she did not have a good relationship with this uncle, because she believed that he only allowed her to live with him so that he could use her public assistance as a source of income.

Id. at 16 (relying on PSI at 2; Dattilio Rept. at 3-4; Cook Mem. at 2).

Placement in Foster Care in New Jersey

Mr. Batts attended preschool and kindergarten in Elizabeth, New Jersey. When he was around five years old, he was playing in front of his apartment building, and he left the area and walked around the block. His mother was not at home, and his grandparents were both at work. His mother's sister found him and became angry at his mother for leaving him unsupervised. She took him to her home for several days without notifying his mother or his grandparents that she had him in her custody. The police later discovered that he was with her, and the matter was referred to the New Jersey Department of Youth and Family Services (DYFS).

DYFS determined that Mr. Batts's home was unsuitable, because his mother was uncooperative with the authorities, and both of

his grandparents worked full time and could not provide adequate supervision. Accordingly, DYFS removed Mr. Batts from his mother's home and placed him in foster care.

Mr. Batts was placed in a series of foster homes in different cities in New Jersey, but he was removed from each placement after a few months due to behavioral problems both at home and at school. Despite his behavioral problems, he performed well academically. Mr. Batts's mother visited him while he was in foster care, but she was unable to take custody of him, because she continued to fail to meet the requirements outlined by DYFS.

Mr. Batts found these events traumatic. He said he felt angry, abandoned, and rejected. He hoped that if he misbehaved, he might be removed from foster care and sent back to live with his mother.

Id. at 17-18 (relying on Dattilio Rept. at 4-5).

Placement with Paternal Grandfather in Passaic, New Jersey

After several foster care placements, Mr. Batts was placed in the care of his paternal grandfather, who worked for a printing company in Passaic, New Jersey. Mr. Batts lived with his grandfather and his grandfather's two grown sons and attended first and second grade in Passaic.

Id. at 18 (relying on Dattilio Rept. at 5).

Batts's Relationship with his Father

Mr. Batts did not see his father during his early childhood, because his father spent a significant part of that time in jail. At some point during Mr. Batts's elementary school years, he began developing a relationship with his father. However, when he was eight years old, his father was sentenced to twelve years in prison on drug charges, which was emotionally traumatic for Mr. Batts. Mr. Batts said he no longer has contact with his father.

Id. at 18-19 (relying on Dattilio Rept. at 4; Cook Mem. at 2).

Return to Mother in Elizabeth, New Jersey

Mr. Batts's mother eventually began cooperating with DYFS, and Mr. Batts returned to live with her in Elizabeth, New Jersey. He attended third and fourth grades in Elizabeth, where he earned a "B" average and excelled at sports. However, he again began exhibiting behavior problems in school.

On one occasion when Mr. Batts's mother was summoned to the school to address a disciplinary issue, she slapped Mr. Batts in front of school officials. The school reported the incident to DYFS. A social worker met with Mr. Batts and his mother and asked Mr. Batts whether his mother ever hit him. Mr. Batts was afraid to respond in front of his mother and therefore remained silent. Mr. Batts's mother "stormed out of the room" and said she did not want him. As a result, Mr. Batts was again removed from his mother's home.

Mr. Batts told Dr. Dattilio that his caregivers had always provided him with food and clothing and cared for him in the physical sense but that he had felt he had no one to talk to and was "basically on his own." Despite the incident in which his mother slapped him, Mr. Batts told Dr. Dattilio that he was never physically or sexually abused by his family. However, he did say he felt he had been psychologically abused by being frequently moved from one home to another.

Ms. Cook filed an addendum to her report asserting that Mr. Batts has recently revealed to her "a painful secret that he has been keeping for years," that is, that on one occasion when he was nine years old, he was forcibly anally raped by his fifteen-year-old cousin. Mr. Batts said that the cousin threatened him with unspecified consequences if he ever told anyone about the incident. He said he feared that if he told anyone, he would not be believed and that his cousin might retaliate. Ms. Cook said that keeping such secrets is common among sexual abuse survivors and that Mr. Batts was less likely than most to come forward, because he had no stable relationship with a trusted adult.

Id. at 19-20 (relying on Dattilio Rept. at 5, 11; Cook Mem. at 5).

Return to Paternal Grandfather in Passaic, New Jersey

When Mr. Batts was removed from his mother's home, he was returned to the home of his paternal grandfather in Passaic, New Jersey. He completed fourth grade in the Passaic schools and maintained a "B" average.

Id. at 20-21 (relying on Dattilio Rept. at 5).

Placement with Maternal Great Uncle in Elizabeth, New Jersey

When Mr. Batts was in fifth grade, his paternal grandfather was transferred to a job in South Carolina, and Mr. Batts went to live with his mother's uncle in Elizabeth, New Jersey. This was the same uncle that Mr. Batts's mother distrusted because she believed he saw her and Mr. Batts as a source of income.

Mr. Batts's great uncle was a corrections officer at Rahway State Prison and lived with his wife and two children. Mr. Batts lived in their home for one year. Mr. Batts continued to perform well academically and to excel in sports. However, his classmates teased him about his life situation and made fun of his mother, and he continued to get into fights at school.

Mr. Batts's great uncle refused to permit him to visit with his mother, because he felt that she was a bad influence. As a result, Mr. Batts ran away from his uncle's home, went to the DYFS office, and told officials that he wanted to return to his mother.

Id. at 21-22 (relying on Dattilio Rept. at 5-6; Cook Mem. at 3).

Placement in Foster Care in Irvington, New Jersey

DYFS determined that Mr. Batts's mother could not take him. Because Mr. Batts had run away, his uncle refused to take him back. Accordingly, Mr. Batts was placed with a foster family in Irvington, New Jersey consisting of a mother, her four sons, and four foster boys. Mr. Batts did not like this home, because the foster mother was a strict disciplinarian and required him to call her "Mom."

Id. at 22 (relying on Dattilio Rept. at 6).

Placement in Homeless Shelter in Trenton, New Jersey

Mr. Batts ran away from his foster home in Irvington, New Jersey and went to his maternal aunt's home in Elizabeth, New Jersey. Mr. Batts's mother removed him from his aunt's home and took him to the police station in Irvington, New Jersey so that she would not get into trouble with the authorities. Thereafter, DYFS placed Mr. Batts in a homeless shelter for youths in Trenton, New Jersey. Mr. Batts remained at the shelter for a few months, during which time he did not attend school or engage in any extracurricular activities. At the age of ten or eleven, he lost his virginity to a thirteen-year-old girl who was living at the shelter.

Mr. Batts reported that he sometimes saw other foster children subjected to physical abuse. In addition, for a period of time when he was around ten years old, he was exposed to older children who forced him and other younger children to fight with each other, and the older children placed bets on who would win. He said that these fights were sometimes violent and bloody but that he felt he had no choice but to participate.

Id. at 22-23 (relying on Dattilio Rept. at 6; Cook Mem. at 3).

Placement with Paternal Grandfather in Rock Hill, South Carolina

After Mr. Batts left the homeless shelter, he spent a brief time living with his paternal grandmother in East Orange, New Jersey and then relocated to Rock Hill, South Carolina, where he lived with his paternal grandfather and attended sixth grade. His paternal grandfather lived with his girlfriend, and Mr. Batts was the only child in the home. Mr. Batts enjoyed living with his grandfather and experienced no emotional or behavioral problems in the home. However, he continued to get into fights at school, and his grades began to decline. Mr. Batts remained with his paternal grandfather for one year.

Id. at 23-24 (relying on Dattilio Rept. at 6-7).

Return to Mother in Phillipsburg, New Jersey

While Mr. Batts was living with his paternal grandfather in South Carolina, his mother was working to regain custody of him. She had relocated to Phillipsburg, New Jersey, where she was living in an apartment with her boyfriend and Mr. Batts's younger sister. She and her boyfriend visited Mr. Batts and attended family counseling sessions with him. As a result of these efforts, at the age of twelve, Mr. Batts left his paternal grandfather's home in South Carolina and went to live with his mother and her boyfriend in Phillipsburg, New Jersey.

Mr. Batts was happy to be reunited with his mother. He liked his mother's boyfriend, and they became very close. While Mr. Batts was living with his mother, she married her boyfriend and gave birth to a son. Mr. Batts developed a close relationship with his younger brother. However, despite his happiness at being reunited with his mother, Mr. Batts harbored resentment about things his mother had done in the past, and these memories became a source of family conflict.

Mr. Batts attended seventh and eighth grades in Phillipsburg Middle School. He continued to excel at sports. However, he received "Cs" and "Ds" in school, failed one class, and was suspended from school several times for fighting. He became sexually active and began drinking alcohol and smoking marijuana.

Id. at 24-25 (relying on Dattilio Rept. at 7; Cook Mem. at 3, 5, 6-7).

Initiation into the Bloods Gang

When Mr. Batts was in seventh grade, he made friends with another student who was a member of the Bloods, a criminal street gang. During that year, his friend who belonged to the gang went to jail and remained incarcerated for a year. Thus, it was impressed upon Mr. Batts that gang activity could lead to prison.

When Mr. Batts was in eighth grade, he was approached by the Bloods and invited to join the gang. The gang members told Mr. Batts that they were like a family and took care of each other. Because Mr. Batts's own family life had been fractured, he found gang life appealing.

In order to be initiated into the Bloods, Mr. Batts was required to fight five different youths behind Phillipsburg High School. Each fight lasted thirty-six seconds, a symbolic reference to 36th Street in Compton, California where the Bloods gang had formed.

During Mr. Batts's first year as a Blood, he spent time with other gang members and wore the gang's colors, which he said gave him a sense of identity. After Mr. Batts joined the Bloods, he continued to play football and basketball, earned average grades, and completed eighth grade.

Id. at 25-26 (relying on Dattilio Rept. at 7-8; Michals Rept. II at 14, 17-18; N.T. Trial, July 26, 2007, at 149).

Relocation to Easton, Pennsylvania

When Mr. Batts was in ninth grade, his parents relocated to Easton, Pennsylvania. Mr. Batts continued to attend Phillipsburg High School, using a former Phillipsburg address. He began spending more time on the streets with his fellow gang members, and his grades declined to the point where he was failing all of his classes. As a result, his mother withdrew him from basketball. His parents attempted to find help for him. However, they were unsuccessful, and Mr. Batts's behavior and school performance continued to deteriorate.

Id. at 26 (relying on Dattilio Rept. at 8; Cook Mem. at 6).

Batts's Decision to Move Out of His Parents' House

One evening after Mr. Batts came home late, he and his mother had an argument, and his mother struck him. The following day, Mr. Batts moved out of his parents' house, dropped out of school, and began selling crack cocaine for the Bloods in order to support himself.

Mr. Batts's parents reported him missing to the Easton Police Department. Although they repeatedly attempted to contact him, he told them to stop calling. He told Dr. Dattilio that he had decided to live his life on the streets, because he felt he was better accepted by the Bloods than by anyone else. Dr. Michals's report states: "[H]is decision to participate, to join the gang,

was volitional, and he chose to do it, which was a major catastrophic decision. After learning about the gang, he made choices, including spending time with the gang. His involvement increased, he dropped out of school, and was getting more rewards from gang involvement than pursuing his education."

Id. at 26-27 (relying on Dattilio Rept. at 8; Cook Mem. at 6; Michals Rept. II at 15).

3. Batts's Attack on Hilario and Edwards

The court detailed the events that led up to Batts's attack on Hilario and Edwards on the night of February 7, 2006 and Batts's account of his state of mind at the time he committed his crimes. *See id.* at 27-29.

Mr. Batts moved out of his mother's house on Friday, February 3, 2006. That day or the next day, he met Vernon Bradley, a lieutenant in the Bloods gang. Bradley had two tears tattooed on his face, which signified that he had killed two people. Dr. Michals asked Mr. Batts why he continued to associate with Bradley after he learned that Bradley was a killer. Mr. Batts told Dr. Michals that "there would be gains by fitting in."

As I stated earlier, on Tuesday, February 7, 2006, Mr. Batts was riding around in a car in Easton with Bradley and three other gang members. They saw Hilario and Edwards on the front porch of a house at 713 Spring Garden Street installing a video camera. Mr. Batts was told that these two boys had stolen some money and drugs from another gang member. Bradley asked whether anyone in the car was willing to "put in some work," which Mr. Batts interpreted as a directive to kill Hilario and Edwards. No one else in the car responded. However, Mr. Batts agreed to do the job. No one ordered him to carry out the execution, and no one threatened him with any consequences for refusing to do it. Mr. Batts said he did not think too much about the task, because he understood that in the gang, it was important to do whatever was expected. Mr. Batts told Dr. Dattilio that he believed he would have been killed if he had failed to carry out the execution.

After the shooting, Mr. Batts returned to the car. When he told Bradley what he had done, Bradley said, "Good job." Shortly

thereafter, Mr. Batts was made a sergeant in the Bloods. He said he did not commit the crimes in order to obtain a promotion but did it because it was expected of him.

Mr. Batts told Dr. Dattilio that when he shot Hilario and Edwards, he felt nothing. However, after he returned to the car, he began to worry that he might be arrested and might go to jail, although he did not yet fully realize how serious the legal consequences of his actions would be.

Id. (relying on Dattilio Rept. at 9; Michals Rept. at 4, 8; Michals Rept. II at 14; N.T. Trial, July 26, 2007, at 151-52; N.T. Trial, July 27, 2007, at 98-99).

4. Batts's Flight to New Jersey and Subsequent Arrest

The court detailed Batts's behavior after the crimes, including his flight to another state, his attempts to avoid capture by the police, his ultimate arrest, the lies he told investigators, and his failure to show any remorse for his crimes. *See id.* at 29-30.

On the night of the shooting, Mr. Batts stayed at Bradley's house. The following day, he left Pennsylvania and went to stay with other gang members in Phillipsburg, New Jersey in order to avoid being arrested by the Easton police. Mr. Batts's mother called him and told him that Bradley had been arrested and that the police were looking for him. She urged him to turn himself in.

On February 10, 2006, Mr. Batts was arrested at the house where he was staying in Phillipsburg, New Jersey. When police entered the home, Mr. Batts attempted to hide his face inside his hoodie sweatshirt. When he was asked to identify himself, he gave a false name. However, police were able to identify him from a photograph they had been given.

When Mr. Batts was questioned by police, he initially denied any involvement with the Bloods and said that Bradley was the one who had fired the gun at Hilario and Edwards. However, later in the same interview, Mr. Batts confessed that it was he who had done the shooting. He showed no emotion and no remorse. He

gave no indication that he was fearful of Bradley and made no mention of having been forced to commit the crime.

Id. (relying on N.T. Trial, July 25, 2007, at 37-39; N.T. Trial, July 26, 2007, at 26-27, 34-35, 54-59, 62-65; PSI at 4; Michals Rept. II at 4-5).

5. Batts's Trial and Incarceration

The court reviewed Batts's pretrial proceedings, trial, convictions, and sentencing as set forth in Sections II and III above. *See id.* at 30-32. In addition, the court detailed Batts's experiences during his incarceration, both while he was in Northampton County Prison awaiting trial and after he was sent to a series of state prisons following his convictions and sentencing. *See id.* at 30-35.

Pretrial Incarceration

After Mr. Batts's arrest, he was placed in Northampton County Prison, where he remained for twenty-one months. While he was there, he got into several fights with inmates who knew or were related to his victims. Because Mr. Batts was a juvenile, he was regularly confined to his cell for his own safety.

Id. at 30 (relying on Dattilio Rept. at 10).

Incarceration Following Conviction

After Mr. Batts's sentencing, he was placed in a series of State Correctional Institutions:

State Correctional Institution Graterford in 2007 for one week; State Correctional Institution Camp Hill in 2007 for two months; State Correctional Institution Pine Grove from January through September of 2008; State Correctional Institution Somerset from September, 2008 through June, 2009; and State Correctional Institution Retreat from June, 2009 through the present.

Id. at 32 (relying on PSI at 5).

Education in Prison

Since Mr. Batts has been in the state prison system, he has completed the following courses: April 25, 2008, Leadership Development; January 25, 2011, Long-Term Offenders; February 12, 2013, Violence Prevention, Moderate Intensity.

Mr. Batts enrolled in but failed to complete the following programs: December 29, 2009, Long-Term Offenders; December 14, 2012, Violence Prevention, High Intensity.

Mr. Batts told Dr. Dattilio that he also completed a pre-vocational class on how to create a resume and apply for jobs. Dattilio at 10.

Mr. Batts asserted that he completed his GED in 2010. Although prison records reflect that he began the GED program on September 28, 2009, the records were inconclusive as to whether he completed the program. PSI at 6.

Id. at 32-33 (relying on PSI at 6; Dattilio Rept. at 10).

Employment in Prison

Because of his age, Mr. Batts was not employed before he went to prison. However, since he has been in prison, he has worked in the kitchen, and for the past year, he has cleaned laundry on his cell block. He told Dr. Dattilio that if he is ever released from

prison, he would like to own his own business, for example, driving a truck or operating a barbershop.

Id. at 33 (relying on PSI at 5-6; Dattilio Rept. at 10).

Activities in Prison

Mr. Batts participates in prison sports and fitness programs, including football, basketball, softball, and weight lifting.

Id. at 34 (relying on Dattilio Rept. at 10).

