

**IN THE
SUPREME COURT OF PENNSYLVANIA**

79 EM 2026

COMMONWEALTH OF PENNSYLVANIA

V.

**LORI ANN LASSITER,
Petitioner**

80 EM 2026

COMMONWEALTH OF PENNSYLVANIA

V.

**CECIL HOLMES,
Petitioner**

114 WM 2026

COMMONWEALTH OF PENNSYLVANIA

V.

**MARSHA SCAGGS,
Petitioner**

196 MM 2026

COMMONWEALTH OF PENNSYLVANIA

V.

**JOHN MARSHALL PAYNE, III,
Petitioner**

**RESPONSE OF: ATTORNEY GENERAL OF PENNSYLVANIA
PURSUANT TO THE COMMONWEALTH ATTORNEYS ACT¹**

**COMBINED RESPONSE OF THE ATTORNEY GENERAL OF
PENNSYLVANIA TO PETITIONS FOR KING’S BENCH REVIEW**

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT:

DAVID W. SUNDAY, JR., Attorney General of Pennsylvania, by HUGH J. BURNS, JR., Deputy Attorney General, respectfully files the following combined response to defendants’ petitions for the exercise of King’s Bench jurisdiction, and thus states:

Introduction

In *Commonwealth v. Lee*, 357 A.3d 356 (Pa. 2026), this Court ruled that 18 Pa.C.S. § 1102(b) is unconstitutional as it mandates a life without parole sentence for second degree murder for “defendants who do not kill, intend to kill, or foresee that life will be taken,” 357 A.3d at 391-392, with no allowance for “the offender’s characteristics and culpability.” *Id.* at 392. This Court made clear that *Lee* did not question the validity of the underlying offense of second degree murder (“we do not

¹ See 71 Pa.C.S. § 732-204 (a)(3) (duty of Attorney General “to uphold and defend the constitutionality of all statutes”). Notably, were relief to be granted in these four petitions, the effect would be immediate in all 67 Pennsylvania counties. The interest and duties of the Attorney General are therefore clearly implicated here.

pass judgment on the legality or wisdom of the felony murder doctrine itself. A challenge to the severity of a sentencing scheme is qualitatively different than a challenge to the validity of a substantive crimes”). *Id.* at 397 n.18. And it specifically declined to decide questions of retroactive application. *Id.* at n.20.

In the instant petitions the defendants argue that this Court should grant King’s Bench review in order to extend its unconstitutionality ruling in *Lee* by declaring it retroactive.²

² This Court generally precludes retroactive effect for new constitutional decisions on collateral review. *E.g.*, *Commonwealth v. Cross*, 726 A.2d 333, 337-338 (Pa. 1999) (“a new rule of law will not be applied retroactively to any case on collateral review”); *Commonwealth v. Blystone*, 725 A.2d 1197, 1202-1203 (Pa. 1999) (“A new rule of law to which we give full retroactive effect, will not be applied to any case on collateral review”); *Commonwealth v. Todaro*, 701 A.2d 1343, 1348 (Pa. 1997) (“even a case which breaks with past precedent that is given a fully retroactive effect is not applied to any case on collateral review”). An exception to this rule is set forth in *Teague v. Lane*, 489 U.S. 288 (1989). *See Commonwealth v. Bracey*, 986 A.2d 128, 143-144 (Pa. 2009) (“*Teague* is acknowledged as setting forth the legal framework for a principled approach to deciding when a pronouncement of law should be given effect to cases pending on collateral review ... This Court has looked to *Teague* principles when confronted with [such] questions”) (footnote omitted); *Commonwealth v. Hughes*, 865 A.2d 761, 779-782 (Pa. 2004) (applying *Teague* and concluding that new constitutional rule altering in offender’s favor burden of proving incompetency to stand trial was not applicable on collateral review). The U.S. Supreme Court has held that states are constitutionally required to apply new constitutional rules that are “substantive” under *Teague*. *Montgomery v. Louisiana*, 577 U.S. 190, 200 (2016) (“when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule”). *Teague* recognizes the strong societal interest in finality on collateral review. *Commonwealth v. Cunningham*, 81 A.3d 1, 8-9 (Pa. 2013) (explaining that adherence to *Teague* reflects “the strong interest in finality inherent in an orderly criminal justice system, as well as the social policy

Continued

In this combined response to these substantively identical petitions, the Office of the Attorney General (OAG) does not address the merits of the retroactivity issue. Rather, it addresses the important threshold question of whether the petitions present a sound basis for the exercise of King’s Bench jurisdiction. For the reasons stated below, they do not.³

Argument

1. Petitioners’ claims are cognizable under the PCRA

This Court will exercise its discretion to grant King’s Bench review only in “extraordinary circumstances.” *In re Bruno*, 101 A.3d 635, 683 (Pa. 2014). *Bruno* at 670. *E.g.*, *Commonwealth v. Brown*, 358 A.3d 469, 540 (Pa. 2026) (review necessary to “guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system”) (citation omitted); *Commonwealth v. Banks*, 943 A.2d 230 (Pa.2007) (*per curiam*) (execution imminent but no process in place for deciding offender’s competency to be executed); *Bruno* at 676 (review necessary to maintain confidence in judicial system); *Commonwealth v. Williams*, 129 A.3d 1199 (Pa. 2015) (claim that this Court’s authority to enforce death sentence was usurped by unconstitutional executive reprieve); *Friends of Danny DeVito v. Wolf*,

and concomitant limitations on the courts' jurisdiction and authority reflected in the Post Conviction Relief Act”).

