

IN THE SUPREME COURT OF PENNSYLVANIA

No. ____ EM 2026

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

LORI ANN LASSITER

Petitioner

**PETITION REQUESTING RELIEF
THROUGH THE EXERCISE OF KING'S BENCH POWERS**

Bret Grote (No. 317273)
Nia Holston (No. 327384)
Rupalee Rashatwar (No. 331085)
Quinn Cozzens (No. 323353)
Abolitionist Law Center
990 Spring Garden St., Ste. 306
Philadelphia, PA 19123
412-654-9070

Jennifer Merrigan (No. 318243)
Elie Kirshner (No. 330863)
Phillips Black
1901 S. 9th St. # 608
Philadelphia, PA 19148
917-255-5610

Nilam A. Sanghvi (No. 209989)
Ryan Grosso (No. 323359)
Pennsylvania Innocence Project
1515 Market St., Ste. 300
Philadelphia, PA 19102
215-204-4255

Elizabeth A. DeLosa (No. 309521)
Pennsylvania Innocence Project
914 Fifth Ave.
Pittsburgh, PA 15219
412-482-2069

Attorneys for Petitioner

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL BACKGROUND.....	3
III.	GROUNDS FOR THE EXERCISE OF KING’S BENCH JURISDICTION EXIST HERE TO RESOLVE THE PRESSING ISSUE OF RETROACTIVITY OF THIS COURT’S DECISION IN <i>LEE</i> FOR THE MORE THAN ONE THOUSAND PEOPLE CURRENTLY SERVING UNCONSTITUTIONAL SENTENCES	9
IV.	CLAIMS FOR KING’S BENCH RELIEF	13
A.	<i>Lee</i> has retroactive application on collateral review under both federal and state retroactivity doctrines	13
1.	<i>Lee</i> applies retroactively under federal <i>Teague</i> analysis.....	15
2.	<i>Lee</i> applies retroactively under general Pennsylvania retroactivity doctrine.	19
B.	Any or sentencing scheme struck down as unconstitutional under Article I, Section 13 should be automatically retroactive.	25
V.	RELIEF SOUGHT.....	28

TABLE OF AUTHORITIES

Cases

<i>Alcatel-Lucent USA Inc. v. Commonwealth</i> , 326 A.3d 816 (Pa. 2024)	13
<i>Am. Trucking Ass'ns v. Smith</i> , 496 U.S. 167 (1990)	14
<i>August v. Stasak</i> , 424 A.2d 1328 (Pa. 1981)	19
<i>Blackwell v. Commonwealth State Ethics Comm'n</i> , 589 A.2d 1094 (Pa. 1991)	<i>passim</i>
<i>Commonwealth v. Bracey</i> , 986 A.2d 128 (Pa. 2009)	14
<i>Commonwealth v. Lassiter</i> , 722 A.2d 657 (Pa. 1998)	5
<i>Commonwealth v. Lee</i> , 357 A.3d 356 (Pa. 2026)	<i>passim</i>
<i>Commonwealth v. McIntyre</i> , 232 A.3d 609 (Pa. 2020)	26
<i>Commonwealth v. Miller</i> , 417 A.2d 128 (Pa. 1980)	20
<i>Commonwealth v. Taylor</i> , 283 A.3d 178 (Pa. 2022)	11
<i>Commonwealth v. Washington</i> , 142 A.3d 810 (Pa. 2016)	14
<i>Commonwealth v. Wolfe</i> , 140 A.3d 651 (Pa. 2016)	26
<i>Danforth v. Minnesota</i> , 552 U.S. 264 (2008)	25, 26
<i>Desist v. United States</i> , 394 U.S. 244 (1969)	20
<i>Edwards v. Vannoy</i> , 593 U.S. 255 (2021)	15