Conduct in Prison

Since he has been in prison, Mr. Batts has been disciplined for five incidents of misconduct:

On December 16, 2009, Mr. Batts was found guilty of refusing to obey an order. He was suspended from his prison job for fifteen days.

On February 14, 2010, Mr. Batts was found guilty of refusing to attend work, school, and mandatory classes. He was sentenced to loss of privileges for thirty days and suspension from his prison job for 999 days.

On May 28, 2010, Mr. Batts was found guilty of fighting after he became involved in a heated exchange with another inmate during a game of basketball. He was placed in disciplinary custody for sixty days, during which time he was suspended from his prison job.

On August 5, 2011, Mr. Batts was found guilty of refusing to obey an order and being in an unauthorized area. He was sentenced to cell restriction for fifteen days.

On October 16, 2012, Mr. Batts was charged with possession of contraband (a pornographic magazine and money), lying to an employee, and failing to report the presence of contraband. His charges were later reduced, and he was sentenced to cell restriction for fifteen days.

In January of 2014, Mr. Batts was disciplined for throwing liquid at another inmate at Northampton County Prison.

Mr. Batts told Dr. Dattilio that although there are Bloods in prison, he has given up gang activity and wishes to avoid the behaviors and associations that created problems for him when he was a juvenile. Although the court heard testimony yesterday indicating that you may have continued to associate with certain members of the Bloods gang for a period of time after you entered the prison system, there was no evidence that you engaged in any violent gang-related activity while that in prison.

Id. at 34-35 (relying on PSI at 6; Dattilio Rept. at 10-11; N.T. Resentencing Hrg., May 1, 2014 at 119).

6. Batts's Current Family Support Network

The court described Batts's current family support network, which includes his mother, stepfather, and his younger brother and sister. *See id.* at 35-36.

Mr. Batts's mother and stepfather are caring and supportive. Mr. Batts is very close to his younger brother, who regularly calls, writes, and visits him in prison. Mr. Batts reports that he wishes to be a positive role model for his brother and advises him to do well in school, listen to his parents, and stay out of trouble. Mr. Batts says he recognizes that his own mistakes cost him his freedom and that he wants to help his brother avoid similar mistakes.

Mr. Batts indicated that he has two brothers and one sister on his father's side, although he did not indicate whether he has had any contact with them. He told Dr. Kraus that he believes he has one child, a seven-year-old daughter. He attempted to prove his paternity of the child by submitting to a paternity test, but the child's mother refused to cooperate with testing.

Id. (relying on PSI at 2; Cook Mem. at 3; Kraus Rept. at 2).

7. Batts's Current Feelings About His Crimes

The court noted that Batts has recently expressed remorse for his crimes and sympathy for his victims. *See id.* at 36.

Mr. Batts told Dr. Dattilio that he realizes that his crimes were "terrible and traumatic for everyone, including himself" and that he feels remorse for what he did. He said he committed the crimes because he was immature and feared for his life. In court yesterday, Mr. Batts apologized to Delores Howell, the grandmother of Clarence Edwards.

Id. (relying on Dattilio Rept. at 11; N.T. Resentencing Hrg., May 1, 2014 at 169).

8. Batts's Mental Status

The court gave a detailed account of Batts's mental status as reported by experts for both the Commonwealth and the defense. *See id.* at 36-40.

Dr. Dattilio reported that Mr. Batts has no history of major mental illness or medical problems and no history of drug or alcohol use other than drinking beer and smoking marijuana in high school. Mr. Batts's overall IQ scores are in the low average range. Although certain tests indicated that he may have a slight learning disability, his overall profile does not raise any concerns of serious neurocognitive deficits or brain damage. Dr. Michals's report states: "Mr. Batts had no history of manifestations of any mental disorder that would cause or are related to the commission of the crime for which he has been charged and convicted."

Mr. Batts told Dr. Dattilio that the fights in his life have always been due to the fact that he had a "bad temper." He has never taken anger management classes, although some of his anger issues were addressed in his violence prevention course in prison. Mr. Batts said he has matured since he entered the prison system and has not lost his temper in recent years.

Dr. Dattilio noted that Mr. Batts was rejected by his mother in early childhood and was never allowed to develop a sustained bond with any other caregiver except for a brief period when he appeared to have established a positive bond with his paternal grandfather. Dr. Dattilio commented on a parent/child bonding evaluation performed by a psychologist at the request of DYFS when Mr. Batts was ten years old. The evaluator concluded that Mr. Batts's mother had a poor bond with her son and lacked the necessary emotional maturity, lifestyle, and stability to plan for her son's needs. Dr. Dattilio suggested that because of this weak attachment, Mr. Batts longed for a happy family life with a parent who truly cared about him. As a result, he was particularly vulnerable to recruitment by a gang.

Results of psychological tests administered at the time of Mr. Batts's arrest indicated that he is driven by a desire to present an image of "hard-boiled strength." However, Dr. Dattilio suggested that this desire may be more of a façade than an ingrained defense. Nevertheless, in commenting on the results of the Minnesota Multiphasic Personality Inventory-2 that Mr. Batts completed in 2013, Dr. Dattilio stated: "Individuals with this type of profile tend to show a pattern of chronic psychological maladjustment and are resistant to personality change. This certainly has the potential to exacerbate depending on the level of stress in the immediate environment." Dr. Dattilio went on to state: "[G]iven his personality dynamics, he is likely to have some long-term adjustment problems that are repetitive and tend to be resistant to psychological treatment." Nevertheless, Dr. Dattilio expressed the opinion that Mr. Batts could improve over time with psychotherapy. Dr. Dattilio stated: "There is indication that his depressive symptoms may improve with psychotherapy or with the reduction in situational stress."

Dr. Dattilio cited recent research on adolescent brain development showing that adolescents are lacking in psychosocial maturity and therefore tend to display recklessness, poor judgment, lack of foresight, susceptibility to peer pressure, and weak impulse control. Dr. Dattilio said that Mr. Batts's young age at the time of his offense, his chaotic upbringing, his need for acceptance by his peers, and his fear of Bradley all contributed to his poor decision making in this case. Dr. Dattilio stated that in light of Mr. Batts's lack of any criminal record, the crimes he committed against Corey Hilario and Clarence Edwards were completely out of character for him. Dr. Dattilio noted that the vast majority of adolescents who commit antisocial acts cease those activities in adulthood and that only approximately five to ten percent of these adolescents become chronic offenders. Dr. Dattilio noted that although Mr. Batts continues to maintain some of the personality features that marked his adolescence, he now shows sincere remorse for his crimes. Dr. Dattilio suggested that Mr. Batts's behavior and thinking patterns are likely to change as he further matures.

Dr. Dattilio noted that certain treatment programs in prison are not open to inmates who are serving a life sentence. Thus, he recommended that the court modify Mr. Batts's sentence to permit the possibility of parole so that Mr. Batts can take advantage of such treatment programs.

Id. (relying on Dattilio Rept. at 11-19; Michals Rept. II at 18; Kraus Rept. at 6).

9. Recommendations to the Court

The court noted the recommendations made by the Commonwealth, the PSI, Edwards's grandmother, Dr. Dattilio, and Ms. Cook. *See id.* at 40-41.

The PSI and Delores Howell, Edwards's grandmother, recommended that the court resentence Mr. Batts to life in prison without the possibility of parole. Dr. Dattilio and Ms. Cook recommended that the court modify Mr. Batts's sentence to permit the possibility of parole. Dr. Kraus and Dr. Michals made no recommendation with respect to sentencing.

Id. (relying on N.T. Resentencing Hrg., May 1, 2014 at 90; PSI at 9; Dattilio Rept. at 19; Cook Mem. Addendum at 3).

G. The Court's Consideration of Evidence Relevant to each of the Sentencing Factors

Having completed its discussion of the information presented, the court detailed the information that was relevant to each of the sentencing factors the court was required to consider, organizing the information into twenty-three categories. *See id.* at 41-56.

1. Personal Characteristics and Family, Home and Neighborhood Environment

The court reviewed the evidence of Batts's troubled childhood, his difficulties in forming attachments to trusted adults, and the positive

development in his family relationships since his incarceration. *See id.* at 41-42.

As noted by the evaluators, Mr. Batts had a troubled childhood. He was removed from his mother's care at the age of five, was returned to her for a period of time when he was in third grade, and was removed from her again until he went back to live with her in seventh grade. He has had little contact with his father, because his father has been incarcerated for most of his life. Although he had a network of family members who were able to care for him at various times, he was moved frequently from one home to another, spent a significant amount of time in foster homes, and spent several months in a homeless shelter for youths. As a result, he was unable to form a stable bond with a parent figure. He ran away from several of his homes in an effort to be reunited with his mother.

Although Mr. Batts was returned to his mother's custody when he was in seventh grade and formed a close relationship with his stepfather and younger brother, he experienced difficulty adjusting to the household and began to have problems in school. When he was in ninth grade, he moved out of his parents' home as a result of family conflict. By that time, he had joined the Bloods gang. The crimes at issue in this case were committed days after he moved out of his parents' house.

Since Mr. Batts has been in prison, his mother and stepfather have been caring and supportive. He has a close relationship with his younger brother and has attempted to help him avoid the mistakes that he made.

Id.

2. Education

The court discussed Batts's schooling before he committed his crimes and his efforts to further his education after he was incarcerated. *See id.* at 42.

Mr. Batts had completed eighth grade and started ninth grade when he was incarcerated for the crimes at issue in this case.

Since he has been in prison, he has completed vocational, leadership, and violence prevention classes. Although prison records reflect that he began the GED program on September 28, 2009, the records were inconclusive as to whether he completed the program.

Id.

3. Employment

The court discussed Batts's limited employment experience while in prison. *See id.* at 43.

Because of his age, Mr. Batts was not employed before he was incarcerated. Since he has been in prison, he has worked in the kitchen and cleaned laundry on his cell block. If he is ever released from prison, he would like to own his own business such as driving a truck or operating a barber shop.

Id.

4. Use of Drugs and/or Alcohol

The court discussed Batts's use of drugs and alcohol prior to his incarceration. *See id.* ("Mr. Batts began using alcohol and marijuana when he was in seventh grade. He continued using marijuana until he was incarcerated.").

5. Prior Criminal Record

Although Batts had no criminal record before he committed the crimes at issue in this case, the court noted that he had engaged in illegal conduct.

See id.

Although Mr. Batts had no prior criminal record before he committed the crimes at issue in this case, he told evaluators that he has frequently been involved in fights at school, that he smoked marijuana from seventh grade until he was incarcerated,

and that he sold crack cocaine after he joined the Bloods gang. As discussed earlier, since Mr. Batts has been in prison, he has been involved in fights and has been disciplined for misconduct on five occasions.

Id.

6. Past Exposure to Violence

The court discussed Batts's history of exposure to violence, including physical discipline by his mother, bullying and physical assaults by other children, and one sexual assault by his cousin. *See id.* at 43-44.

As discussed earlier, Mr. Batts was sometimes slapped by his mother and physically assaulted by other children and now claims for the first time that he was once sexually assaulted by an older cousin. Although he performed well in school and sports, he was sometimes ridiculed by other students and frequently got into fights at school.

Id.

7. Circumstances of the Crime

The court reviewed the circumstances of Batts's crimes, including the brutal nature of the attack, the peculiar vulnerability of his victims, his lack of any justification for his actions, his premeditation and planning of the attack, his self-serving motive, and his lack of conflicting emotions or compassion for his victims. *See id.* at 44.

Mr. Batts executed a cold-blooded murder and attempted murder of two defenseless boys he did not know for the purpose of gaining acceptance and perhaps promotion in the Bloods gang. It was a premeditated act. He did not act on impulse but took time to plan and execute the crime. He shot one victim in the

back and the other victim while he was looking into the victim's face.

Id.

8. Participation in the Crime

The court noted that although Batts acted at Bradley's invitation, Batts chose to commit his crimes and acted alone in carrying them out. *See id.* ("This was not felony murder, in which a defendant is found guilty for a killing committed by his accomplice. Although Bradley invited Mr. Batts to commit this crime, Mr. Batts agreed to carry out the crimes, and when he did so, he acted alone.").

9. The Defendant's Asserted Justification

The court did not credit Batts's assertion that he committed his crimes out of fear for his own life. *See id.* at 44-46.

Mr. Batts told Dr. Dattilio that he feared he would be killed if he did not carry out the murder. Although Dr. Samuel, Dr. Dattilio, and Ms. Cook credited this assertion, the jury did not, and the record does not appear to support it. Bradley did not order Mr. Batts to commit the crime. Bradley did not threaten Mr. Batts with any consequences if he refused to do so. The other four gang members who were in the car declined Bradley's invitation, and Bradley did not threaten them or retaliate against them. Moreover, Mr. Batts's own description of the events was inconsistent with his assertion that he acted out of fear. If Mr. Batts had carried out the execution only because he feared he would be killed, one would have expected him to report high levels of anxiety and revulsion at the prospect of killing another human being. But Mr. Batts reported no conflicting emotions. On the contrary, he said he did not think much at all about the task at hand but simply did what was expected of him. He said that Edwards was looking up into his face when he pulled the trigger, and yet he felt nothing. That description does not sound like a

person who dreaded killing another human being and only did so because he feared being killed himself. It sounds like a person who wanted to prove to his fellow gang members that he was capable of committing cold-blooded murder. Dr. Kraus notes that Mr. Batts admitted as much when she interviewed him. She said, "He discussed his anger and his willingness to do anything to become accepted as a successful gang member, including the commission of murder."

Id. (relying on N.T. Trial, July 30, 2007, at 65-70).

10. Age and Emotional Maturity and Development

The court discussed Batts's age and the youthful characteristics that can impair the judgment of teenaged offenders but concluded that, given the particular circumstances presented in this case, Batts's behavior was not the product of such youthful characteristics. *See id.* at 46-48.

Dr. Dattilio and Ms. Cook urge the court to show leniency, because, they argue, Mr. Batts was only fourteen years old at the time of his crimes, and research shows that fourteen-year-olds are still in the process of psychosocial development and, when compared to adults, tend to display recklessness, poor judgment, lack of foresight, susceptibility to peer pressure, and weak impulse control. Although the court accepts the validity of these observations about the psychosocial development of adolescents, and although the court has carefully considered Mr. Batts's youth and immaturity as factors weighing in his favor, as I will discuss shortly, under the circumstances presented in this case, the court will give Mr. Batts only limited consideration for his youth and immaturity.

Although there may be circumstances in which a crime can be partially explained by a young defendant's recklessness, poor judgment, lack of foresight, susceptibility to peer pressure, or weak impulse control, this was not such a crime. Mr. Batts did not act on impulse. He was not caught up in youthful risk-taking behavior and lacked the ability to foresee how it might get out of control. Mr. Batts made a purposeful choice to move out of his parents' home and commit himself to life in the Bloods gang. He knew from prior experience and observation that the Bloods gang

was a violent criminal organization and that he would be asked to commit violent criminal acts. Four days after Mr. Batts moved out of his parents' house, Bradley offered Mr. Batts the opportunity to prove himself by committing murder, and Mr. Batts acted on the opportunity. He was not caught up in the heat of a stressful confrontation but had time to plan and deliberate. He placed a mask over his face, pulled gloves onto his hands, and picked up a handgun. He got out of the car and walked down the street toward the Edwards house. When he walked up the steps to the front porch with the gun in his hand, he was not acting on impulse or a lack of appreciation for what might happen next. He knew exactly what he was going to do. He made a calculated decision to shoot two defenseless boys at point blank range. He shot one boy in the back as he was running away. He shot the other boy twice in the head as he lay helpless on the porch and looking directly up into his face. This was not a crime that resulted from youthful impulsivity, a mistake in judgment, or inability to foresee the consequences of his actions. Mr. Batts intended to kill, and he did kill. Whether he did so to earn a promotion or only to meet the gang's expectations, his intent was to prove to his fellow criminals that he was willing to commit a cold-blooded murder.

I am not suggesting that premeditated murder can never be considered impulsive for purposes of sentencing. There might well be circumstances under which premeditated murder could be the product of poor judgment, lack of foresight, susceptibility to peer pressure, and weak impulse control. That is not the case here.

Id.

11. Familial and/or Peer Pressure

The court discussed Batts's susceptibility to peer pressure and the fact that he was urged to commit his crimes by a senior gang member. See *id.* at 49.

Some of the experts have opined that Mr. Batts had a heightened need for acceptance by his peers as a result of his troubled upbringing and was therefore peculiarly susceptible to peer pressure, particularly that of the older gang member who invited

him to commit this crime. However, this peer pressure was not imposed upon Mr. Batts. Mr. Batts sought out and embraced gang membership with full knowledge that the other gang members would expect him to commit acts of violence. He then agreed to commit an execution-style killing in order to move up in the ranks of the gang hierarchy. Where a defendant actively seeks out and welcomes peer pressure, the peer pressure does not diminish his culpability. The court will not treat gang membership as a mitigating factor in this case.

Id.

12. The Defendant's Ability to Deal with the Police

The court concluded that Batts had demonstrated sophisticated criminal behavior when he evaded police, fled to another state, concealed his whereabouts by hiding with fellow gang members, falsified his identity, and lied to investigators about the circumstances of his crimes. *See id.* at 49-50.

Mr. Batts demonstrated a sophisticated criminal mentality in his dealings with the police. After the crime, he concealed his whereabouts by leaving the state and hiding among his fellow gang members in New Jersey. When police located him, he tried to hide his face and gave a false name. When he was arrested and questioned, he lied about what had happened. He did not confess his crime until police made it clear that they had substantial evidence against him.