³ The OAG respectfully requests the opportunity for briefing on the ultimate issue of retroactivity should King’s Bench review be granted.

227 A.3d 872, 876 (Pa. 2020) (review of executive order closing all non-life-sustaining businesses). It is used “only with extreme caution.” *In re Domitrovich*, 257 A.3d 702, 715 (Pa. 2021); *Commonwealth v. Balph*, 3 A. 220, 230 (Pa. 1886).

King’s Bench review is inappropriate when other paths for review are available. It is a last resort, not a shortcut. “The purpose of its exercise is not to permit or encourage parties to bypass an existing constitutional or statutory adjudicative process[.]” *In Re Bruno*, 101 A.3d at 670 (citations omitted); *Brown*, 358 A.3d at 531 (King’s Bench jurisdiction necessary where availability of amicus participation was an inadequate safeguard in conceded proceeding); *Ball v. Chapman*, 289 A.3d 1, 34 (Pa. 2023) (Dougherty, J., concurring and dissenting) (under King’s Bench jurisdiction there is “by definition ... no lower court ruling” to review); *see In re Dauphin County Fourth Investigating Grand Jury*, 943 A.2d 929, 936 (Pa. 2007) (extraordinary jurisdiction inappropriate for issues “reviewable in the ordinary course”).

Here, defendants/petitioners seek to litigate their claim that *Lee* should be held retroactive and applicable to their collateral sentencing challenges. But illegal sentence claims are cognizable under the PCRA. 42 Pa.C.S. § 9542 (“This subchapter provides for an action by which ... persons serving illegal sentences may obtain collateral relief”). Indeed, because the PCRA is “the sole means of obtaining collateral relief,” *id.*, this Court has consistently held that “claims that **could be**

brought under the PCRA **must** be brought under that Act.” *Commonwealth v. Hall*, 771 A.2d 1232, 1235 (Pa. 2001) (original emphasis); *Commonwealth v. Descardes*, 136 A.3d 493, 405, 503 (Pa. 2016) (reaffirming the Court’s “repeatedly and uniformly” stated holding that “where a petitioner’s claim is cognizable under the PCRA, the PCRA is the only method of obtaining collateral review”).

Petitioners argue that, because in their cases a PCRA illegal sentence claim based on *Lee* would be untimely, they have “no legal recourse” and are “unable to seek relief” except by King’s Bench review (Payne, 10-13; Scaggs, 7-10; Holmes, 7-9; Lassiter, 8-10). But this Court has “squarely rejected” the argument that the untimeliness of a PCRA claim permits review outside the PCRA. *Commonwealth v. Taylor*, 283 A.3d 178, 188-189 (Pa. 2022) (rejecting Taylor’s argument that if his “judicial bias claim does not qualify under a PCRA timeliness exception, it must be cognizable under state habeas corpus,” finding that this “confuses the issues of whether a claim satisfies the jurisdictional requirements of the PCRA and whether the PCRA provides a remedy for such a claim”) (brackets and citation omitted); *Commonwealth v. Abu-Jamal*, 833 A.2d 719, 727-728 (Pa. 2003) (“specious” to argue that untimeliness of “actual innocence” PCRA claim required non-PCRA collateral review). By asking this Court to exercise King’s Bench jurisdiction in order to reach the merits of their untimely PCRA claims, petitioners are asking for an end-run around the PCRA that this Court has consistently ruled it will not allow.

Significantly, moreover, it is not correct to say that petitioners genuinely have “no legal recourse” and are “unable to seek relief.” While they are presently unable to raise a PCRA retroactivity timeliness exception, that does not mean that no retroactivity ruling by this Court can be expected in the near future. Since new decisions are generally inapplicable on collateral review absent a *Teague* exception, any timely PCRA claim raising *Lee* is a vehicle for this Court to rule on retroactivity. If in any such case this Court were to rule that *Lee* is retroactive, the petitioners could immediately invoke the PCRA timeliness exception for such claims.⁴

Petitioners have clearly devoted considerable time and effort to crafting their pleadings, and have researched such things as the dollar cost of life imprisonment for murder and the likelihood of recidivism for older offenders (Payne, 23; Scaggs, 20; Holmes, 19-20; Lassiter, 23). But they do not claim that no timely *Lee* PCRA appeals are on the horizon. Indeed, they do not even address this question, which is surprising given their burden to justify the extraordinary exercise of King’s Bench review. While it is understandable for them to be focused on their own cases, and while they may subjectively consider “[e]ach day” of the status quo “unjust” (Payne, 12; Scaggs, 9; Holmes, 9; Lassiter, 12), “perceived injustice cannot warrant the

