

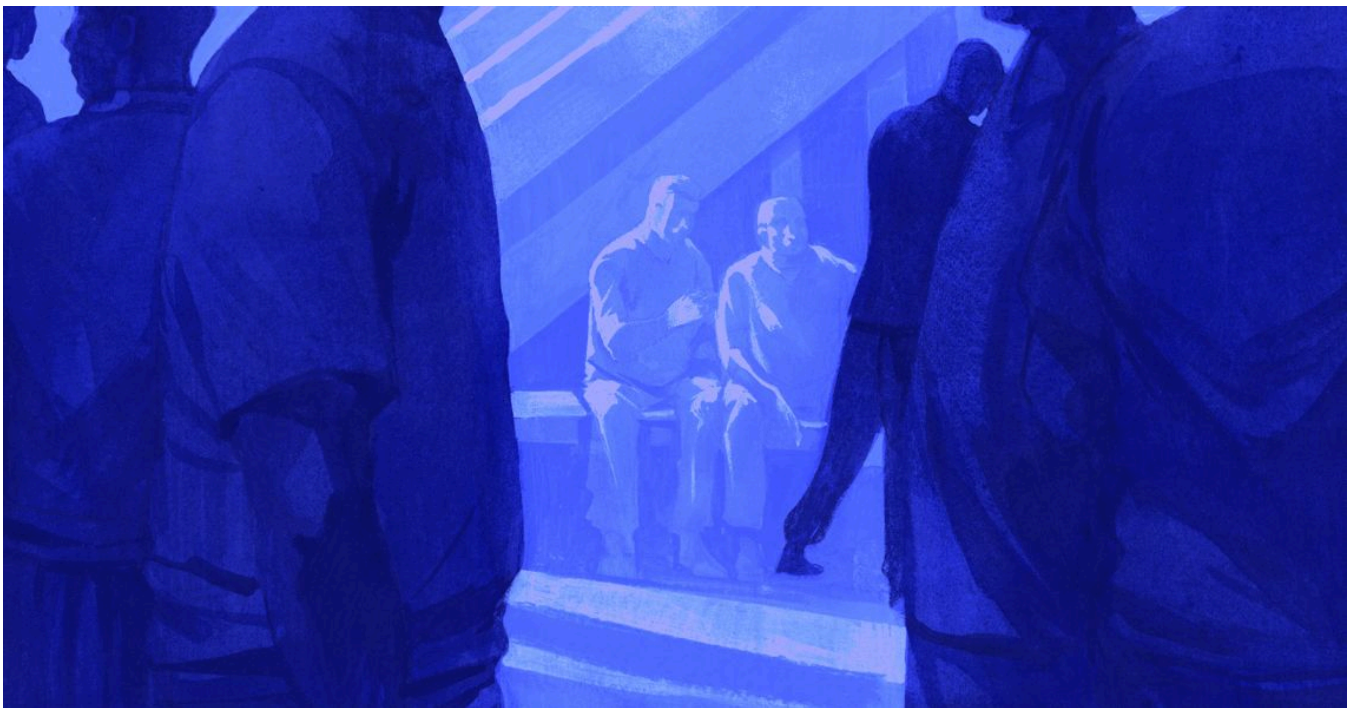
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LIFE INSIDE

Pennsylvania Struck Down Mandatory Life Without Parole for 2nd-Degree Murder. What Comes Next?

People affected by the state's felony murder law reflect on the ruling and the uncertain path ahead.



TARA ANAND FOR THE MARSHALL PROJECT

By AALA ABDULLAHI

In March, in a bombshell ruling, the Pennsylvania Supreme Court struck down mandatory life in prison without parole for a second-degree murder charge also known as felony murder. Under the law, people who had participated in felonies such as robberies, kidnappings and arson — but who did not kill victims — faced the same punishment as those who did.

At the center of the ruling was Derek Lee, a participant in a 2014 robbery of a Pittsburgh home that left a man dead. Lee's co-conspirator fatally shot the man while Lee was elsewhere in the house. Still, Lee was convicted of felony murder and automatically sentenced to life in prison without the possibility of parole.

Lawmakers had 120 days to figure out a new sentencing scheme. Although the state House and Senate each passed a bill, they failed to reach a consensus before the July 24 deadline. This means the ruling has now taken effect, allowing Lee's resentencing to proceed and requiring judges to use their discretion when sentencing people in pending and future second-degree murder cases. The legislature can still pass a new sentencing law when it reconvenes in September or at any point in the future.

At question is whether the law will be retroactive and apply to more than 1,100 people serving life without parole for second-degree murder, according to Bret Grote, who helped argue the Lee case and is the legal director of the progressive Abolitionist Law Center. But he is optimistic about the ruling: "It is an opening that suggests that the system of punishment should not be built around the notion that some people are disposable," he said.

With the path forward still unclear, The Marshall Project spoke with several stakeholders about the impact of the law on their lives and what the change might mean. The conversations have been edited and condensed for clarity.

"At some point, mercy and punishment have to meet."