Id.

13. The Defendant's Capacity to Assist His Attorney

The court concluded that Batts's age had not impaired his ability to assist in his own defense. *See id.* at 50.

Mr. Batts's age at the time of his defense did not appear to prevent him from assisting in his own defense. As noted earlier, Mr. Batts took steps to evade the police, presented a coherent story when he was arrested, and decided to confess when he determined that the evidence was against him. He obtained able

counsel to act in his defense at trial, and there was no indication that he failed to provide his counsel with meaningful assistance.

Id.

14. Mental Health History

The court noted that, according to the experts presented by both the Commonwealth and the defense, Batts did not suffer from any mental illness that might have triggered his criminal behavior but that he did have personality features indicating chronic psychological maladjustment, including a violent temper, a defiant attitude toward authority, a desire to present an image of strength, a tendency to address conflict through fighting, and susceptibility to stress and other destabilizers in his environment. See *id.* at 50-52.

Mr. Batts has no history of significant medical problems, drug use, brain damage, or mental illness. His IQ is in the low average range. Psychological tests indicate that he is driven by a desire to present an image of "hard-boiled strength." Individuals with his personality profile tend to demonstrate chronic psychological maladjustment and be resistant to treatment. Their problems tend to be exacerbated by increases in stress or other destabilizers in their environment.

Mr. Batts was reportedly rejected by his mother in early childhood, and he never formed a stable bond with an adult caregiver. As a result, he has had a lifelong desire to belong to a supportive and caring family. Some of the evaluators opined that this desire left Mr. Batts particularly vulnerable to recruitment by the Bloods gang.

Throughout his life, Mr. Batts has had a violent temper. He frequently got into fights during his elementary school and middle school years, and he had to fight in order to be initiated into the Bloods gang. Dr. Dattilio suggested that Mr. Batts's young age at the time of the offense, his chaotic upbringing, his

weak attachment to his parental figures, his need for acceptance by his peers, and his fear of senior gang members all contributed to his poor decision making in this case. Although Mr. Batts asserts that he has matured in recent years, he has continued to get into fights in prison and has repeatedly been disciplined for violating prison rules and defying prison authorities. However, nothing in his past approached the level of brutality he exhibited in the crimes he committed in this case. To that extent, his crimes were out of character for him.

Id.

15. Diminished Culpability, Capacity for Change, and Potential for Rehabilitation

The court noted that, based on the experts' opinions, Batts has shown some willingness to pursue treatment but has not demonstrated significant insight into his own behavior, has not resolved his anger issues, has not shown an ability to withstand external stresses, and would need years of therapy to achieve meaningful personality change and rehabilitation. *See id.* at 52-54.

The court has already determined that, under the particular circumstances presented here, Mr. Batts's age and immaturity at the time of the offense do not significantly diminish his culpability. In addition, Mr. Batts's behavior in prison has not been encouraging. Although he has worked at prison jobs and completed courses on leadership, violence prevention, and adjustment to prison life, he has repeatedly been disciplined for violating prison rules and defying prison personnel. Mr. Batts admitted to Dr. Dattilio that he has a bad temper and that most of his fighting over the course of his life has been attributable to his temper. Dr. Kraus noted that Mr. Batts has an ingrained desire to present an image of "hard-boiled strength," the same desire that led him to shoot Hilario and Edwards as a way of proving himself to his fellow gang members. Dr. Kraus said, "He discussed his anger and his willingness to do anything to become accepted as a successful gang member, including the commission of murder."

Dr. Dattilio said that as a result of being separated from gang influences and taking classes in prison, Mr. Batts has developed some insight into the behavior that led to his crimes. Dr. Kraus indicated that Mr. Batts understands some of the psychological issues that led him to commit his crimes, including his anger toward his mother's perceived rejection of him, his mother's perceived preference for his stepfather, and his own need to affiliate with accepting alternate authority figures. However, Dr. Kraus said that Mr. Batts is not fully insightful about how his feelings of inadequacy can lead to errors in judgment. She stated: "Nonetheless, he appears to have made significant changes in his thinking and behavior over his years in prison and at this point appears competent and amenable to treatment."

Dr. Kraus noted that we do not know how Mr. Batts might react if he were subjected to stress and "destabilizers" outside the prison environment. She stated that the risk assessments Mr. Batts completed indicate a low to moderate risk for reoffense. She further stated: "Clearly, if this young man is ever released he will require human services and monitoring to enable him to not fall back into a criminal lifestyle." Although the evaluators agree that Mr. Batts has demonstrated some capacity for change in recent years, the court cannot be confident that significant change will occur without years of therapy.

Id.

16. Cooperation with Authorities

The court noted again that Batts had not cooperated with authorities but had evaded police and lied to investigators. *See id.* at 54 ("As noted above, Mr. Batts did not cooperate with the authorities but fled the jurisdiction, hid his identity, gave a false name to police, and lied about the circumstances of his crimes.").

17. Acceptance of Responsibility

The court noted that Batts has recently taken responsibility for his actions. *See id.* ("The evaluators report that Mr. Batts has now taken responsibility for his actions and acknowledges the impact his crimes have had on his victims and the community.").

18. Expression of Remorse

The court noted that Batts has recently expressed remorse for his crimes. *See id.* ("Although Mr. Batts initially expressed no remorse for his crimes, he now appears to have done so. He said he committed the crimes because he was immature and feared for his life. In court yesterday, Mr. Batts apologized to Delores Howell, the grandmother of Clarence Edwards.").

19. Impact of the Crimes on Victims and the Community

The court described the impact of Batts's crimes on Edwards, Hilario, and Edwards's grandmother. *See id.* at 55.

Edwards was his mother's only child. His grandmother saw his body on the front porch immediately after the shooting. She was not allowed to see him in his final moments.

Hilario had to undergo extensive physical therapy. Because of the placement of the bullet, doctors decided to leave the bullet in his body, and the bullet remains there to this day.

Id. (relying on N.T. Trial, July 24, 2014, at 70, 95, 99, 101-04, 124-29, 184-85; N.T. Trial, July 25, 2007, at 95-99).

20. Particular Vulnerability of the Victims

The court noted the particular vulnerability of Edwards and Hilario. *See id.* ("Mr. Batts's victims were teenaged boys. They were unarmed, unprepared, and unsuspecting.").

21. Need to Avoid Minimizing the Seriousness of the Crime

The court noted the strong need of the victims and the community to see that Batts's crimes are treated with the utmost seriousness. *See id.* ("Mr. Batts's victims and the community have been heavily impacted by his crimes. Compassion for Mr. Batts does not diminish the community's need to see that justice is done.").

22. Defendant's Dangerousness and the Need to Protect the Public

The court found that Batts's lifelong history of aggression, violence, disrespect for the law, and unstable temperament render him an extreme danger to society. *See id.* at 55-56 ("Mr. Batts has a documented history of aggression, violence, and disrespect for the law. Although his mental state may ultimately improve after years of psychotherapy, at the present time, he must be deemed an extreme danger to society.").

23. Recommendations of the PSI, Experts, Character Witnesses, Victims and Community Members, and Attorneys for the Commonwealth and the Defense

The court reviewed the recommendations it had received. *See id.* at 56.

As noted above, the PSI and Delores Howell, Edwards's grandmother, recommended that the court resentence Mr. Batts

to life in prison without the possibility of parole. Dr. Dattilio and Ms. Cook recommended that the court modify Mr. Batts's sentence to permit the possibility of parole. Dr. Kraus and Dr. Michals made no recommendation with respect to sentencing.

Id.

H. The Court's Balancing of the Sentencing Factors

Having detailed the evidence relevant to each of the factors the court was required to consider, the court proceeded to balance the factors in Batts's favor against those factors not in his favor, explaining its reasons for weighing some factors more heavily than others. *See id.* at 56-65.

Mr. Batts, there are a number of factors that are not in your favor and that weigh against leniency in this case.

First is the nature and circumstances of your crimes. You executed a cold-blooded murder and attempted murder of two defenseless boys you did not know for the purpose of advancing your personal interests in the Bloods gang. It was a premeditated act. It was brutal, unprovoked, and senseless. As I said earlier, you placed a mask over your face, pulled a glove onto your hand, and picked up a handgun. You got out of the car and walked down the street toward the Edwards house. You walked up onto the porch and took aim. You shot Corey Hilario in the back as he tried to escape. Then you turned to Clarence Edwards, who had fallen down and was lying helpless on the porch. You looked down into his face, and he looked up at you. Then you shot him in the head, twice. You felt nothing. Your only concern was that you might be caught by the police.

Second is the extent of your participation in the crimes. Although Bradley invited you to commit these crimes, you agreed to do the job, and you acted alone.

Third is your lack of any justification for the crimes. Although you have said you acted out of fear for your life, as I discussed earlier, I do not find your assertion credible. Although you have said you acted based on peer pressure, as I discussed earlier, you sought out and embraced that peer pressure by seeking

membership in the Bloods gang. Thus, I find that you acted without justification.

Fourth is the particular vulnerability of your victims. Corey Hilario and Clarence Edwards were teenagers. They were unarmed, unprepared, and unsuspecting.

Fifth is your lack of cooperation with the authorities. After the shooting, you fled the state to avoid being arrested by the Easton police. When the police found you, you tried to hide your face and gave a false name. When the police asked you what happened, you lied. You only confessed after you saw that the police had substantial evidence against you.

Sixth is the impact that your crimes have had on the victims and the community. You attacked multiple victims. Corey Hilario was seriously injured by the bullet you fired into his back, and because of the placement of the bullet, it remains in his body to this day. Clarence Edwards was killed. He was his mother's only child, and she has now lost him forever. Edwards's grandmother, who had raised him since he was six years old, walked out the front door and saw her grandson lying on the porch with two bullet wounds to his head. She was not even allowed to touch him in his final moments.

Seventh is the need to avoid minimizing the seriousness of your crimes. Compassion for you does not diminish the needs of the victims and the community to see that justice is done.

Eighth is the uncertainty of your amenability to treatment. The experts opined that people with your personality profile tend to display chronic psychological maladjustment and are resistant to treatment. As I said before, your behavior in prison has not been encouraging. Although you have worked at prison jobs and completed courses on leadership, violence prevention, and adjustment to prison life, you have been repeatedly disciplined for violating prison rules, defying prison authorities, and fighting.

Ninth is the need to protect the public. Based on the brutality of your crimes, your documented history of violence, aggression, and disrespect for the law, and the uncertainty of your amenability to treatment, at this time, you must be considered an extreme danger to the community. Although you may ultimately prove to be amenable to treatment, the experts have

indicated that any rehabilitation will require years of psychotherapy. Thus, this factor weighs in favor of an extended period of incarceration.

However, there are a number of factors that are in your favor.

First is your childhood experiences. Your father was incarcerated for most of your life, and your mother lacked the maturity to provide a stable home for you. Although you were provided with food, clothing, and the necessities of life, you were repeatedly moved from one home to another between the ages of five and twelve. As a result, you never formed a stable attachment to a trusted adult. In addition, you were subjected to significant hardships. You were exposed to physical violence by your mother and your peers. You claim that you were sexually assaulted by your cousin. Older children manipulated you to engage in fights with other children. Because of these conditions, you developed a heightened need for the support of a caring family, and as a result, you were later attracted to the apparent cohesion of life in a criminal street gang. Although these factors do not diminish your culpability, they do suggest that you might benefit from psychotherapy and other forms of rehabilitation.

Second, you were fourteen years old at the time you committed the crimes in this case. The experts have cited scientific research indicating that adolescents are still in the process of psychosocial development and, when compared to adults, tend to display recklessness, poor judgment, lack of foresight, susceptibility to peer pressure, and weak impulse control. As I said earlier, given the particular circumstances of this case, the court does not believe that your young age significantly diminishes your culpability, because your crimes were not the product of recklessness, poor judgment, lack of foresight, susceptibility to peer pressure, or weak impulse control. Your crimes were deliberate and premeditated acts. However, you have since recognized the wrongfulness of your conduct and gained some insight into the psychological issues that led you to commit your crimes. Thus, the court does believe that your young age weighs in your favor in assessing your amenability to treatment and rehabilitation and your capacity for change.

Third, you had no prior criminal record at the time of your arrest. You regularly attended elementary school and middle school, and for the most part, you performed well academically. You excelled

at a wide variety of sports. Although you did admit to some limited underage drinking, casual use of marijuana, selling crack cocaine for the Bloods gang, and fighting at school, nothing in your past approached the level of brutality that you exhibited in the crimes you committed in this case. As I mentioned, since you have been in prison, you have acknowledged the wrongfulness of your conduct. You have recently taken responsibility for your crimes and have recently shown some compassion for your victims. Although you were never employed prior to your arrest because of your young age, you have held two jobs in prison, and you have pursued some pre-vocational training. You have taken courses on leadership and violence prevention. You have maintained a close relationship with your family and attempted to be a positive role model for your younger brother, advising him to do well in school, listen to his parents, and avoid the mistakes that cost you your freedom. Thus, these factors weigh in your favor in assessing your capacity for change.

Fourth, several of the experts opined that based on your young age and the insights you have gained into the psychological issues that led you to commit your crimes, if you are given the benefit of years of psychotherapy and other forms of rehabilitation, your psychological condition could improve.

Although the court heard testimony yesterday indicating that you may have continued to associate with certain members of the Bloods gang for a period of time after you entered the prison system, there was no evidence that you engaged in any violent gang-related activity while in prison and, therefore, that testimony has not affected my determination of your sentence.

The court recognizes, as noted in *Miller v. Alabama*, that we cannot proceed as though Mr. Batts was not a child at the time of his offense. We must consider the extent to which his youth and immaturity, his troubled childhood, his need for acceptance, and his desire to prove himself contributed to his crime. We have considered those factors, including the disruption and emotional pain Mr. Batts suffered as a child.

As I noted earlier, the new statute passed by the Pennsylvania legislature in response to *Miller v. Alabama* is not applicable to this case, because the new statute applies only to defendants who were convicted on or after the date of the decision in *Miller v. Alabama*. However, the court is guided by the new statute,

because the court recognizes that the statute is an expression of the legislative will. For defendants such as Mr. Batts who were under the age of fifteen at the time of their crimes, the new statute provides for a minimum sentence of 25 years to life. Based on the particular facts of this case, I conclude that Mr. Batts should receive more than the minimum sentence contemplated by the new statute.

Can the defendant please rise. After considering all of the testimony, documents, trial transcripts, reports and information listed previously, and after considering the United States Supreme Court decision in *Miller v. Alabama*, the Pennsylvania Supreme Court decision in *Commonwealth v. Batts*, the new sentencing statute passed by the legislature, 18 Pa.C.S. Section 1102.1, and after careful consideration and weighing of all of the factors listed above, the court concludes that the factors not in the defendant's favor significantly outweigh the factors in his favor. Weighing all of the factors, including the brutal nature of your crime; the recommendation of the prosecutor, the fact that you acted alone; the fact that you acted for your own personal gain; your lack of justification for your crimes; the particular vulnerability of your victims; your lack of cooperation with the authorities; the impact that your crimes have had on the victims, the victims' families and the community; the need to avoid minimizing the seriousness of your crime; the uncertainty of your amenability to treatment; the need to protect the public; your troubled childhood; your young age and stage of development at the time you committed your crimes and, in particular, the fact that you were only fourteen years old at the time of your crimes, an age that warrants particular consideration, as determined by the United States Supreme Court; the fact that your crimes appear to have been out of character for you; and the opinions of several of the experts that you are amenable to treatment and might be rehabilitated with years of psychotherapy, the court concludes that the factors not in the defendant's favor significantly outweigh the factors in his favor.

Id.

I. The Court's Sentencing Decision

The court concluded by reviewing the directive of the United States Supreme Court in *Miller* and announced its decision that, based on the particular facts of this case, the appropriate sentence for Batts's crime of first-degree murder is life in prison without the possibility of parole. *See id.* at 65-68.

Mr. Batts, I have carefully weighed the factors in your favor and those not in your favor. This decision does not come lightly for me. I haven't slept much in the last week. I've been up, I've been putting everything I have to make a decision in this case. I've considered the admonition of the United States Supreme court that I consider whether your crimes reflect "unfortunate yet transient immaturity." Mr. Batts, I have concluded that your crimes do not reflect unfortunate yet transient immaturity.

On the evening of February 7, 2006, you committed a calculated, callous and cold-blooded murder. You made yourself the judge, jury and executioner of Clarence Edwards and, if not for the grace of God, you would have also killed Corey Hilario.

For all of these reasons and the reasons stated previously, the defendant will be sentenced as follows:

The Defendant will be sentenced to pay the costs of prosecution.

The term of imprisonment for the charge of attempted murder shall run concurrent to the sentence of imprisonment for the charge of murder in the first degree.

The sentence of imprisonment for the charge of aggravated assault shall merge with the sentence of imprisonment for attempted murder.

The Defendant will be given credit for all time served.

For the charge of attempted murder, for the attempted murder of Cory Hilario, the defendant will be sentenced to serve a term of

imprisonment in a State Correctional Institution for a minimum period of 10 years to a maximum period of 20 years.