⁴ For example, in *Commonwealth v. Page*, CP-46-CR-0001914-2009, a timely PCRA case pending in Montgomery County, the petitioner has raised a *Lee* claim which the Commonwealth opposes on retroactivity grounds. Whichever party prevails the retroactivity decision will likely be subject to appeal. This and similar cases provide appropriate vehicles for this Court to ultimately rule on the issue.

judicial creation of an extra-PCRA remedy[.]” *Commonwealth v. Eller*, 807 A.2d 838, 845 (Pa. 2002).⁵

Petitioners repeatedly claim they are serving “unconstitutional cruel” and “unconscionable” sentences, creating a “monumental injustice” (Payne, 12, 28; Scaggs, 6, 9, 25; Holmes, 5, 9, 25; Lassiter, 8, 12, 28). But these arguments must be viewed in light of the fact that *Lee* did not outlaw life without parole for second degree murder, but rather prescribed the process that is constitutionally required to impose it. *See Commonwealth v. Olson*, 218 A.3d 863, 874 (Pa. 2019) (new constitutional rule not retroactive because, *inter alia*, it did not alter “the range of conduct or the class of persons that the law punishes”) (citation omitted). Under *Lee* the maximum penalty for second degree murder remains life without parole. Since an offender resentenced under *Lee* could be sentenced to life without parole again, the sentence itself is not cruel or unconscionable.

⁵ That it is difficult to obtain collateral review on the basis of new decisions under the PCRA, moreover, reflects an intentional legislative choice to promote finality. *See, e.g., Commonwealth v. Sam*, 952 A.2d 565, 576-577 (Pa. 2008) (“absolutely no doubt” of the “enduring societal interest in the finality of criminal proceedings”; finality “is essential to both the retributive and the deterrent functions of criminal law” and a “compelling” interest “shared both by society and the state”; it is “not just a notion of criminal theory” but is “reflected in the very letter of our PCRA,” because the purpose of the 1995 amendments was to “narrow the grounds for collateral relief ... to achieve finality”).

Thus, that the petitioners do not want to wait for a ruling by this Court in the ordinary course is not a basis for King’s Bench review, which cannot be treated as a shortcut for bypassing existing procedures.

2. Petitioners may request executive clemency

Petitioners are also free to seek executive clemency based on *Lee*.

Indeed, to a large extent they rely on what can only be understood as clemency arguments. Each focuses on their efforts at personal self-improvement, which is irrelevant under *Lee*.⁶ Each also claims to have been wrongfully convicted, which is likewise irrelevant under *Lee*.⁷ While personal self-improvement is laudable, to the

⁶ Payne states that he has “dedicated his life to his family,” is “committed to self-improvement,” is “passionate” about supporting veterans, and has “transform[ed] his life” (6-7). Scaggs says her “childhood and adolescence” were “marked by trauma and violence,” she “frequently witnessed her step-father assault her mother,” and was a rape victim at age 15, but she has “profoundly transformed herself” by “assisting incarcerated women with mental health challenges” and “organiz[ing] fundraisers.” She adds that she is in poor health (3-5). Holmes says he suffers from “advanced dementia” and was “assaulted by a younger prisoner” but has “earned the trust of [DOC] employees” and notes that his wife had “stood by him” (1-5). Lassiter says she has “earned her GED and high school diploma,” has been “clean and sober for decades,” has been “consistently employed” and “ca[es] for elderly [prisoners]” (6-7).

⁷ Payne argues there was no “physical evidence” of his guilt; he “denie[s] any involvement” in the murder and “maintain[s] his innocence” (3-6). Scaggs says there was “an altercation” in which a gun was put in her hand, she refused to shoot the victim and a co-defendant “pulled the trigger” (2). Holmes says the Commonwealth had a “theory” that he acted as a lookout during the robbery-murder and he was unaware his co-defendant would fatally use the knife Holmes gave him (2-3). Lassiter “maintain[s] her innocence” and contends that her statement (the content of which she does not discuss) was “the product of fear and police coercion” (1, 5).

extent such claims may be deemed factually supported in the absence of any fact finding, they relate to executive clemency, not King's Bench jurisdiction.

This too makes petitioners' claims inappropriate for King's Bench review. Because "[t]he Pennsylvania Constitution entrusts clemency decisions to the sole discretion of the executive branch," the judiciary "cannot impinge upon the exclusive jurisdiction of the executive branch of the government" in determining whether to commute a sentence. *Commonwealth v. Michael*, 56 A.3d 899, 903-904 (Pa. 2012) (brackets and citation omitted). King's Bench review cannot be used as a substitute for executive clemency.

The avenue of *properly* requesting executive clemency stands in contradiction to petitioners' claim that they are unable to seek relief except by King's Bench review. Notwithstanding their burden to justify their request for this extraordinary form of jurisdiction, petitioners do not address the option of seeking clemency in the wake of *Lee*, and do not claim to have attempted it. This undermines their claims of unfairness and unavailability of relief absent King's Bench review. *See District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52, 71 (2009) (denying due process claim; "without trying" available procedures "Osborne can hardly complain that they do not work in practice").

For these reasons, King's Bench review should be denied.

Respectfully submitted,

 /s/
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Deputy Attorney General