<i>Ex parte Siebold</i> , 100 U.S. 371 (1880)	26
<i>Friends of Danny DeVito v. Wolf</i> , 227 A.3d 872, (Pa. 2020)	10
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963)	24
<i>In re Bruno</i> , 101 A.3d 635 (Pa. 2014)	9
<i>Mackey v. United States</i> , 401 U.S. 667 (1971)	24
<i>Miller v. Alabama</i> , 577 U.S. 406 (2012)	<i>passim</i>
<i>Montgomery v. Louisiana</i> , 577 U.S. 190 (2016)	<i>passim</i>
<i>Off. of Disciplinary Couns. v. Surrick</i> , 749 A.2d 441 (Pa. 2000)	14
<i>Schriro v. Summerlin</i> , 542 U.S. 348 (2004)	15
<i>Scott v. Pa. Bd. of Prob. & Parole</i> , 284 A.3d 178 (Pa. 2022)	16
<i>Teague v. Lane</i> , 489 U.S. 288 (1989)	14, 15
<i>United States v. United States Coin & Currency</i> , 401 U.S. 715 (1971)	27
Constitutional Provisions	
Pa. Const. art. I, § 13.....	<i>passim</i>
Pa. Const. art. V, § 2(a)	9
Pa. Const. art. V, § 10(a)	9
Statutes	
42 Pa. C.S. § 502.....	9
42 Pa. C.S. § 9545(b)	10

42 Pa. C.S. § 9545(b)(1)(iii)	11
-------------------------------------	----

Other Authorities

Br. of <i>Amici Curiae</i> Former Department of Corrections Secretaries John Wetzels and George Little and Executives Transforming Probation and Parole.....	23
Danielle Ohl, Broken ‘compassionate release’ rules strand Pa.’s sickest prisoners as costs to taxpayers soar, Spotlight PA (Mar. 30, 2022) ...	23
Tarika Daftary-Kapur and Tina M. Zottoli, Reentry Experiences of Released Juvenile Lifers in Philadelphia, Montclair State Legal Decision Making Lab (2022)	24
Nazgol Ghandnoosh, <i>Felony Murder: An On-Ramp for Extreme Sentencing</i> (Updated July 2026)	22
U.S. Sentencing Comm’n, <i>The Effects of Aging on Recidivism Among Federal Offenders</i> (Dec. 2017)	23

I. INTRODUCTION

Petitioner is Lori Ann Lassiter, a 62-year-old woman who was convicted of second-degree murder in October 1989. While Ms. Lassiter has consistently maintained her innocence, even under the Commonwealth's theory of the case, her alleged involvement in the crime was minimal. Indeed, it is undisputed that Ms. Lassiter was not responsible for taking another person's life. The Commonwealth's theory at trial was that Ms. Lassiter initiated a robbery for William "Ricky" Carter, who, during the robbery, fatally shot Eddie Byrd in September 1988. Neither the Commonwealth nor any witness alleged that Ms. Lassiter participated in the shooting or was even armed.

Before this conviction, Ms. Lassiter's prior criminal record consisted of a non-violent conviction for criminal conspiracy and forgery in Delaware, for which she received a nine-month sentence. However, according to her publicly available secure court summary, this case represents her only known conviction in Pennsylvania. Under Pennsylvania law, however, she was automatically sentenced to mandatory life without parole for second-degree murder. Ms. Lassiter has served over 38 years.

In *Commonwealth v. Lee*, 357 A.3d 356, 396 (Pa. 2026), this Court held that the statute under which Ms. Lassiter was sentenced, requiring a mandatory sentence of life without parole for felony murder, constitutes cruel punishment under Article I, Section 13 of the Pennsylvania Constitution. The Court did not address whether its holding would apply retroactively. *Id.* at 397 n.20. The Court also stayed the issuance of its mandate “for 120 days in order to provide a reasonable amount of time for the General Assembly to consider appropriate remedial measures.” *Id.* at 397. The 120 days have lapsed, and the General Assembly has not acted.

As a result, Ms. Lassiter is serving an unconstitutional automatic life without parole sentence for a felony murder conviction entered over 38 years ago but is unable to obtain relief under *Lee* until this Court holds that it applies retroactively. This Court should exercise its King’s Bench jurisdiction to do so and remand for Ms. Lassiter’s resentencing.

II. FACTUAL BACKGROUND

On September 18, 1988, Eddie Byrd, who worked as a cab driver, was shot and killed.¹ Police discovered his body lying face down approximately 30 to 40 feet from his United station wagon taxicab in Cobbs Creek Park in Philadelphia.² Ms. Lassiter maintains she had no involvement in this crime and has persistently sought relief from her wrongful conviction.