For the charge of murder in the first degree, for the murder of Clarence Edwards, the defendant will be sentenced to imprisonment for a term not to exceed his natural life, without the possibility of parole.

Following yesterday's hearing -- you can be seated. Following yesterday's hearing, I spoke with my law clerk regarding the sentence that I intended to impose. I told her that I intended to impose a sentence of life without the possibility of parole. She responded, Judge, he was 14 years old. Have mercy. I left the courthouse and, on my way home, I drove past 713 Spring Garden Street. I parked in front of the house. I then imagined the events that occurred on the evening of February 7, 2006. As I sat in front of 713 Spring Garden Street I imagined Qu'eed Batts wearing a mask and one glove, walking up the stairs and then shooting Corey Hilario in the back and Clarence Edwards twice in the head while Qu'eed Batts looked at Clarence's face.

I imagined Delores Howell later coming outside and seeing her grandson dying on the porch with two gunshots in his head. But there was no need for me to imagine because this, in fact, happened on February 7, 2006. I then asked myself if it was Qu'eed Batts instead of Clarence Edwards who was killed, would Mr. Batts's family ask the court to show mercy --

SPECTATOR: Yes, we would.

THE COURT: As a judge, I have carefully considered all of the factors required by the law and I have concluded that Qu'eed Batts should be sentenced to serve a term of life imprisonment without the possibility of parole. Mercy for Mr. Batts will have to come from God. May God have mercy on your soul.

Id.

VII. Batts's Post-Sentence Motions and Appeal

On May 12, 2014, Batts filed post-sentence motions requesting that the court reconsider the sentence imposed and conduct another sentencing hearing. See "Defendant's Post-Sentence Motions," *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. May 12, 2014) ("Post-Sentence Motions"). On May 13, 2014, the court denied Batts's Post-Sentence Motions. See *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. May 13, 2014).

On June 10, 2014, Batts filed a Notice of Appeal to the Superior Court of Pennsylvania. See Notice of Appeal, *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. June 10, 2014). In his Statement of Matters Complained of on Appeal, Batts asserts the same claims of error he raised in his Post-Sentence Motions, incorporating the arguments in his Post-Sentence Motions by reference. See "Defendant's Statement of Matters Complained of on Appeal," *Commonwealth v. Batts*, No. C-48-CR-1215-2006 (C.P. Northampton Co. June 10, 2014).

Batts's claims of error are as follows:

1. The court erred by denying Batts's motion *in limine* to preclude the Commonwealth from presenting evidence, disclosed for the first time on the morning of the resentencing hearing, that Batts had continued his gang affiliation while in prison, or, in the alternative, for a continuance of the resentencing hearing to permit the defense to

- review and respond to the evidence. See Post-Sentence Motions ¶¶ 4-10; Statement of Matters Complained of on Appeal ¶ 1.
2. The court misapplied the directive of the Pennsylvania Supreme Court in *Commonwealth v. Batts*, 66 A.3d 286 (Pa. 2013), which, Batts argued, precludes a sentence of life without parole for juveniles who were subject to non-final judgments of sentence for murder as of the date of the United States Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012). See Post-Sentence Motions ¶ 11; Statement of Matters Complained of on Appeal ¶ 2.
 3. The court's sentence of life without parole violates the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Pennsylvania Constitution, because (1) the Pennsylvania courts have not established procedures to narrow imposition of such a sentence to only "unusual" or "rare" cases, as directed by *Miller*, but permits such sentences to be "wantonly and randomly applied"; and (2) a sentence of life without parole can never be constitutionally imposed upon a defendant who was only fourteen years old at the time of the commission of his crimes. See Post-Sentence Motions ¶¶ 12-14; Statement of Matters Complained of on Appeal ¶ 3.
 4. The court concluded that Batts felt no emotion and was not under duress at the time of commission of his crimes, disregarding contrary

evidence in the trial record without explanation or rational basis, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 1 and 9 of the Pennsylvania Constitution. See Post-Sentence Motions ¶¶ 15-19; Statement of Matters Complained of on Appeal ¶ 4.

5. The court improperly conducted a personal investigation of the crime scene; considered evidence gathered in that investigation that was not of record and not relevant to any sentencing factor; was influenced by that evidence, despite the court's assertion to the contrary; and, as a result of that investigation, improperly gave more weight to evidence of the nature and circumstances of Batts's crimes than to evidence of his "chaotic upbringing, his amenability to rehabilitation, and other relevant sentencing factors which could not be 'visited', and therefore enhanced, in the consideration of the court." Post-Sentence Motions ¶ 20; Statement of Matters Complained of on Appeal ¶ 5.
6. In balancing the sentencing factors, the court demonstrated bias by giving excessive consideration to the nature and circumstances of Batts's crimes and inadequate consideration to the factors the court was required to consider under *Miller*. See Post-Sentence Motions ¶ 21; Statement of Matters Complained of on Appeal ¶ 6.
7. The court erred in according any weight to opinions of the Commonwealth's expert, Dr. Michals, because Dr. Michals testified that

he believes people are incapable of changing their character, and this opinion is inconsistent with the principles announced in *Miller*, which held that juveniles must be regarded as more amenable to change than adults. See Post-Sentence Motions ¶ 22; Statement of Matters Complained of on Appeal ¶ 7.

8. The court's conclusion that Batts engaged in "fights (plural)" while in prison was contrary to the record, which reflected only one such incident, and that incident was minor and should have been disregarded. See Post-Sentence Motions ¶ 23; Statement of Matters Complained of on Appeal ¶ 8.
9. In balancing the sentencing factors, the court disregarded or "trivialized" Batts's age, contrary to the holding of *Miller*. See Post-Sentence Motions ¶ 24; Statement of Matters Complained of on Appeal ¶ 9.
10. The court improperly concluded that it "could not be sure that the public would be safe" should Batts be released, which (1) "placed upon Mr. Batts an improper burden that would be impossible to meet" and (2) assumed that Batts was incapable of change and irreparably corrupt. Post-Sentence Motions ¶ 25; Statement of Matters Complained of on Appeal ¶ 10.
11. The court erred by (1) indicating that it considered the absence of mental illness to be a factor supporting a sentence of life without

parole; and (2) holding that Batts should not be released without mental health treatment but then sentencing him to life without parole, which, "given how the state prison system allocates mental health treatment," will effectively preclude Batts from receiving the necessary mental health treatment while he is in prison. See Post-Sentence Motions ¶ 26; Statement of Matters Complained of on Appeal ¶ 11.

12. The court erred by imposing a sentence of life without parole, because "*Miller* severely limited the traditional wide discretion granted a judge at sentencing and the record here does not demonstrate that Qu'eed Batts was one of the unusual or rare cases demonstrating "'irreparable corruption.'" Post-Sentence Motions ¶ 27; Statement of Matters Complained of on Appeal ¶ 12.
13. The court erred by "failing to recognize the incompetencies associated with youth" and, as a result, "made erroneous assumptions about a juvenile's free will." See Post-Sentence Motions ¶ 28; Statement of Matters Complained of on Appeal ¶ 13.
14. Because Pennsylvania's only statutory sentence that could be imposed upon juveniles convicted of first-degree murder was mandatory life without parole, which was held unconstitutional in *Miller*, Pennsylvania was left with no constitutional sentence for this class of offenders, and the only available option was to sentence Batts to the penalty for the most severe lesser included offense, *i.e.*, third-degree murder, which

carries a maximum sentence of forty years. See Post-Sentence Motions ¶ 29 (citing 18 Pa.C.S.A. § 1102); Statement of Matters Complained of on Appeal ¶ 14 (same). Batts noted, "Though this argument was rejected by the Pennsylvania Supreme Court in *Batts*, resentencing for the lesser included offense is required as a matter of federal due process." Post-Sentence Motions ¶ 29 (citing the Fifth and Fourteenth Amendments to the United States Constitution); Statement of Matters Complained of on Appeal ¶ 14 (same).

DISCUSSION

I. Sentencing Factors

The factors a court must consider in sentencing are prescribed by the Sentencing Code. See 42 Pa.C.S.A. § 9721(b).

(b) General standards.--In selecting from [permitted sentencing alternatives], the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing

Id.; accord *Commonwealth v. Coulverson*, 34 A.3d 135, 144 (Pa. Super. 2011) ("When imposing a sentence, the sentencing court must consider the factors set out in 42 Pa.C.S. § 9721(b), that is, the protection of the public, gravity of offense in relation to impact on victim and community, and rehabilitative needs of the defendant. . . . [A]nd, of course, the court must

consider the sentencing guidelines.'" (quoting *Commonwealth v. Fullin*, 892 A.2d 843, 847-48 (Pa. Super. 2006)). To properly weigh the statutory sentencing factors, the court must consider many aspects of the record, including the particular circumstances of the offense, the impact of the defendant's conduct on the victim and community, and the defendant's age, character, personal characteristics, prior criminal record, and potential for rehabilitation. See *Commonwealth v. Griffin*, 65 A.3d 932, 937 (Pa. Super. 2013); *Commonwealth v. Burkholder*, 719 A.2d 346, 350 (Pa. Super. 1998), *appeal denied*, 747 A.2d 364 (Pa. 1999).

As noted above, in *Miller*, the United States Supreme Court held that a mandatory sentence of life without parole for a juvenile violates the Eighth Amendment of the United States Constitution. See 132 S. Ct. at 2469. The Court did not impose a categorical ban on life without parole for juveniles but held that such a sentence cannot be mandatory but may be imposed only after the trial court has considered mitigating factors, particularly those related to the defendant's age and level of maturity at the time of the offense. See *id.* Although the Court held that such sentences should be "uncommon," the Court made clear that a sentencing court has discretion to impose life without parole on a juvenile provided the court has conducted a thorough inquiry, considered all appropriate factors, including those relating to the defendant's age and maturity, and finds that life without parole is appropriate based on the particular facts of the case. See *id.*

We . . . hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. . . . Because that holding is sufficient to decide these cases, we do not consider [defendants'] alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said . . . about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." [*Roper v. Simmons*, 543 U.S. 551 (2005)]; [*Graham v. Florida*, 560 U.S. 48 (2010)]. **Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.**

Id. (emphasis added).

In *Batts*, the Pennsylvania Supreme Court confirmed that *Miller* does not preclude life without parole for juveniles. See 66 A.3d at 291.

[T]he Supreme Court did not entirely foreclose the imposition of a life-without-parole sentence on a juvenile offender; rather, the majority stated that the occasion for such punishment would be "uncommon," and, in any event, must first "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime of prison." [*Miller*, 132 S. Ct. at 2469]. . . . [T]he majority explained that its decision "mandates only that a sentence follow a certain process -- considering an offender's youth and attendant characteristics -- before imposing a particular penalty." [*Id.* at 2471.]

Id.

The Pennsylvania Supreme Court noted that on October 25, 2012, in an attempt to address *Miller*, the Pennsylvania General Assembly enacted 18 Pa.C.S.A. § 1102.1, which expressly provides that juveniles convicted of first-degree murder may be sentenced to life without parole and, in addition, establishes mandatory minimum sentences of 35 years to life for defendants age fifteen and older and 25 years to life for defendants younger than fifteen. *See id.* at 293 (citing 18 Pa.C.S.A. § 1102.1(a)). However, the court noted that the new statute does not apply to Batts, because it applies only to defendants convicted after the date of decision in *Miller*. *See id.*

The court held that Batts remains subject to a mandatory life sentence but that, on remand, the trial court must consider all of the sentencing factors, including the age-related factors outlined in *Miller*, and determine whether to impose a minimum sentence that would permit the possibility of parole. *See id.* at 295 ("We agree with the Commonwealth that the imposition of a minimum sentence taking [age-related] factors into account is the most appropriate remedy"). As more fully set forth below, we believe that this directive permits this court to determine, consistent with *Miller*, that (1) there is no minimum sentence short of life in prison that would be appropriate in this case; and (2) this court therefore has discretion to reimpose a sentence of life without parole.

In his concurring opinion, Justice Baer stated that although Batts is not governed by the new sentencing statute, the sentencing court should be

guided by the high mandatory minimum sentences in the new statute, because they represent the legislature's expression of policy. *See id.* at 299-300 (Baer, J., concurring) (citing 18 Pa.C.S.A. § 1102.1). As this court noted at the resentencing hearing, we agreed with Justice Baer and have been guided by both the majority opinion in *Batts* and by the new sentencing statute. *See* N.T. Resentencing Hrg., May 2, 2014, at 6.

Because *Batts* is a juvenile, this court must give particular attention to the age-related factors outlined in *Miller*. *See Batts*, 66 A.3d at 297.

At a minimum, [the court] should consider a juvenile's age at the time of the offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation.

Id.

On appeal, the appellate court must determine whether this court considered the appropriate factors. *See* 42 Pa.C.S.A. § 9781(d).

(d) Review of record.--In reviewing the record the appellate court shall have regard for:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant.
- (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.
- (3) The findings upon which the sentence was based.

(4) The guidelines promulgated by the commission.

Id.

II. Appropriateness of Batts's Sentence

A. Standard of Review

"Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion." *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003). "To constitute an abuse of discretion, the sentence imposed must either exceed the statutory limits or be manifestly excessive." *Id.* "In this context, an abuse of discretion is not shown merely by an error in judgment." *Id.* "Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision." *Id.*; accord *Commonwealth v. Walls*, 926 A.2d 957, 961 (Pa. 2007) ("Simply stated, the sentencing court sentences flesh-and-blood defendants and the nuances of sentencing decisions are difficult to gauge from the cold transcript used upon appellate review."); *Commonwealth v. Ellis*, 700 A.2d 948, 958 (Pa. Super. 1997) ("[T]he appellate courts must give great weight to the sentencing judge's discretion, as he or she is in the best position to measure various factors such as the nature of the crime, the defendant's character, and the defendant's display of

remorse, defiance or indifference."), *appeal denied*, 727 A.2d 127 (Pa. 1998); *Commonwealth v. Ward*, 568 A.2d 1242, 1243 (Pa. 1990) (sentencing court is "in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it").

B. Presumption that Sentencing Court Properly Considered the Factors

Where the sentencing court had the benefit of a PSI, the law presumes that the court considered and weighed the factors appropriately. See *Commonwealth v. Devers*, 546 A.2d 12, 18 (Pa. 1988). The Pennsylvania Supreme Court has stated:

Where pre-sentence reports exist, we shall continue to presume that the sentencing judge was aware of relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors. A pre-sentence report constitutes the record and speaks for itself [Sentencing judges] are under no compulsion to employ checklists or any extended or systematic definitions of their punishment procedure. Having been fully informed by the pre-sentence report, the sentencing court's discretion should not be disturbed. This is particularly true, we repeat, in those circumstances where it can be demonstrated that the judge had any degree of awareness of the sentencing considerations, and there we will presume also that the weighing process took place in a meaningful fashion. It would be foolish, indeed, to take the position that if a court is in possession of the facts, it will fail to apply them to the case at hand.

Id.; accord *Commonwealth v. Griffin*, 65 A.3d 932, 937 (Pa.

Super. 2013) (same); *Commonwealth v. Tirado*, 870 A.2d 362, 368

(Pa. Super. 2005) (same).

C. Cases Finding Abuse of Discretion

Cases in which a sentencing court has been found to have abused its

discretion have generally involved extreme sentences combined with a clear failure to consider the statutory factors. *See, e.g., Commonwealth v. Coulverson*, 34 A.3d 135, 146 (Pa. Super. 2011) (where 19-year-old boy with mental health problems was convicted of assault, robbery, burglary, and sex offenses, virtual life sentence of ninety years in the aggregate was "clearly unreasonable"; although sentences were within the standard range and the court had the benefit of a PSI, the court referred to the PSI "only as a perfunctory exercise," focused "entirely on the severity of [the defendant's] offenses," and gave "no consideration whatsoever" to defendant's lifelong dysfunction, his cooperation with the Commonwealth, his remorse for his crimes, his attempts at reclaiming a productive role in society, or the possibility that he might have been rehabilitated with mental health treatment); *Commonwealth v. Dodge*, 957 A.2d 1198, 1202 (Pa. Super. 2008) (equivalent of life sentence for nonviolent property crimes, most of which involved receiving stolen costume jewelry, was "clearly unreasonable").

D. Cases Finding No Abuse of Discretion

Where the sentencing court has considered the statutory factors and based its decision on findings in the record and the sentence is not disproportionate to the defendant's crimes, a sentence is not clearly unreasonable. *See Commonwealth v. Klueber*, 904 A.2d 911, 911 (Pa. 2006) (reversing Superior Court and holding that aggregate sentence of thirty-three

and one-half to sixty-seven years for 134 counts of possession of child pornography was not "clearly unreasonable"; "The trial court relied on [defendant's] prior history and conducted a lengthy sentencing hearing before finding [defendant] was a high risk for re-offense and was an active danger to the public."); *Commonwealth v. Dodge*, 77 A.3d 1263, 1270 (Pa. Super. 2013) (following remand after life sentence was vacated by Pennsylvania Supreme Court) (aggregate sentence of forty years for nonviolent property crimes, most of which involved receiving stolen costume jewelry, was not "clearly unreasonable"; court considered statutory sentencing factors, defendant had lengthy criminal history, sentences were at lowest end of sentencing range, and sentence did not amount to life sentence, because it would allow defendant to be paroled in his early eighties); *Commonwealth v. Macias*, 968 A.2d 773, 778 (Pa. Super. 2009) (sentence of twenty to forty years for third degree murder for participating in beating death was reasonable; sentence was within guidelines range, and although court considered mitigating factors, including defendant's psychological issues, it found such factors were outweighed by brutality of crime and indifference to victim's suffering; "The sentencing court merely chose not to give the mitigating factors as much weight as [defendant] would have liked and decided that the facts did not warrant imposition of a sentence lower than the standard range."); *Commonwealth v. Malovich*, 903 A.2d 1247, 1254 (Pa. Super. 2006) (where defendant was serving sentence

of eighteen months' probation for theft by deception and was found in possession of marijuana, court's decision to revoke his probation and sentence him to eighteen months to three years in state prison was not "manifestly unreasonable"; "The record thus reveals not just that [defendant] was likely to commit another offense, but also that he had in fact done so. . . . In light of the court's observations on [defendant's] intractable attitude and behavior, we find no basis to conclude that the sentence was excessive or disproportionate.").