*At 18, **Avis Lee** acted as a lookout during a robbery that ended in a fatal shooting. She was sentenced to life without parole at 20. Her sentence was eventually commuted by Gov. Tom Wolf in 2021, after she served more than 40 years. Today, she serves as a re-entry resource coordinator for Let's Get Free, an organization she co-created while she was still inside.*

Q: What made felony murder so complex?

The issue with felony murder was, number one, it carried the same sentence as first-degree murder. Every other degree has a different sentence. Third-degree doesn't have the same sentence as second. Voluntary manslaughter doesn't have the same sentence as manslaughter. But second-degree murder had the same sentence as first. It made no sense.

The second thing is that everybody got treated the same, no matter how peripherally involved they were, or whether they were the lookout or the driver. Some people don't even know about the murder until after the fact. Everybody that got convicted and didn't take a plea deal got mandatory life in prison.

Q: What has the ruling meant to you?

This is like a dream come true for me. It's long overdue. Prior to this ruling, many people would have died in prison. That's the purpose of the sentence: death by incarceration. I have a timesheet where it said minimum date, all caps: L-I-F-E. Maximum date, all caps: L-I-F-E.

I asked other people if I could see their time sheets, and their minimum date would say 5, their maximum date would say 10. The more time I served, the more I couldn't believe it. I'm like, *'I'm still in here. They want me to die in jail.'*

Q: How should the state measure or think about blame going forward?

I've never killed anyone ever. Literally. I have killed bugs, a couple mice; that's it. And I served 40 years, 6 months and 12 days for a murder that I personally did not commit. If the Board of Pardons hadn't commuted my sentence, I'd still be sitting in prison right now on year 45.

Crime does have to be punished. I'm a firm believer in that. But the punishment has to suit not only the crime but the person's involvement. I just am a firm believer that at some point mercy and punishment have to meet.

I've met thousands of people during my incarceration. Every single person that I ever encountered — myself included — if we had it to do all over again, we certainly would make a different choice. It doesn't go away once you're released. I never want survivors to think *'Oh, they get out and just live happily ever after.'* We get out and live our lives, but we remember that someone else was not living there every day, and that we were somehow involved, and that is what motivates us to do well, to help others, to give back, because it's a crime we cannot fix.

“A lot of victims’ families are angry, and that's what legislators are afraid of.”

In 1980, three young men kidnapped and carjacked Nancy Leichter's father. When the two accomplice brothers driving his car learned that he had a heart condition, they allowed him to go to the hospital, where he later died. The man who orchestrated the robbery was convicted of third-

degree murder and eventually released in 2018 on parole. The brothers went to trial and were convicted of second-degree murder. Today, Nancy Leichter is an unlikely advocate of the law change.

Q: What brought you to this issue?

In 2018, I found out from a newspaper reporter that the third man was about to be released from prison, yet these two brothers remained in prison. I thought, *That's not right. How is the one who orchestrated the crime going to get out of prison, and these two guys who had compassion for my father are going to die in prison?*

They had absolutely no intent to harm him. They didn't directly take his life. I learned they had been model prisoners and, certainly in my mind, had paid for their crime.

I'm not minimizing what they did. My mother lost the love of her life. She was never the same. It was sort of like I lost both parents. I was heartbroken at his loss, and I was also upset at the unfairness of what was going on here, because [the accomplices] did not deserve to die in prison.

So I wrote letters to the attorney general. I wrote to the Board of Pardons. I wrote op-eds. I testified in support of their release. They were granted clemency and released on lifetime parole.

Q: Have you met the men?

I asked to meet with them in April 2021, and they were certainly no longer the children they had been when they were convicted of the crime and sentenced. They apologized immediately and profusely and sincerely for what they had done. They said they didn't even know my dad had died [in the hospital]. They didn't understand the depth of what they had done until they saw my mother in the courtroom.

They never denied their participation in the crime against my father. They thought about it every single day for 40 years. They were two human beings who had made the most horrific mistake of their lives, and they knew it.

That day was very healing for me. I was glad that I helped give them a second chance, and they are actively trying to help young people not make the same mistakes they did.

Q: How should the state think about blame in these cases?

Each case is different. Each person has to be looked at by a judge and a jury on the specific actions, on the circumstances.

I know victims' families' testimony and feelings are very, very important. A lot of victims' families are angry; they keep their anger [alive], so that's what legislators are afraid of. No legislator wants a victim's family saying, "You let this guy out." On the other hand, I'm the daughter of a victim and I feel differently. I know there are other people like me, but the majority of victims' families are not as forgiving.

There has to be justice on both ends. If someone [should be] punished — and they are punished — at the end of that punishment, there has to be justice and fairness. Let's not send someone to prison and throw them away. These are human beings.

"Every case should be decided on a case-by-case basis."

Turahn Jenkins is a lawyer who has spent more than two decades in Pennsylvania's criminal justice system as a prosecutor, public defender and private defense attorney. His connection to the felony murder movement is personal: His first cousin was convicted of second-degree murder after a dispute over money at a birthday party resulted in the death of two people. His cousin has been incarcerated for nearly 20 years.