However, even under the Commonwealth's theory, Ms. Lassiter at most initiated a robbery for her co-defendant, William "Ricky" Carter, who shot and killed Mr. Byrd during the robbery. Ms. Lassiter was alleged to have walked away from the scene by the time shots were fired and was not alleged to have been armed.

At the time of Mr. Byrd's death, Ms. Lassiter was working as a prostitute in the area. Ms. Lassiter told the police in a statement one week after the incident that she had dealt with Mr. Byrd once or twice before sexually. Ms. Lassiter explained to the police that on the night of the murder she was with Mr. Byrd but that they only used cocaine

¹ N.T. 10/30/1989, 27.

² *Id.* at 53.

together and that, after approximately 30 minutes, she left his cab. Ms. Lassiter told police that after she got out of the cab, she saw Mr. Carter “walking towards [her].”³ Ms. Lassiter claimed to have seen two other individuals also get in the cab with Mr. Carter but could not identify them.⁴ Ms. Lassiter explained that, after exiting the cab, she just continued walking ahead down the street and, approximately three to four minutes after the assailants entered the cab, she heard a gunshot. Ms. Lassiter denied having anything to do with the murder.

Ms. Lassiter was nevertheless arrested and charged with second-degree murder and other offenses. The Commonwealth’s theory at trial was that Ms. Lassiter initiated the robbery for Mr. Carter. To establish its case, it primarily relied upon the testimony of another prostitute, Letisha Suswell, who claimed to be in the area of the shooting that night, and Ms. Lassiter’s own statements. Ms. Suswell testified that she noticed a cab upon returning home at around 1 a.m.⁵ While she was standing on a sidewalk approximately 100 yards away, she heard two or three bangs

³ N.T. 10/31/1989, 219.

⁴ *Id.* at 221-22.

⁵ *Id.* at 173-74.

coming from the cab.⁶ She subsequently claimed to see Ms. Lassiter and Mr. Carter running from the cab and through the park.⁷ There were no other eyewitnesses.

Ms. Lassiter waived her right to a jury trial in exchange for the Commonwealth taking the death penalty off the table and, in turn, she agreed to testify at Mr. Carter's trial.⁸ *See Commonwealth v. Lassiter*, 722 A.2d 657, 659 (Pa. 1998). Following her attorney's advice, Ms. Lassiter testified in a manner consistent with her initial statement to police—both during her trial and Mr. Carter's trial. Following a two-day bench trial, Ms. Lassiter was ultimately convicted of second-degree murder and sentenced to life imprisonment without the possibility of parole. Ms. Lassiter has since consistently maintained that her statement was the product of fear and police coercion.

At the time of her case, Ms. Lassiter was struggling with a debilitating cocaine addiction that had led her to engage in prostitution

⁶ *Id.* at 156-57.

⁷ *Id.* at 157-58.

⁸ Ms. Lassiter was not death penalty eligible based on these facts, which present, at best, a second-degree murder theory.

for many years. Even with these challenges, Ms. Lassiter earned her GED and high school diploma. Today, Ms. Lassiter recognizes that her incarceration ultimately saved her life by removing her from a dangerous lifestyle that placed her at grave risk of death or overdose. Upon entering state prison, Ms. Lassiter resolved to change the course of her life and confront her addiction. Determined to achieve lasting sobriety, she took full advantage of the Department of Corrections' substance abuse treatment programs, consistently participating in drug and alcohol counseling and other rehabilitative services. Her commitment to recovery marked the beginning of a sustained effort to rebuild her life and break free from the cycle of addiction that had defined much of her past. As a result, she has been clean and sober for decades.

Ms. Lassiter has maintained an excellent prison adjustment record for nearly four decades. She has never had a violent misconduct and has been misconduct-free since 2003. Ms. Lassiter has remained consistently employed, including working in the commissary, the optical lab, and the property room (all of which are honor jobs), as well as in dietary services,

janitorial services, and medical hospice care.⁹ She also crochets and knits blankets and children's clothing for the Lion's Club. Ms. Lassiter's experience caring for elderly incarcerated persons is something that she has found especially meaningful and rewarding. During her incarceration, Ms. Lassiter has also earned an associate's degree in business from the Pennsylvania Business Institute and vocational certificates in commercial housekeeping, optical assistance, and painting.¹⁰

If released, Ms. Lassiter would be a productive citizen as she has been throughout her incarceration and would like to spend her remaining years helping others and in the company of her daughter, Tamarra, with whom she maintains a close relationship. She would also have access to substantial re-entry services through counsel, the Pennsylvania

⁹ Ms. Lassiter trained in the SCI Cambridge Springs optical lab and graduated in 2007. She worked there from 2007-2011 and then returned to work in the lab full time in 2024. Her supervisor advocated for this with the Department of Corrections as individuals serving life sentences are generally not permitted to work in the lab because the available spots are reserved for those who are expected to reenter society and need job skills to do so.