E. The Court's Balancing of the Factors Here

Here, the court presided over Batts's resentencing hearing and had the opportunity to observe his demeanor during that proceeding. As an aid to sentencing, the court ordered, received, and reviewed the PSI prepared by the Northampton County Department of Adult Probation and Parole. See N.T. Resentencing Hrg. at 8-9. The court reviewed the record and the transcripts of the decertification hearing and the trial; the sentencing guideline forms; the sentencing memoranda submitted by the Commonwealth and the defense; the written reports of Dr. Dattilio, Dr. Michals, Dr. Samuel, and Dr. Kraus concerning their psychological evaluations of Batts; the Sentencing Memorandum of Ms. Cook; and the letter of Delores Howell, all of which were made a part of the record for purposes of resentencing. See *id.* at 8-10. At the resentencing hearing, the court heard testimony from Dr. Dattilio, Dr. Michals, Lieutenant Serbin,

Delores Howell, Batts, and Batts's mother, Shaniqua Batts, as well as written statements by Howell and Shaniqua Batts and the letter of Gregory Troxell. See N.T. Resentencing Hrg., May 1, 2014. In addition, the court considered the recommendations it had received from attorneys for the Commonwealth and the defense, the PSI, Delores Howell, Dr. Dattilio, and Ms. Cook. See N.T. Resentencing Hrg., May 2, 2014, at 56.

The court thoroughly analyzed the law governing its sentencing determination, including the requirements of the Sentencing Code, historical case law, the United States Supreme Court's 2012 decision in *Miller*, and the Pennsylvania Supreme Court's subsequent decision on appeal in *Batts*. See *id.* at 3-8.

The court provided a lengthy and detailed description of information taken from the documents and testimony, describing Batts's birth to unwed teenaged parents; his removal from his parents' custody due to his mother's neglect and his father's incarceration; Batts's successive placements with relatives and foster families in multiple states; his exposure to bullying, violence, and sexual abuse; his difficulties in different schools; his return to his mother at age twelve; his initiation into the Bloods gang when he was in eighth grade; his ultimate decision to move out of his parents' house and make his home with the Bloods gang at age fourteen; his February 7, 2006 attack on Hilario and Edwards; the brutal nature of the crimes and Batts's self-serving motives for committing the crimes; the jury's rejection of Batts's

defense that he acted out of fear for his own life; Batts's lack of emotion as he carried out the attack; the impact of Batts's crimes on the victims, their families, and the community; Batts's flight to another state and attempts to avoid capture by the police; his subsequent arrest; his lies to investigators; his failure to show any remorse for his crimes; his trial and incarceration; his efforts to further his education in prison; his misconduct in prison, including defying authority figures and fighting with other inmates; his current supportive family support network; his recent expressions of remorse for his crimes; the results of his psychological testing and evaluations by mental health experts, focusing on his history of disrupted attachments, his personality profile showing a pattern of chronic psychological maladjustment and long-term adjustment problems that are repetitive in nature and resistant to treatment; conflicting testimony by the experts with respect to his prospects for treatment and rehabilitation; and opposing sentencing recommendations by the attorney for the Commonwealth, the PSI, and Delores Howell on the one hand and counsel for the defense, Dr. Dattilio, and Ms. Cook on the other hand. *See id.* at 13-41.

The court organized this information into twenty-three categories, each relating to one of the sentencing factors the court was required to consider. *See id.* at 41-56. The court discussed each factor in detail, setting forth the evidence relevant to each factor. *See id.* The court rejected the defense's claims that Batts joined the Bloods gang without fully understanding the

nature of the organization and the violent acts his fellow gang members might require him to perform. See N.T. Sentencing Hrg., May 1, 2014, at 108-09.

THE COURT: Wasn't his -- the friend who got him into the Bloods, wasn't he arrested and put in jail prior to Mr. Batts committing this crime?

DR. DATTILIO: Yes.

THE COURT: Wouldn't that have given him an indication if you join the Bloods you could go to jail?

DR. DATTILIO: You would think.

THE COURT: You would think.

Id.

The court took great care in explaining why, based on its review of the particular facts of this case and the experts' opinions, it had accorded little weight to most of the age-related factors outlined in *Miller*. See N.T. Sentencing Hrg., May 2, 2014, at 46-48.

Dr. Dattilio and Ms. Cook urge the court to show leniency, because, they argue, Mr. Batts was only fourteen years old at the time of his crimes, and research shows that fourteen-year-olds are still in the process of psychosocial development and, when compared to adults, tend to display recklessness, poor judgment, lack of foresight, susceptibility to peer pressure, and weak impulse control. Although the court accepts the validity of these observations about the psychosocial development of adolescents, and although the court has carefully considered Mr. Batts's youth and immaturity as factors weighing in his favor, as I will discuss shortly, under the circumstances presented in this case, the court will give Mr. Batts only limited consideration for his youth and immaturity.

Although there may be circumstances in which a crime can be partially explained by a young defendant's recklessness, poor judgment, lack of foresight, susceptibility to peer pressure, or weak impulse control, this was not such a crime. Mr. Batts did not act on impulse. He was not caught up in youthful risk-taking behavior and lacked the ability to foresee how it might get out of control. Mr. Batts made a purposeful choice to move out of his parents' home and commit himself to life in the Bloods gang. He knew from prior experience and observation that the Bloods gang was a violent criminal organization and that he would be asked to commit violent criminal acts. Four days after Mr. Batts moved out of his parents' house, Bradley offered Mr. Batts the opportunity to prove himself by committing murder, and Mr. Batts acted on the opportunity. He was not caught up in the heat of a stressful confrontation but had time to plan and deliberate. He placed a mask over his face, pulled gloves onto his hands, and picked up a handgun. He got out of the car and walked down the street toward the Edwards house. When he walked up the steps to the front porch with the gun in his hand, he was not acting on impulse or a lack of appreciation for what might happen next. He knew exactly what he was going to do. He made a calculated decision to shoot two defenseless boys at point blank range. He shot one boy in the back as he was running away. He shot the other boy twice in the head as he lay helpless on the porch and looking directly up into his face. This was not a crime that resulted from youthful impulsivity, a mistake in judgment, or inability to foresee the consequences of his actions. Mr. Batts intended to kill, and he did kill. Whether he did so to earn a promotion or only to meet the gang's expectations, his intent was to prove to his fellow criminals that he was willing to commit a cold-blooded murder.

I am not suggesting that premeditated murder can never be considered impulsive for purposes of sentencing. There might well be circumstances under which premeditated murder could be the product of poor judgment, lack of foresight, susceptibility to peer pressure, and weak impulse control. That is not the case here.

Id.

The court identified the factors that weighed in Batts's favor and those that weighed against him. *See id.* at 56-65. Weighing heavily against Batts

was the nature of his crimes. *See id.* at 6-57.

You executed a cold-blooded murder and attempted murder of two defenseless boys you did not know for the purpose of advancing your personal interests in the Bloods gang. It was a premeditated act. It was brutal, unprovoked, and senseless. . . . You shot Corey Hilario in the back as he tried to escape. Then you turned to Clarence Edwards, who had fallen down and was lying helpless on the porch. You looked down into his face, and he looked up at you. Then you shot him in the head, twice. You felt nothing. Your only concern was that you might be caught by the police.

Id.

Also weighing against Batts were the extent of his participation in the crimes ("Although Bradley invited you to commit these crimes, you agreed to do the job, and you acted alone."); Batts's lack of justification for the crimes ("Although you have said you acted out of fear for your life, as I discussed earlier, I do not find your assertion credible."); the particular vulnerability of his victims ("Corey Hilario and Clarence Edwards were teenagers. They were unarmed, unprepared, and unsuspecting."); Batts's lack of cooperation with the authorities ("After the shooting, you fled the state to avoid being arrested. . . . When the police found you, you tried to hide your face and gave a false name. . . . When the police asked you what happened, you lied."); the impact of his crimes on the victims and the community ("Corey Hilario was seriously injured by the bullet you fired into his back, and because of the placement of the bullet, it remains in his body to this day. Clarence Edwards was killed. He was his mother's only child, and she has now lost him forever."); the need to avoid minimizing the seriousness of his

crimes ("Compassion for you does not diminish the needs of the victims and the community to see that justice is done."); the uncertainty of Batts's amenability to treatment ("The experts opined that people with your personality profile tend to display chronic psychological maladjustment and are resistant to treatment. . . . [In prison], you have been repeatedly disciplined for violating prison rules, defying prison authorities, and fighting."); and the need to protect the public ("Based on the brutality of your crimes, your documented history of violence, aggression, and disrespect for the law, and the uncertainty of your amenability to treatment, at this time, you must be considered an extreme danger to the community."). *Id.* at 57-59.

The court detailed the factors weighing in Batts's favor, including his troubled childhood ("Although you were provided with food, clothing, and the necessities of life, you were repeatedly moved from one home to another between the ages of 5 and 12. As a result, you never formed a stable attachment to a trusted adult."); the significant hardships he suffered ("You were exposed to physical violence by your mother and your peers. You claimed that you were sexually assaulted by your cousin. Other children manipulated you to engage in fights with other children."); his young age at the time he committed his crimes ("[T]he court does believe your young age weighs slightly in your favor in assessing your amenability to treatment and rehabilitation and your capacity for change."); Batts's positive record of

attendance at school and participation in sports; his lack of a prior record of violent crime ("Although you did admit to some limited underage drinking, use of marijuana, selling crack cocaine for the Bloods gang, and fighting in school, nothing in your past approached the level of brutality that you exhibited in this case."); his recent expressions of remorse ("You have recently taken responsibility for your crimes and have shown some compassion for your victims."); his education and employment in prison ("You have held two jobs in prison and have pursued some prevocational training. You have taken courses on leadership and violence prevention."); his current positive relationships with his family members ("You have maintained a close relationship with your family and attempted to be a positive role model for your younger brother, advising him to do well in school, listen to his parents, and avoid the mistakes that cost you your freedom."); and the opinions of several experts that Batts could benefit from psychotherapy ("[S]everal of the experts opine that based upon your young age and insights you have gained into the psychological issues that led you to commit your crimes, if you were given the benefit of years of psychotherapy and other forms of rehabilitation, your psychological condition may improve."). *See id.* at 60-63.

The court returned to the age-related factors it was required to consider under *Miller* and *Batts* and weighed them against all of the other factors it was required to consider, concluding that the factors weighing

against Batts significantly outweighed those factors weighing in his favor.

See *id.* at 63-65.

The court recognizes, as noted in *Miller versus Alabama*, that we cannot proceed as though Mr. Batts was not a child at the time of his offense. We must consider the extent to which his youth and immaturity, his troubled childhood, his need for acceptance and his desire to prove himself contributed to his crime. We have considered those factors including the disruption and emotional pain Mr. Batts suffered as a child.

. . . .

Can the defendant please rise. After considering all of the testimony, documents, trial transcripts, reports and information listed previously, and after considering the United States Supreme Court decision in *Miller v. Alabama*, the Pennsylvania Supreme Court decision in *Commonwealth v. Batts*, the new sentencing statute passed by the legislature, 18 Pa.C.S. Section 1102.1, and after careful consideration and weighing of all of the factors listed above, the court concludes that the factors not in the defendant's favor significantly outweigh the factors in his favor. Weighing all of the factors, including the brutal nature of your crime; the recommendation of the prosecutor, the fact that you acted alone; the fact that you acted for your own personal gain; your lack of justification for your crimes; the particular vulnerability of your victims; your lack of cooperation with the authorities; the impact that your crimes have had on the victims, the victims' families and the community; the need to avoid minimizing the seriousness of your crime; the uncertainty of your amenability to treatment; the need to protect the public; your troubled childhood; your young age and stage of development at the time you committed your crimes and, in particular, the fact that you were only fourteen years old at the time of your crimes, an age that warrants particular consideration, as determined by the United States Supreme Court; the fact that your crimes appear to have been out of character for you; and the opinions of several of the experts that you are amenable to treatment and might be rehabilitated with years of psychotherapy, the court concludes that the factors not in the defendant's favor significantly outweigh the factors in his favor.

Id.

The court emphasized that it had wrestled with the decision over an extended period of time but had ultimately determined that Batts should be sentenced to life in prison without the possibility of parole. *See id.* at 65-68.

Mr. Batts, I have carefully weighed the factors in your favor and those not in your favor. This decision does not come lightly for me. I haven't slept much in the last week. I've been up, I've been putting everything I have to make a decision in this case. I've considered the admonition of the United States Supreme Court that I consider whether your crimes reflect "unfortunate yet transient immaturity." Mr. Batts, I have concluded that your crimes do not reflect unfortunate yet transient immaturity.

On the evening of February 7, 2006, you committed a calculated, callous and cold-blooded murder. You made yourself the judge, jury and executioner of Clarence Edwards and, if not for the grace of God, you would have also killed Corey Hilario.

. . . .

Following yesterday's hearing -- you can be seated. Following yesterday's hearing, I spoke with my law clerk regarding the sentence that I intended to impose. I told her that I intended to impose a sentence of life without the possibility of parole. She responded, Judge, he was 14 years old. Have mercy. I left the courthouse and, on my way home, I drove past 713 Spring Garden Street. I parked in front of the house. I then imagined the events that occurred on the evening of February 7, 2006. As I sat in front of 713 Spring Garden Street I imagined Qu'eed Batts wearing a mask and one glove, walking up the stairs and then shooting Corey Hilario in the back and Clarence Edwards twice in the head while Qu'eed Batts looked at Clarence's face.

I imagined Delores Howell later coming outside and seeing her grandson dying on the porch with two gunshots in his head. But there was no need for me to imagine because this, in fact, happened on February 7, 2006. I then asked myself if it was Qu'eed Batts instead of Clarence Edwards who was killed, would Mr. Batts's family ask the court to show mercy --

SPECTATOR: Yes, we would.

THE COURT: As a judge, I have carefully considered all of the factors required by the law and I have concluded that Qu'eed Batts should be sentenced to serve a term of life imprisonment

without the possibility of parole. Mercy for Mr. Batts will have to come from God. May God have mercy on your soul.

Id.

As noted above, because Batts was convicted of first-degree murder, he was subject to a mandatory life sentence. See 18 Pa.C.S.A. § 1102(a). On remand, the Pennsylvania Supreme Court has directed this court to resentence Batts to a maximum term of life in prison, in accordance with section 1102(a), and, in addition, giving due consideration to the factors outlined in *Miller*, determine whether to impose a minimum sentence that would permit the possibility of parole. See *Batts*, 66 A.3d at 297. The court considered all appropriate factors. We believe that, based upon our analysis of the evidence relevant to each of the sentencing factors the court was required to consider, including the age-related factors outlined in *Miller*, a sentence of life without parole was not disproportionate to Batts's crimes. The court placed the reasons for its decision on the record. Accordingly, we respectfully suggest that the court did not abuse its discretion and that Batts's appeal should be dismissed.

III. Batts's Claims of Error

Claim 1: The Court Improperly Denied Batts's Motion *in limine* and Request for a Continuance

Batts asserts that the court erred by denying his motion *in limine* to preclude the Commonwealth from presenting evidence, disclosed for the first time on the morning of the resentencing hearing, that Batts had continued his gang affiliation while in prison, or, in the alternative, for a continuance of the resentencing hearing to permit the defense to review and respond to the evidence. See Post-Sentence Motions ¶¶ 4-10; Statement of Matters Complained of on Appeal ¶ 1. We disagree.

First, it was unnecessary to preclude the evidence or grant a continuance. The volume of evidence relating to Batts's continuing gang affiliation in prison was small and required little analysis. The new evidence amounted to approximately sixty pages consisting of (1) photographs of Batts talking with other inmates and purportedly using Bloods gestures and handshakes; and (2) reports of a few items of gang paraphernalia found in Batts's prison cell, *i.e.*, a list of Bloods slang words, a list of Bloods "rules," and a red bandana. See Resentencing Hrg., May 1, 2014, at 180-204. The court deferred Dr. Dattilio's testimony until the afternoon in order to provide the defense an opportunity to review this documentation and discuss it with Batts. See *id.* at 33. Dr. Dattilio testified that he had reviewed "every stitch" of the documentation and discussed it with defense counsel and Batts. See

id. at 113-14. Thus, it was unnecessary to grant a continuance to permit the defense to review the evidence.

Second, any error the court committed in denying Batts's motion *in limine* and his request for a continuance was harmless. See *Commonwealth v. Thornton*, 431 A.2d 248, 251 (Pa. 1981).