Q: Tell me about your connection to the felony murder movement.

Even before my cousin's incarceration, I always felt the law was unfair. My first job out of law school, I was a law clerk in the public defender's office. One of the first homicide trials I watched was an 18-year-old kid who was a lookout for a robbery. His friend went in and ended up killing the store owner. The kid kept saying, "I didn't do anything. I never went in the store." He got life. It was heartbreaking. Even after the verdict, he didn't realize he had just been sentenced to life without the possibility of parole. Fast forward a couple of years later, my family and I found ourselves in the same situation.

Q: Can you explain how your cousin ended up with a second-degree murder charge?

There were four men that showed up at a birthday party after a dispute with the host over the money that was supposed to be paid to the entertainers. The boyfriend of one of the girls shot and killed two of the people there. There was no allegation that my cousin shot anybody, but because of the law, he and the other two men all went down [to] second-degree. What added insult to injury was that the actual gunman was a juvenile. He ended up getting resentenced, so he has a term. Meanwhile, he's the one that did all the shooting.

Q: Have you spoken with your cousin since the ruling came down?

He gets a few [video] calls a month. I got on a call with some other cousins and his kids. I'm thinking the call is to celebrate the ruling, so I say, "Man, that's such great news!" And they're like, "What are you talking about?" They had no idea. When they realized, it was total elation. He was screaming. It was great.

Q: From your perspective as a lawyer, what makes mandatory life for felony murder so complex?

There should certainly be a consequence for people involved in conduct that results in a death. It would be disingenuous to say anything to the contrary. However, to say that someone should serve the rest of their life in prison for the actions of another person, even though they may have acted "in concert," is extreme. It removes the level of humanity that should be applied when you look at these cases. Every case should be decided on a case-by-case basis. I struggle with the idea of mandatory sentencing in most instances, because it removes the discretion of a sentencing judge to impose what they think is proper and just.

Q: How does this ruling change the conversation around "death by incarceration" and long sentences?

My cousin went in when he was 22 years old. He hadn't really lived. He was a kid. I've watched him turn into a man over the past 20 years. We need to recognize that people evolve. Just sending someone into a prison to serve 40, 50, or 60 years does not do anything to solve the problem. I don't know that it's necessarily a deterrent.

Pennsylvania is one of the last remaining states where people who get life don't have the opportunity at parole. There's a reason we're in the minority. We're on the wrong side of history. What this ruling does is give people hope. Not just those serving life for second-degree murder, but it opens up the conversation for people who have been given ridiculous amounts of incarceration for crimes less than murder that should get a second look and a second opportunity at freedom.

"What I really think is that they should let judges be judges."

Larry Krasner is the District Attorney of Philadelphia. Philadelphia is home to about half of the people in Pennsylvania serving life without parole for second-degree murder, meaning the city will be at the center of whatever remedy emerges from the Pennsylvania Supreme Court's ruling.

Q: What was your reaction to the ruling?

Only a few states were as extreme as Pennsylvania, so getting rid of that law — either legislatively or through the courts — was long overdue.

In my opinion, there should not be a mandatory sentence for second-degree murder moving forward. These are offenses where culpability really runs the gamut from much less serious to much more serious. Given all of that, it matters that they get this right, and that they don't act like second-degree murder is almost first-degree murder, either looking backward or looking forward.

Q: What should the new sentencing approach look like and what will be hardest for lawmakers to figure out?

What I really think is that they should let judges be judges. We spend too much time taking away from judges the power to look at an individual and try to make an individual sentence. They're going to get it wrong some of the time, but I'm a lot happier with that than a bunch of people who profit from prisons in their local tax base — who have no background in the field — just sitting around a table and coming up with whatever's on their mind as being a way to remedy this.

This discussion takes us back to a place we've been before and that was when Philadelphia had more juvenile lifers than any other city in the world, so we had to do a lot of re-sentencings.

With the juvenile lifers, what we saw in the more enlightened jurisdictions is that you had judges looking at the entire life of a defendant — including the time in custody, all aspects of suffering and victimization, the trauma of survivors, and looking at the culpability in the offense itself. They looked at everything, and in general, they came to a lot of good conclusions. We know this because so many of those juvenile lifers are out and have not committed any crimes whatsoever. They're actually a safer group than an average sample of the population.

The very clear lesson of the juvenile re-sentencings is that life-without-parole sentences are a bad idea, and that people who have been held accountable and served appropriately lengthy periods of time can come out, contribute to society and be safe.

Q: Will this ruling apply retroactively to people already serving these sentences?

Everybody involved with this believes that soon enough, it's going to apply retroactively. It's almost politically untenable to take the position that *'All these people were sentenced under an unconstitutional scheme, but that's too bad. Go ahead and bite the bullet and die in jail.'* That's sort of an absurdist position.

We are going in the right direction here. I just hope the details of how we come through this are modern and criminological, as opposed to cheap politics.

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I specialize in how information moves (or doesn't) inside prisons and jails. I cover how people navigate the system: what they rely on, what they're missing and how breakdowns in communication and access shape their daily lives.

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