The doctrine of harmless error is a technique of appellate review designed to advance judicial economy by obviating the necessity for a retrial where the appellate court is convinced that a trial error was harmless beyond a reasonable doubt. Its purpose is premised on the well-settled proposition that "[a] defendant is entitled to a fair trial but not a perfect one." *Lutwak v. United States*, 344 U.S. 604, 619 (1953).

Id.; accord *Commonwealth v. Noel*, 53 A.3d 848, 857 (Pa. Super. 2012). If the appellate court is convinced beyond a reasonable doubt that an error did not contribute to the verdict, the error is harmless and provides no basis for reversal. See *Thornton*, 431 A.2d at 251.

Here, Dr. Dattilio stated conclusively that, in his view, the evidence did not prove that Batts had continued his gang affiliation in prison and did not change his expert opinion. See *id.* at 113-14. In addition, the court stated on the record that it was unpersuaded by this evidence and did not consider the evidence in reaching its sentencing decision. See Resentencing Hrg., May 2, 2014, at 63.

Although the court heard testimony yesterday indicating that you may have continued to associate with certain members of the Bloods gang for a period of time after you entered the prison system, there was no evidence that you engaged in any violent gang-related activity while in prison and, therefore, that testimony has not affected my determination of your sentence.

Id. Because this evidence did not change Dr. Dattilio's opinion and was not considered by the court, the evidence did not prejudice Batts and did not contribute to the court's sentencing determination. Thus, we respectfully suggest that this claim of error is without merit.

Claim 2: The Court Misapplied the Pennsylvania
Supreme Court's Directive on Remand

Batts asserts that the court misapplied the directive of the Pennsylvania Supreme Court in *Commonwealth v. Batts*, 66 A.3d 286 (Pa. 2013), which, Batts argues, precludes a sentence of life without parole for juveniles who were subject to non-final judgments of sentence for murder as of the date of the United States Supreme Court's decision in *Miller v. Alabama*, 132 S. Ct. 2455 (2012). See Post-Sentence Motions ¶ 11; Statement of Matters Complained of on Appeal ¶ 2. We disagree.

First, Justice Baer's concurrence in *Batts* expressly stated that the majority's holding directs imposition of life in prison, "either with the possibility of parole or without the possibility of parole," and the majority opinion did not contradict Justice Baer's statement of its holding. See *Batts*, 66 A.3d at 299 (Baer, J., concurring).

I join in full the Majority's opinion, vacating the Superior Court's decision and remanding the case to the trial court for it to resentence [Batts] based upon his individual circumstances to a sentence of life imprisonment **either with the possibility of parole or without the possibility of parole** for his conviction

of first degree murder committed when he was a fourteen year old juvenile.

Id. (emphasis added). Justice Baer evidently read nothing in the *Batts* opinion that precluded this court from reimposing life without parole on remand following appropriate consideration of the sentencing factors, including the age-related factors outlined in *Miller*. See *id.* at 299.

Second, the majority opinion in *Batts* outlined the Commonwealth's position in detail, including its assertion that the trial court retains discretion to impose life without parole, and expressly stated, without qualification, that it agreed with the Commonwealth's position. See *Batts*, 66 A.3d at 294-97.

[*Batts*] asserts that the statutory scheme providing for a mandatory sentence of life-without-parole upon conviction of first-degree murder is unconstitutional in its entirety in light of *Miller*. Hence, [*Batts*] contends that this court should look to other statutes existing at the time that the offense was committed in order to determine the appropriate sentence that may be imposed consistent with the Eighth Amendment. This existing constitutional sentence, [*Batts*] argues, should be based on the most severe lesser included offense, namely, third-degree murder, with a maximum term of forty years' imprisonment. Devising any other sentence would, in [*Batts*'s] view, be most appropriately left to the Legislature. . . . Accordingly, [*Batts*] argues that he is entitled to a remand for an individualized sentencing hearing in which the judge should consider the factors delineated in *Miller* prior to imposing an appropriate sentence pursuant to the statutory penalty for third-degree murder.

Characterizing the impact of *Miller* on the current sentencing scheme as "minimal," the Commonwealth responds that the unconstitutional portion of the sentencing scheme is the statute governing parole eligibility, which does not distinguish juvenile offenders when stating that parole may not be granted to those serving a life sentence. Because this portion of the statute is severable, the Commonwealth continues, the "remaining

unaltered statutory provisions," including Section 1102(a) of the Criminal Code, still require that the court impose a sentence of life imprisonment for a juvenile convicted of first-degree murder. In the Commonwealth's view, however, the judge now has discretion, based upon the age-related considerations set forth in *Miller*, to impose the sentence **either without parole or with the possibility of parole after a specified term of years**. The Commonwealth observes that the United States Supreme Court expressly limited its holding in this regard. . . .

The Commonwealth also notes that, in other cases, the Superior Court has remanded for resentencing in light of *Miller* for the trial court to consider the relevant factors and determine whether a sentence of **"life imprisonment with, or without, the possibility of parole"** should be imposed. Supplemental Brief for Commonwealth at 10 (citing *Commonwealth v. Knox*, 50 A.3d 732, 745 (Pa. Super. 2012)). Thus, the Commonwealth reasons that the appropriate remedy for [Mr. Batts's] unconstitutionally mandatory life-without-parole sentence is for this court to remand for a new sentencing hearing at which the trial court may consider the factors detailed in *Miller* and impose a life sentence, **either with or without parole**.

. . . . [The Commonwealth's *amicus*, the Pennsylvania District Attorneys Association], asserts that "[n]othing in [prior cases] suggests that a sentence of **life without parole**, originally imposed in a constitutionally unsound manner, cannot be reimposed in a constitutionally sound one." *Amicus* Brief at 12.

We find the Commonwealth's construction of the applicable statutes to be the best supported. [Batts's] argument that the entire statutory sentencing scheme for first-degree murder has been rendered unconstitutional as applied to juvenile offenders is not buttressed by either the language of the relevant statutory provisions or the holding in *Miller*. Section 1102, which mandates the imposition of a life sentence upon conviction for first-degree murder, see 18 Pa.C.S. § 1102(a), does not itself contradict *Miller*. It is only when that mandate becomes a sentence of life-without-parole as applied to a juvenile offender -- which occurs as a result of the interaction between Section 1102, the Parole Code, see 61 Pa.C.S. § 6137(a)(1), and the Juvenile Act, see 42 Pa.C.S. § 6302 -- that *Miller*'s proscription squarely is triggered. . . . *Miller* neither barred imposition of a life-without-parole sentence on a juvenile

categorically nor indicated that a life sentence with the possibility of parole could never be mandatorily imposed on a juvenile. Rather, ***Miller* requires only that there be judicial consideration of the appropriate age-related factors set forth in that decision prior to the imposition of a sentence of life imprisonment without the possibility of parole on a juvenile.**

Batts, 66 A.3d at 294-96 (citations omitted) (emphasis added). The court did not qualify its agreement with the Commonwealth in any way. Thus, the court implicitly adopted the Commonwealth's position that, on remand, this court retains the discretion to impose life without parole.

Third, the majority quoted with approval the Superior Court's decision in *Commonwealth v. Knox*, 50 A.3d 732 (Pa. Super. 2012), which vacated a sentence of life without parole based on *Miller* and expressly stated that, on remand, after consideration of the age-related factors outlined in *Miller*, the trial court would have discretion to reimpose life without parole. See *Batts*, 66 A.3d at 297 (citing *Knox*, 50 A.3d at 745).

Regarding the appropriate age-related factors, as the Commonwealth and its *amicus* observe, the Superior Court has considered the impact of *Miller* and vacated and remanded for resentencing, instructing the trial court that:

[A]t a minimum it should consider a juvenile's age at the time of the offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation.

Knox, 50 A.3d at 745 (citing *Miller*, ___ U.S. at ___, 132 S. Ct. at 2455). **We agree with the Commonwealth** that the imposition of a minimum sentence taking such factors into account is the most appropriate remedy for the federal constitutional violation that occurred when a life-without-parole sentence was mandatorily applied to [Batts].

Batts, 66 A.3d at 297.

The *Knox* case involved a defendant who, like Batts, was convicted prior to *Miller* and therefore was not governed by Pennsylvania's new sentencing statute, 18 Pa.C.S.A. § 1102.1. See *Knox*, 50 A.3d at 732. The *Knox* court thoroughly analyzed *Miller* and stated that, on remand, after considering the age-related factors outlined in *Miller*, the sentencing court could decide to reimpose life without parole. See *id.* at 745.

Because [defendant] was sentenced to a mandatory sentence of life in prison without the possibility of parole for the commission of a second-degree murder as a juvenile, we are constrained to vacate the judgment of sentence and remand the case to the trial court for resentencing. **We emphasize that our disposition does not mean that it is unconstitutional for a juvenile actually to spend the rest of his life in prison**, only that the mandatory nature of the sentence, determined at the outset, is unconstitutional. Therefore, although *Miller* did not delineate specifically what factors a sentencing court must consider, at a minimum it should consider a juvenile's age at the time of the offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation. *Miller*, 567 U.S. at ___, 132 S. Ct. 2455. Prior to sentencing, we anticipate that the trial court will order briefs from the Commonwealth and [defendant], and accept briefs from their *amici*, if any, on these

factors **and the issue of whether life with or without the possibility of parole should be imposed.**

Id. (emphasis added).

When the Pennsylvania Supreme Court cited *Knox* in *Batts*, the Court gave no indication that it was overruling, limiting, or disagreeing with *Knox* in any manner. Had the Court intended to extend *Miller* and hold that Pennsylvania had no statutory mechanism for a sentence of life without parole prior to the enactment of section 1102.1, the court would have said so explicitly and would have provided a detailed explanation for its conclusion. However, the court expressly stated that it did not intend to extend *Miller*. See *Batts*, 66 A.3d at 296.

Significantly, in the arena of evolving federal constitutional standards, we have expressed a reluctance to "go further than what is affirmatively commanded by the High Court" without "a common law history or a policy directive from our Legislature." *Commonwealth v. Sanchez*, [36 A.3d 24, 66 (Pa. 2011), cert. denied, 133 S. Ct. 122 (2012)]. Moreover, barring application of the entire statutory scheme as applied to juveniles convicted of first-degree murder, based solely on the policy discussion in *Miller* (short of its affirmative holding), would contradict the "strong presumption that legislative enactments do not violate the constitution." *Commonwealth v. Chase*, [960 A.2d 108, 112 (Pa. 2008)]; see also 1 Pa.C.S. § 1922(3) (presumption that the General Assembly does not intend to violate the federal or state constitutions when it enacts legislation).

Id. This passage makes clear that the Pennsylvania Supreme Court did not intend to extend *Miller* and hold that there was no mechanism for imposing life without parole on juveniles until the General Assembly enacted a new sentencing statute.

Batts rests his argument entirely on the following passage from the majority opinion:

We recognize the difference in treatment accorded to those subject to non-final judgments of sentence for murder as of Miller's issuance and those convicted on or after the date of the High Court's decision. **As to the former, it is our determination here that they are subject to a mandatory maximum sentence of life imprisonment as required by Section 1102(a), accompanied by a minimum sentence determined by the common pleas court upon resentencing.** Defendants in the latter category are subject to high mandatory minimum sentences and the possibility of life without parole, upon evaluation by the sentencing court of criteria along the lines of those identified in Miller. See 18 Pa.C.S. § 1102.1. Nevertheless, in the absence of a claim that such difference violates constitutional norms, we have interpreted the statutory provisions applicable to [Batts] (and all others similarly situated) in accord with the dictates of the Eighth Amendment as set forth in Miller, as well as the Pennsylvania Legislature's intent reflected in the relevant statutory provisions.

Post-Sentence Motions at 3 (quoting *Batts*, 66 A.3d at 297) (emphasis added by Batts). Batts argues that because the court mentioned life without parole only in connection with the new statute, the court must have intended that defendants not governed by the new statute are not subject to the possibility of life without parole.

We believe that Batts has taken the quoted language out of context. In this passage, the court was not focused on the issue of possible differences in the maximum penalty but only on possible differences in the minimum penalty. Justice Baer noted the possibility that after *Miller*, for defendants not subject to the new sentencing statute, different courts might

exercise their discretion to impose dramatically different minimum sentences.

See *id.* at 300. See 66 A.3d at 300.

While the legislature specified that its enactment applied to juvenile offenders convicted on or after the date of the *Miller* decision, which would not include [Batts], I believe that trial courts conducting resentencing of defendants like [Batts], whose conviction predated *Miller*, but who preserved a *Miller* claim on appeal, would be wise to follow the policy determinations made by the legislature in its recent enactment. . . . If trial courts fail to take guidance from the recent legislative enactments, the minimum sentence imposed on any given juvenile before becoming eligible for parole could vary widely. One court could immediately parole an 18-year-old offender, while another court could impose a 50 year minimum sentence on a 14 year old offender. While discretionary sentencing is a valid trial court function and *Miller* specifies that individual circumstances should be considered by judges sentencing juvenile murder offenders, given that the legislature is the policy-making body for our Commonwealth and has quickly responded to *Miller* indicating the minimum sentences it view as appropriate for different aged juvenile homicide offenders, I believe courts engaging in resentencing necessitated by the *Miller* decision, should look to the newly enacted statute for guidance without abrogating their discretion as appropriate in individualized cases.

Id.

The majority in *Batts* noted of the possibility of dramatically varying minimum sentences but concluded that such differences were permitted by the existing statutory scheme. See *Batts*, 66 A.3d at 297.

We recognize the difference in treatment accorded to those subject to non-final judgments of sentence for murder as of *Miller*'s issuance and those convicted on or after the date of the High Court's decision. As to the former, it is our determination here that they are subject to a mandatory maximum sentence of life imprisonment as required by Section 1102(a), accompanied by a minimum sentence determined by the common pleas court upon resentencing. Defendants in the latter category are subject

to high mandatory minimum sentences and the possibility of life without parole, upon evaluation by the sentencing court of criteria along the lines of those identified in *Miller*. See 18 Pa.C.S. § 1102.1. Nevertheless, in the absence of a claim that such difference violates constitutional norms, we have interpreted the statutory provisions applicable to [Batts] (and all others similarly situated) in accord with the dictates of the Eighth Amendment as set forth in *Miller*, as well as the Pennsylvania Legislature's intent as reflected in the relevant statutory provisions.

Id. Thus, the language Batts relies upon was not addressing the issue of the maximum penalty and does not limit this court's discretion to impose life without parole.

In *Batts*, the Pennsylvania Supreme Court struck down 61 Pa.C.S.A. § 6137(a)(1), the statutory provision that made inmates serving life sentences ineligible for parole, insofar as it applied to juveniles. See *id.* ("Because this portion of the statute is severable, . . . the 'remaining unaltered statutory sentencing provisions,' including Section 1102(a) of the Criminal Code, still require that the court impose a sentence of life imprisonment for a juvenile convicted of first-degree murder.") (quoting the Commonwealth's brief). Thus, the court removed the statutory prohibition on parole for juveniles serving life sentences. Although *Batts* now permits the sentencing judge to allow the possibility of parole for a juvenile, nothing in the opinion requires the court to do so. Given the numerous passages in the majority opinion in *Batts* cited above, we believe it is clear that we have the discretion to impose a sentence of life without parole. Thus, we respectfully suggest that this claim of error is without merit.

Claim 3: The Sentence of Life Without Parole Is Unconstitutional

Batts asserts that the court's sentence of life without parole violates the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Pennsylvania Constitution, because (1) the Pennsylvania courts have not established procedures to narrow imposition of such a sentence to only "unusual" or "rare" cases, as directed by *Miller*, but permits such sentences to be "wanton and randomly applied"; and (2) a sentence of life without parole can never be constitutionally imposed upon a defendant who was only fourteen years old at the time of the commission of his crimes. See Post-Sentence Motions ¶¶ 12-14; Statement of Matters Complained of on Appeal ¶ 3. We disagree.

First, both the United States Supreme Court in *Miller* and the Pennsylvania Supreme Court in *Batts* have established safeguards to prevent "random and wanton" application of life without parole, *i.e.*, the requirement that the court consider the age-related factors set forth in *Miller*. Requiring consideration of these factors ensures that sentencing courts cannot exercise their discretion randomly but must consider evidence relevant to age-related factors and explain how those factors affected the sentencing decision.

Second, as noted above, the United States Supreme Court expressly held that it was not imposing a categorical ban on life without parole for fourteen-year-olds, and the Pennsylvania Supreme Court stated in *Batts* that it would not extend the holding of *Miller* without an express directive from

the legislature. See *Batts*, 66 A.3d at 296 ("[W]e have expressed a reluctance to 'go further than what is affirmatively commanded by the High Court' without 'a common law history or a policy directive from our Legislature.'" *Commonwealth v. Sanchez*, [36 A.3d 24, 66 (Pa. 2011), cert. denied, 133 S. Ct. 122 (2012)]). This court is bound by the holding of the Pennsylvania Supreme Court. Thus, we respectfully suggest that this claim of error is without merit.

Claim 4: The Court Improperly Rejected Batts's Defense that He Acted Out of Fear for His Own Life

Batts asserts that the court concluded that Batts felt no emotion and was not under duress at the time of commission of his crimes, disregarding contrary evidence in the trial record without explanation or rational basis, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 1 and 9 of the Pennsylvania Constitution. See Post-Sentence Motions ¶¶ 15-19; Statement of Matters Complained of on Appeal ¶ 4.

The court erred in failing to consider relevant trial evidence, which did not support, and contradicted, the court's repeated references to [Batts's] coldness and lack of emotion at the time of the commission of the killing, and the fact that defendant was not under any duress at the time of the shooting. In fact, there was ample evidence that [Batts] had discovered more about the violence of the gang after he became a gang member; would like to have gotten out of the gang, but did not know how to do so without risking mortal consequences; knew that Mr. Bradley had killed other people; understood Mr. Bradley to have told him that he could be killed if he did not obey orders; understood that Mr. Bradley was directing him to shoot and kill [Edward and Hilario]; and acted, on February 7, 2006, in response to all of that.

In order for the court to have reached the conclusions it reached, it would have been required to reject or disregard all of the aforesaid evidence, notwithstanding the fact that the judge had not presided at trial, and had had no opportunity to judge the credibility of any of the witnesses, or any of the witnesses for the Commonwealth.

Statement of Matters Complained of on Appeal ¶ 4, at 2-3. We disagree.

First, there was significant evidence supporting the court's inference that Batts acted not out of fear for his life but out of his desire to gain acceptance in the gang. As the court pointed out at the resentencing hearing:

Bradley did not order Mr. Batts to commit the crime. Bradley did not threaten Mr. Batts with any consequences if he refused to do so. The other four gang members who were in the car declined Bradley's invitation, and Bradley did not threaten them or retaliate against them. Moreover, Mr. Batts's own description of the events was inconsistent with his assertion that he acted out of fear. If Mr. Batts had carried out the execution only because he feared he would be killed, one would have expected him to report high levels of anxiety and revulsion at the prospect of killing another human being, but Mr. Batts reported no conflicting emotion.

On the contrary, he said he did not think much at all about the task at hand but simply did what was expected of him. He said that Clarence Edwards was looking up into his face when he pulled the trigger, and yet he felt nothing. That description does not sound like a person who dreaded killing another human being and only did so because he feared being killed himself. It sounds like a person who wanted to prove to his fellow gang members that he was capable of committing cold-blooded murder.

Dr. Kraus notes that Mr. Batts admitted as much when she interviewed him. She said, quote, he discussed his anger and his

willingness to do anything to become accepted as a successful gang member, including the commission of murder, end quote.

N.T. Resentencing Hrg., May 2, 2014, at 45. In addition, the court noted:

After the shooting, Mr. Batts returned to the car. When he told Bradley what he had done, Bradley said, quote good job. Shortly thereafter, Mr. Batts was made a universal sergeant in the Bloods. He said he did not commit the crimes in order to obtain a promotion but he did it because it was expected of him.

Mr. Batts told Dr. Dattilio that when he shot Corey Hilario and Clarence Edwards, he felt nothing. However, after he returned to the car, he began to worry that he might be arrested and he might go to jail, although he did not fully realize how serious the legal consequences of his actions would be.

Id. at 28-29. The court concluded: "You felt nothing. Your only concern was that you might be caught by the police." *Id.* at 57.

Second, the jury rejected Batts's defense that he acted under duress.

Judge Moran gave the jury explicit instructions on the issue of duress:

[T]he thrust of [the Commonwealth's] argument was this: That Mr. Batts intentionally walked up on that porch after having been driven there, took the gun in hand, walked up to the porch and intentionally shot to kill two people. He succeeded in killing one. He succeeded in injuring the other. Not that he was ordered to but that he did so of his own intent. There may have also been an order, but I think it's fair to say the Commonwealth has argued with you -- I know they did -- that he had other choices even under those circumstances. Even if you accept that he was ordered, he could have walked away, run away, simply decided, "I'm not going to do it," but that he did it anyway. And he did it of his own volition.

The defense, on the other side, says that, yes, he was a member of the Bloods, but when he joined the Bloods -- and I think their argument is, in part, based on that timing issue -- he did not understand. He understood that they were involved in some bad things, but he didn't understand the whole discipline of the gang

mentality, which they contend says you don't follow my order and you're, quote, food, you're dead.

So those are the contentions and how duress plays into this. Let me reread the definition of duress again.

Duress is a defense to a criminal charge. If the defendant commits the acts otherwise considered a crime but does so under duress, he or she may be found -- not be found guilty of that offense. For the defendant to act under duress, there must be evidence of each of the following: First, that the defendant acted under duress when he or she was coerced into doing a criminal act by the threat to use force or the actual use of force. Second, that the force used or threatened must have been of such a nature that a person of reasonable firmness in the defendant's situation would have been unable to resist it. The force used or threatened need not be present or impending death or serious bodily injury for this defense to apply. You must ask yourself objectively whether a person of reasonable firmness would have been able to resist doing the act if he or she was subjectively placed in the defendant's actual situation. In doing that analysis you may consider factors that might differentiate this defendant from another person such as size, strength, age, physical or mental health. You may also consider the actual situation surrounding the defendant at the time of the alleged duress such as the severity of the offense that he was being asked to commit, the nature of the force that he was threatened with and any alternatives that were available to Mr. Batts to avert that force or threat.

Third, it must be shown that the defendant did not recklessly place himself in a position where it was probable that someone would subject him to duress in order to get him to commit these crimes. To determine this, you must ask whether the defendant, by his actions, consciously disregarded the substantial and unjustified risk that he was putting himself into a situation where it was probable that he would have been subject to duress from another. In other words, ask if the defendant's disregard of such a risk, that is, placing himself in a precarious situation, whether that conduct amounted to a gross deviation from what an objectively reasonable person, somebody who was reasonable, whether they would have placed themselves in that situation, given the nature of the defendant and his situation at the time.

The Commonwealth has the burden of proving duress -- or disproving. **The Commonwealth has the burden of disproving the defense of duress. Thus, you cannot find the defendant guilty of the crimes charged unless you are satisfied beyond a reasonable doubt that the defendant did not act under duress as I've defined it for you.**

Id. at 94-98 (emphasis added). In light of these instructions, Batts's conviction of first-degree murder establishes that the jury rejected both his testimony that he acted out of fear for his life and his claims that he did not realize how violent the Bloods were until after he had joined the gang.

Third, although this court did not preside over the trial and could not judge the credibility of the witnesses, Judge Moran did preside over the trial, and he concluded that the jury had reached the correct conclusion on Batts's defense of duress. See N.T. Sentencing Hrg. at 20 ("[T]he jury I believe correctly concluded that it was done deliberately and with the necessary legal intent to make this crime a first-degree murder.").

Fourth, the Pennsylvania Supreme Court's opinion in this case expressly noted that the jury heard Batts's testimony that he acted under duress and that the jury rejected that testimony. See *Batts*, 66 A.3d at 289 ("[Batts] testified . . . that he had shot the victims on the instruction of Bradley, because his life would have been in danger if he did not follow Bradley's order. . . . [D]espite his defense of duress, the jury convicted [Batts] of first-degree murder") (citations omitted).

There was ample evidence that Batts (1) felt no emotion at the time of the shootings; and (2) acted out of a desire to gain acceptance in the gang and not out of fear for his life. The jury rejected Batts's defense of duress. Thus, the court properly concluded that Batts felt nothing at the time of the shootings and was not acting under duress. Accordingly, we respectfully suggest that this claim of error is without merit.

Claim 5: The Court Improperly Conducted a Personal Investigation of the Crime Scene

Batts asserts that the court improperly conducted a personal investigation of the crime scene; considered evidence gathered in that investigation that was not of record and not relevant to any sentencing factor; was influenced by that evidence, despite the court's assertion to the contrary; and, as a result of that investigation, improperly gave more weight to evidence of the nature and circumstances of Batts's crimes than to evidence of his "chaotic upbringing, his amenability to rehabilitation, and other relevant resentencing factors which could not be 'visited', and therefore enhanced, in the consideration of the court." Post-Sentence Motions ¶ 20; Statement of Matters Complained of on Appeal ¶ 5. We disagree.

First, the court stated that it had already reached its decision before it visited the crime scene. See N.T. Resentencing Hrg., May 2, 2014, at 67.

Following yesterday's hearing, I spoke with my law clerk regarding the sentence that I intended to impose. I told her that I intended to impose a sentence of life without the possibility of parole. She responded, Judge, he was 14 years old. Have mercy.

I left the courthouse and, on my way home, I drove past 713 Spring Garden Street.

Id.

Second, the court gathered no evidence at the crime scene but merely parked in front of the house to "imagine" the events that had occurred there and consider his law clerk's plea to "have mercy." *See id.* at 67-68.

I parked in front of the house. I then **imagined** the events that occurred on the evening of February 7, 2006. As I sat in front of 713 Spring Garden Street I **imagined** Qu'eed Batts wearing a mask and one glove, walking up the stairs and then shooting Corey Hilario in the back and Clarence Edwards twice in the head while Qu'eed Batts looked at Clarence's face.

I **imagined** Delores Howell later coming outside and seeing her grandson dying on the porch with two gunshots in his head. But there was no need for me to **imagine** because this, in fact, happened on February 7, 2006. I then asked myself if it was Qu'eed Batts instead of Clarence Edwards who was killed, would Mr. Batts's family ask the court to show mercy.

. . . .

Mercy for Mr. Batts will have to come from God. May God have mercy on your soul.

Id. (emphasis added). The court's meditations at the crime scene were no different than its meditations in chambers.

Third, any error the court may have committed by visiting the crime scene was harmless and therefore provides no basis for reversal. *Cf. Commonwealth v. Pope*, 14 A.3d 139, 145-47 (in prosecution for robbery, juror's unauthorized visit to crime scene did not prejudice defendant and therefore did not warrant a new trial; crime scene was nothing more than a

typical city street, and defendant failed to demonstrate that juror's unauthorized visit to the crime scene provided the juror with any information not presented at trial or that the unauthorized visit was emotional or inflammatory). Here, the court's visit to the crime scene did not produce any extra-record evidence; did not "enhance" any of the evidence that had already been placed in the record; and did not cause the court to give disproportionate weight to the nature and circumstances of the crime. See *id.* Thus, the court's visit to the crime scene did not prejudice the defendant. Accordingly, we respectfully suggest that this claim of error is without merit.

Claim 6: The Court Gave Excessive Weight to the Nature of the Crimes

Batts asserts that in balancing the sentencing factors, the court demonstrated bias by giving excessive consideration to the nature and circumstances of Batts's crimes and inadequate consideration to the factors the court was required to consider under *Miller*. See Post-Sentence Motions ¶ 21; Statement of Matters Complained of on Appeal ¶ 6. We disagree.

First, as noted above, "[s]entencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion." *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003). "To constitute an abuse of discretion, the sentence imposed must either exceed the statutory limits or be manifestly excessive." *Id.* "In this context, an abuse of discretion is not shown merely by an error in judgment." *Id.* "Rather, the appellant must

establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision." *Id.*; accord *Commonwealth v. Walls*, 926 A.2d 957, 961 (Pa. 2007); *Commonwealth v. Ellis*, 700 A.2d 948, 958 (Pa. Super. 1997) ("[T]he appellate courts must give great weight to the sentencing judge's discretion, as he or she is in the best position to measure various factors such as the nature of the crime, the defendant's character, and the defendant's display of remorse, defiance or indifference."), *appeal denied*, 727 A.2d 127 (Pa. 1998); *Commonwealth v. Ward*, 568 A.2d 1242, 1243 (Pa. 1990) (same).

Second, as noted above, where, as here, the sentencing court had the benefit of a PSI, the law presumes that the court considered and weighed the factors appropriately. See *Commonwealth v. Devers*, 546 A.2d 12, 18 (Pa. 1988) ("This is particularly true . . . in those circumstances where it can be demonstrated that the judge had any degree of awareness of the sentencing considerations, and there we will presume also that the weighing process took place in a meaningful fashion."); accord *Commonwealth v. Griffin*, 65 A.3d 932, 937 (Pa. Super. 2013) (same); *Commonwealth v. Tirado*, 870 A.2d 362, 368 (Pa. Super. 2005) (same).

Third, where the court has considered the statutory factors and based its decision on findings in the record and the sentence is not disproportionate to the defendant's crimes, a sentence is not clearly unreasonable. See

Commonwealth v. Klueber, 904 A.2d 911, 911 (Pa. 2006) (reversing Superior Court and holding that aggregate sentence of thirty-three and one-half to sixty-seven years for 134 counts of possession of child pornography was not "clearly unreasonable"; "The trial court relied on [defendant's] prior history and conducted a lengthy sentencing hearing before finding [defendant] was a high risk for re-offense and was an active danger to the public."); *Commonwealth v. Macias*, 968 A.2d 773, 778 (Pa. Super. 2009) (sentence of twenty to forty years for third degree murder for participating in beating death was reasonable; sentence was within guidelines range, and although court considered mitigating factors, including defendant's psychological issues, it found such factors were outweighed by brutality of crime and indifference to victim's suffering; "The sentencing court merely chose not to give the mitigating factors as much weight as [defendant] would have liked and decided that the facts did not warrant imposition of a sentence lower than the standard range."); accord *Commonwealth v. Montalvo*, 641 A.2d 1176, 1186 (Pa. Super. 1994) ("An allegation that the sentencing court 'failed to consider' or 'did not adequately consider' facts of record is effectively a request for this court to substitute its judgment for that of the lower court.").

Here, the court (1) carefully reviewed the law governing its sentencing decision and the factors it was required to consider in reaching its decision; (2) had the benefit of a PSI; (3) based its decision on findings in the record

as reflected in the PSI, the parties' respective sentencing memoranda and recommendations, transcripts of prior proceedings, voluminous written expert reports and witness statements, and live testimony of both fact and expert witnesses presented at the resentencing hearing; (4) exhaustively detailed the evidence relevant to each of the sentencing factors, including the age-related factors outlined in *Miller*, organizing the evidence into twenty-three categories; (5) identified the factors that weighed in favor of Batts and those that weighed against him; and (6) described the process by which the court balanced the factors, explaining why it weighed some factors more heavily than others and how it came to its ultimate determination of the appropriate sentence. See N.T. Resentencing Hrg., May 2, 2014, at 3-68. Thus, the court fulfilled its duty to consider the required factors, analyze the evidence relevant to each factor, and weigh the evidence to determine the appropriate penalty.

We believe that, based upon our analysis of the evidence relevant to each of the sentencing factors the court was required to consider, including the age-related factors outlined in *Miller*, a sentence of life without parole was not disproportionate to Batts's crimes. Batts simply disagrees with the balance struck by this court and asks the Superior Court to substitute its judgment for that of the sentencing judge. The Pennsylvania Supreme Court has held that such a substitution of judgment is impermissible. See *Montalvo*, 641 A.2d at 1186. Batts has failed to establish that the court

abused its discretion. Thus, we respectfully suggest that this claim of error is without merit.

Claim 7: The Court Improperly Considered
The Testimony of Dr. Michals

Batts asserts that the court erred in according any weight to opinions of the Commonwealth's expert, Dr. Michals, because Dr. Michals testified that he believes people are incapable of changing their character, and this opinion is inconsistent with the principles announced in *Miller*, which held that juveniles must be regarded as more amenable to change than adults. See Post-Sentence Motions ¶ 22; Statement of Matters Complained of on Appeal ¶ 7. We disagree.

First, Dr. Michals did not testify that people are incapable of changing their character. On the contrary, he expressly stated that he does believe that people are capable changing their character. See N.T. Resentencing Hrg., May 1, 2014, at 49-50, 59-60. However, he emphasized that changing the basic structure of one's personality is difficult, especially where that structure has persisted over time and includes traits that are resistant to change, such as anger, instability, impulsivity, poor judgment, and the need to see oneself as strong and invulnerable. See *id.* at 49-50, 58-60.

[BATTS'S COUNSEL]. . . . [W]e have a person who, in your view, doesn't have any mental disorder, and . . . I heard you say that part of your conclusion is based upon the fact we are who we are, I think was a quote, right?

A. In a general sense, defining a personality, yes, we are who we are.

Q. Okay. Does that change over time?

A. Characteristics can change but it's very difficult to make changes to the basic structure of our personality.

Q. Okay. So somebody who is 14 at the time certain things occur won't change over time?

A. I can't say that they won't change. I can't predict the future.

Q. Right.

A. Hopefully they'll change.

Q. Right, but I understand you to be saying that someone's personality is what it is and it's very difficult to change?

A. Yes, and that's supported by the psychological testing that says that he's -- there's chronic psychological maladjustment which is resistant to personality change.

Q. Right, but I'm asking you your opinion and what you said on direct, we are who we are, as I understand what you're telling me is our personality traits and our behavior is difficult to change over time?

A. I would agree with that. Basically it's difficult to change our underlying personality traits.

Q. And that applies to everybody, right?

A. Yes.

Q. Okay. And do you disagree, sir, that people are less likely to have control over their behavior when they are juveniles than they will later when they mature?

A. Yes.

Q. And do you understand that Mr. Batts was 14 when this happened?

A. I was aware of that, yes.

Id. As this exchange makes clear, Dr. Michals did not reject the premise of *Miller* that juveniles are capable of character change. Rather, Dr. Michals recognized that (1) although personality change is difficult, it is possible; and (2) juveniles have greater capacity for personality change than adults. See *id.*

Second, Dr. Michals's opinion that personality change is difficult was shared by Dr. Dattilio. See Dattilio Rept. at 14 ("There is indication that [Batts's] depressive symptoms may improve with psychotherapy or with the reduction in situational stress. However, given his personality dynamics, he is likely to have some long-term adjustment problems that are repetitive and tend to be resistant to psychological treatment."). In fact, when Dr. Michals testified that Batts's personality would be resistant to change, he said that his opinion was based in part on Dr. Dattilio's psychological testing and the opinion expressed in Dr. Dattilio's own report. See N.T. Resentencing Hrg., May 1, 2014 at 49.

[B]ased on my evaluation and review of these records I expressed my opinion that -- and the method of the crime itself, that I did not feel that [Batts] had any mental disorder but it's my opinion as a result of who he is, his personality which is developmental in nature, he has some maladaptive traits that

continue to persist at this point in time, and that's consistent with the results of the psychological testing.

Dr. Dattilio comments in his report on page 13, last paragraph, Mr. Batts was administered the MMPI-II which provides some additional insight into his personality dynamics. Personality characteristics reflect a sense of impulsivity, use of poor judgment and acting out behaviors which is an essential component of this clinical picture. Individuals of this type of profile tend to show a pattern of chronic psychological maladjustment and resistance to personality change.

Id. Thus, both Dr. Michals and Dr. Dattilio opined that it will be difficult for Batts to change the basic structure of his personality. *See id.*; Dattilio Rept. at 14.

Because Dr. Michals did not reject the premise of *Miller* that juveniles are capable of character change, Batts has failed to establish his asserted basis for excluding Dr. Michals's testimony. Accordingly, we respectfully suggest that this claim of error is without merit.

Claim 8: The Court Improperly Considered
Batts's "Fights" in Prison

Batts asserts that the court erroneously concluded that Batts engaged in "fights (plural)" while in prison; that the record reflects only one fight; and that that fight was a minor confrontation during a basketball game that should have been disregarded. *See* Post-Sentence Motions ¶ 23; Statement of Matters Complained of on Appeal ¶ 8. We disagree.

First, it is incorrect that Batts has been involved in only one fight since he has been in prison. Although Batts was only disciplined for one fight, *i.e.*, the fight during the basketball game at SCI Retreat on May 28, 2010, he was

involved in multiple fights while he was awaiting trial in Northampton County Prison. See N.T. Resentencing Hrg., May 2, 2014, at 30. At the resentencing hearing, the court specifically referred to these fights, which were discussed in Dr. Dattilio's own report. See *id.*

After Mr. Batts's arrest, he was placed in Northampton County Prison, where he remained for twenty-one months. While he was there, he got into several fights with inmates who knew or were related to his victims. Because Mr. Batts was a juvenile, he was regularly confined to his cell for his own safety.

Id. (relying on Dattilio Rept. at 10 ("Mr. Batts recalls that the first 21 months while incarcerated in the Northampton County Prison he did get into several fights with other inmates who knew or were related to the victims.")). Thus, Batts's claim that he was involved in only one fight while he was in prison is incorrect.

Second, it is incorrect that the fight during the basketball game at SCI Retreat was a minor confrontation that should have been disregarded. As the court stated at the resentencing hearing, the incident during the basketball game was a serious violation that resulted in significant penalties. See N.T. Resentencing Hrg., May 2, 2014, at 34.

On May 28, 2010, Mr. Batts was found guilty of fighting after he became involved in a heated exchange with another inmate during a game of basketball. He was placed in disciplinary custody for sixty days, during which time he was suspended from his prison job.

Id. (relying on PSI at 6). When Dr. Dattilio testified at the resentencing hearing, he agreed with the Commonwealth that the incident during the

basketball game was a "fight" in which Batts and the other inmate exchanged "punches and strikes"; that the fight was forcibly interrupted by a corrections officer; that the other inmate involved in the fight required medical attention; and that as a result of the fight, Batts "got 60 days in the hole." N.T.

Resentencing Hrg., May 1, 2014, at 119.

[COUNSEL FOR THE COMMONWEALTH]. . . . We have another [misconduct] on May 28th of 2010, where Mr. Batts was -- was disciplined for fighting and on that date he was observed by the corrections officer fighting with an inmate by the name of Holloway on the basketball court in the yard. The inmate was restrained and escorted to medical. During the fight the corrections officer observed both inmates exchange punches and strikes; were you aware of that?

[DR. DATTILIO]. Yeah, I think he got 60 days in the hole for that.

Id.

Based on the foregoing testimony, the court was correct in concluding that Batts has been involved in multiple fights since he has been in prison and that the fight during the basketball game at SCI Retreat was a significant episode of misconduct. Thus, the court acted appropriately in considering Batts's "fights" in prison as a factor in the sentencing determination.

Accordingly, we respectfully suggest that this claim of error is without merit.

Claim 9: The Court Gave Inadequate Consideration to the Age-Related Factors Outlined in *Miller v. Alabama*

Batts asserts that in balancing the sentencing factors, the court disregarded or "trivialized" Batts's age, contrary to the holding of *Miller*. See

Post-Sentence Motions ¶ 24; Statement of Matters Complained of on Appeal ¶ 9. We disagree.

As noted above in response to Claim 6, the court exhaustively considered all of the sentencing factors it was required to consider, including the age-related factors outlined in *Miller*. The court carefully explained its reasons for concluding that, on the facts presented here, the age-related factors outlined in *Miller* did not warrant a reduction in Batts's sentence. Batts simply disagrees with the balance struck by the court and asks that the Superior Court substitute its judgment for that of the sentencing judge. As noted above, the Pennsylvania Supreme Court has held that such a substitution of judgment is impermissible. See *Montalvo*, 641 A.2d at 1186. Thus, we respectfully suggest that this claim of error is without merit.

Claim 10: The Court Gave Excessive Weight to Protection of the Public

Batts asserts that the court improperly concluded that it "could not be sure that the public would be safe" should Batts be released, which (1) "placed upon Mr. Batts an improper burden that would be impossible to meet" and (2) assumed that Batts was incapable of change and irreparably corrupt. Post-Sentence Motions ¶ 25; Statement of Matters Complained of on Appeal ¶ 10. We disagree.

The court did not say that it could not be "sure" that the public would be safe should Batts be released. The court said:

[Dr. Kraus] . . . stated, "Clearly if this young man is ever released he'll require human services and monitoring to enable him to not fall back into a criminal lifestyle." Although the evaluators agree that Mr. Batts has demonstrated some capacity for change in recent years, the court cannot be confident that significant change will occur without years of therapy.

. . . .

Mr. Batts has a documented history of aggression, violence and disrespect for the law. Although his mental state may ultimately improve after years of psychotherapy, at the present time, he must be deemed an extreme danger to society.

N.T. Resentencing Hrg., May 2, 2014, at 54-56. Thus, the court did not require a guarantee that the public would be safe should Batts be released. Contrary to Batts's assertion, the court did not impose an "improper burden" that would be "impossible" for Batts to meet.

As noted above in response to Claims 6 and 9, the court exhaustively considered all of the factors it was required to consider in making its sentencing determination. One of the sentencing factors the court is required to consider is protection of the public. Another factor the court is required to consider is the defendant's amenability to treatment and potential for rehabilitation. The court carefully considered the evidence relevant to these factors, including the opinions of several experts, and determined that, given the nature and circumstances of Batts's crimes, the lack of any justification for the crimes, and Batts's history, personality profile, psychological test results, and current presentation, the court could not be "confident" that it would ever be safe to release Batts from prison. *Id.* at 54.

As the experts recognized and the court considered, the nature and circumstances of the crime were relevant not only to the type of danger Batts poses to the public but also to his amenability to treatment and rehabilitation. See N.T. Resentencing Hrg., May 2, 2014, at 48.

When [Batts] walked up the steps to the front porch with the gun in his hand, he was not acting on impulse or a lack of appreciation for what might happen next. He knew exactly what he was going to do. He made a calculated decision to shoot two defenseless boys at point blank range. He shot one boy in the back as he was running away. He shot the other boy twice in the head as he lay helpless on the porch and looking directly up into his face. This was not a crime that resulted from youthful impulsivity, a mistake in judgment, or inability to foresee the consequences of his actions. Mr. Batts intended to kill, and he did kill. Whether he did so to earn a promotion or only to meet the gang's expectations, his intent was to prove to his fellow criminals that he was willing to commit a cold-blooded murder.

I'm not suggesting that premeditated murder can never be considered impulsive for purposes of sentencing. There might well be circumstances under which premeditated murder could be the product of poor judgment, lack of foresight, susceptibility to peer pressure and weak impulse control. That is not the case here.

Id.

Dr. Dattilio acknowledged that, based on Batts's psychological test results, there are serious concerns about whether Batts is capable of changing his personality dynamics. See Dattilio Rept. at 13 ("Personality characteristics reflect a sense of impulsivity, use of poor judgment, and acting-out behavior which is an essential component of [Batts's] clinical picture. Individuals with this type of profile tend to show a pattern of chronic psychological maladjustment and are resistant to personality change."); *id.*

at 14 ("There is indication that [Batts's] depressive symptoms may improve with psychotherapy or with the reduction in situational stress. However, given his personality dynamics, he is likely to have some long-term adjustment problems that are repetitive and tend to be resistant to psychological treatment.").

Although Dr. Dattilio concluded that Batts would likely improve significantly over time with psychotherapy, see Dattilio Rept. at 19, Dr. Michals did not share Dr. Dattilio's optimism. See *id.*; N.T. Resentencing Hrg., May 1, 2014, at 49. Dr. Michals concluded that Batts is not amenable to treatment and has limited potential for rehabilitation. *Id.* The court weighed the evidence and the opinions of the experts and concluded that the strong need for protection of the public outweighed Batts's limited amenability to treatment and potential for rehabilitation. The court's detailed explanation of its reasoning made clear that the court was not basing its decision on the mere possibility of danger and thereby imposing a burden that would be impossible for any defendant to meet. Rather, the court articulated its serious concerns that, given Batts's history, personality profile, and ongoing behavior in prison, releasing Batts from prison at any time would pose a grave threat to public safety. Thus, we respectfully suggest that this claim of error is without merit.

Claim 11: The Court Improperly Disregarded
Batts's Need for Mental Health Treatment

Batts asserts that the court erred by (1) indicating that it considered the absence of mental illness to be a factor supporting a sentence of life without parole; and (2) holding that Batts should not be released without mental health treatment but then sentencing him to life without parole, which, "given how the state prison system allocates mental health treatment," will effectively preclude Batts from receiving the necessary mental health treatment while he is in prison. See Post-Sentence Motions ¶ 26; Statement of Matters Complained of on Appeal ¶ 11. We disagree.

The experts agreed that Batts's crimes cannot be excused on the ground that they are attributable to a diagnosable mental disorder. See N.T. Resentencing Hrg., May 2, 2014, at 36-37 ("Dr. Dattilio reported that Mr. Batts has no history of major mental illness or medical problems Dr. Michals's report states, quote, Mr. Batts had no history of manifestations of any mental disorder that would cause or are related to the commission of the crimes") (relying on Dattilio Rept. at 11; Michals Rept. II at 18). Thus, the absence of mental illness supported the court's determination to impose life without parole.

At the same time, the experts agreed that certain of Batts's personality features and his responses to his upbringing might well have contributed to his criminal behavior. However, as noted above, the court was persuaded by Dr. Michals's opinion that these personality features and responses are not amenable to treatment. Because the court found that Batts would not likely

achieve significant improvement as a result of mental health treatment, there was no inconsistency in imposing a sentence that might preclude Batts from pursuing significant mental health treatment while he is in prison. Thus, we respectfully suggest that this claim of error is without merit.

Claim 12: The Court Erred in Concluding That Batts Is "Irreparably Corrupt"

Batts asserts that the court erred by imposing a sentence of life without parole, because "*Miller* severely limited the traditional wide discretion granted a judge at sentencing and the record here does not demonstrate that Qu'eed Batts was one of the unusual or rare cases demonstrating "irreparable corruption." Post-Sentence Motions ¶ 27; Statement of Matters Complained of on Appeal ¶ 12.

As noted above in response to Claims 6 and 9, the court exhaustively considered all of the sentencing factors it was required to consider, including the age-related factors outlined in *Miller*. The court carefully explained its reasons for concluding that, on the facts presented here, the age-related factors outlined in *Miller* did not warrant a reduction in Batts's sentence. We believe that, based upon our analysis of the evidence relevant to each of the sentencing factors, a sentence of life without parole was not disproportionate to Batts's crimes. Batts simply disagrees with the balance struck by this court and asks the Superior Court to substitute its judgment for that of the sentencing judge. As noted above, the Pennsylvania Supreme Court has held that such a substitution of judgment is impermissible. See *Montalvo*, 641

A.2d at 1186. Thus, we respectfully suggest that this claim of error is without merit.

Claim 13: The Court Made Erroneous Assumptions About a Juvenile's Free Will

Batts asserts that the court erred by "failing to recognize the incompetencies associated with youth" and, as a result, "made erroneous assumptions about a juvenile's free will." See Post-Sentence Motions ¶ 28; Statement of Matters Complained of on Appeal ¶ 13. We disagree.

As noted above in response to Claims 6, 9, and 12, the court exhaustively considered all of the sentencing factors it was required to consider, including the age-related factors outlined in *Miller*. The court carefully explained its reasons for concluding that, on the facts presented here, the age-related factors outlined in *Miller* did not warrant a reduction in Batts's sentence. Thus, we respectfully suggest that this claim of error is without merit.

Claim 14: The Court Failed to Consider a Sentence for Third-Degree Murder

Batts asserts that, because Pennsylvania's only statutory sentence that could be imposed upon juveniles convicted of first-degree murder was mandatory life without parole, which was held unconstitutional in *Miller*, Pennsylvania was left with no constitutional sentence for juveniles convicted of first-degree murder, and the only available option was to sentence Batts to the penalty for the most severe lesser included offense, *i.e.*, third-degree

murder, which carries a maximum sentence of forty years. See Post-Sentence Motions ¶ 29 (citing 18 Pa.C.S.A. § 1102); Statement of Matters Complained of on Appeal ¶ 14 (same). Batts noted, "Though this argument was rejected by the Pennsylvania Supreme Court in *Batts*, resentencing for the lesser included offense is required as a matter of federal due process." Post-Sentence Motions ¶ 29 (citing the Fifth and Fourteenth Amendments to the United States Constitution); Statement of Matters Complained of on Appeal ¶ 14 (same). We disagree.

In *Batts*, the Pennsylvania Supreme Court squarely rejected Batts's position on this issue. See 66 A.3d at 296 ("[Batts's] argument that he should be sentenced as if he had been convicted of the lesser offense of third-degree murder finds little support in the authorities upon which he relies, as such caselaw is simply inapplicable to the present circumstances."). The Pennsylvania Supreme Court remanded with a specific directive to this court to resentence Batts for first-degree murder, imposing a mandatory sentence of life in prison but considering whether to permit the possibility of parole in light of the full range of sentencing factors, including the age-related factors identified in *Miller*. See *id.* at 297. This court is bound by the decision of the Pennsylvania Supreme Court and therefore has no authority to consider a sentence for third-degree murder. Thus, we respectfully suggest that this claim of error is without merit.

IV. The Court Properly Exercised Its Discretion

The record reflects that the court considered all of the relevant factors under the sentencing guidelines, including those factors weighing in Batts's favor and those factors weighing against him. *See id.* at 24-35. The court's statements during the resentencing hearing demonstrated that the court was aware of the contents of the PSI and other information in the record and weighed that information in accordance with the law. Batts has failed to establish that the court relied on impermissible factors. Although Batts asserts that the court improperly relied on its own investigation of the crime scene, the record shows that the court did not perform any investigation of the crime scene and did not rely on any information gathered from the crime scene in imposing sentence. Batts's sentence of life without parole was not disproportionate to his crimes of murder in the first degree and attempted murder. It was not clearly unreasonable to impose the statutorily mandated sentence of life in prison and to decline to impose a minimum sentence that would permit the possibility of parole. Batts may disagree with the manner in which the court weighed the statutory factors and the ultimate sentencing decision the court reached. However, the court's decision was not an abuse of discretion. Accordingly, we respectfully suggest that Batts's appeal lacks merit and should be dismissed.

CONCLUSION

For the foregoing reasons, we respectfully suggest that (1) the court properly denied Batts's motion *in limine* and his request for a continuance;

(2) the court properly applied its directive on remand in imposing a sentence of life without parole; (3) imposition of life without parole in this case was not unconstitutional; (4) the court properly rejected Batts's defense that he acted out of fear for his own life; (5) the court did not conduct an improper personal investigation of the crime scene; (6) the court did not give excessive weight to the nature of the crimes; (7) the court properly considered the testimony of Dr. Michals; (8) the court properly considered Batts's fights in prison; (9) the court gave proper consideration to the factors outlined in *Miller*; (10) the court did not give excessive weight to the protection of the public; (11) the court did not improperly disregard Batts's need for mental health treatment; (12) the court did not err in concluding that Batts is "irreparably corrupt"; (13) the court did not make erroneous assumptions about a juvenile's free will; and (14) the court properly declined to consider a sentence for third-degree murder. Accordingly, we respectfully suggest that Batts's appeal lacks merit and should be dismissed.

BY THE COURT:

MICHAEL J. KOURY, JR., J.