¹⁰ As a result of her conduct and rehabilitation, the Department of Corrections supported Ms. Lassiter's commutation application. She received a unanimous favorable vote at merit review and a 3–2 vote in favor of commutation at her public hearing.

Innocence Project, to help ensure a successful transition. While Ms. Lassiter is willing to work in any capacity as a starting point, she dreams of starting her own cleaning business and, as she puts it, “all she lacks is the freedom to complete her goals.”

Ms. Lassiter has a meritorious claim under *Lee*. She is serving an unconstitutional mandatory life without parole sentence. She likewise has a meritorious claim that *Lee* applies retroactively and entitles her to resentencing. Ms. Lassiter requests that this Court exercise its King’s Bench jurisdiction because, absent this Court’s expeditious intervention, she and numerous others convicted of second-degree murder are languishing and spending their remaining years in prison while serving unconstitutional sentences. Ms. Lassiter’s judgment became final on August 26, 1992. Without action from this Court, Ms. Lassiter has no means of obtaining sentencing relief.

Overall, this case highlights the need for *Lee* to be fully retroactive: it would be a monumental injustice for Ms. Lassiter to be required to serve a “cruel,” unconstitutional sentence—which *Lee* instructed is “***inconsistent with notions of rehabilitation***”—and be forced to die in prison simply because the law forbade individualized culpability

assessments at the time of her sentencing many decades ago. *Lee*, 357 A.3d at 394 (emphasis added).

III. GROUNDS FOR THE EXERCISE OF KING’S BENCH JURISDICTION EXIST HERE TO RESOLVE THE PRESSING ISSUE OF RETROACTIVITY OF THIS COURT’S DECISION IN *LEE* FOR THE MORE THAN ONE THOUSAND PEOPLE CURRENTLY SERVING UNCONSTITUTIONAL SENTENCES

King’s Bench jurisdiction is an inherent power rooted in English common law. *In re Bruno*, 101 A.3d 635, 665 (Pa. 2014). Its constitutional anchors are now found in Article V, Sections 2 and 10 of the Pennsylvania Constitution, which designate this Court as the “supreme judicial power of the Commonwealth” and vest it with “general supervisory and administrative authority over all the courts” in the Commonwealth. *Id.* at 663 (citing Pa. Const. art. V, §§ 2(a), 10(a)). While King’s Bench powers exist independently of any statutory grant of jurisdiction, *Bruno*, 101 A.3d at 677, the legislature has also recognized this broad power in 42 Pa. C.S. § 502.

The exercise of the Court’s King’s Bench authority is discretionary. It “is generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of

law.” *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 884 (Pa. 2020) (internal quotation marks omitted). Accordingly, this Court can and should exercise King’s Bench jurisdiction where cases, such as Ms. Lassiter’s, present a pressing legal question of statewide significance that cannot be resolved through the ordinary appellate process.

That is precisely the situation here, and the exercise of King’s Bench jurisdiction to decide whether *Lee* applies retroactively is warranted. The question of retroactivity is purely legal and requires immediate statewide guidance from this Court. Although *Lee* clearly recognized the constitutional right at issue, absent the Court’s intervention, Ms. Lassiter has no legal recourse to remedy her unconstitutional sentence.

Under the PCRA, a petition for relief must “be filed within one year of the date the judgment becomes final” unless it satisfies one of the statute’s limited exceptions. 42 Pa. C.S. § 9545(b). Because *Lee* announced a new constitutional rule, petitioners, like Ms. Lassiter, whose judgments became final more than one year ago—some of them decades ago—must rely on the exception for a newly recognized constitutional right. That exception requires a petitioner to establish that

“a constitutional right . . . *has been held* by [the] court to apply retroactively.” 42 Pa. C.S. § 9545(b)(1)(iii) (emphasis added); *see also Commonwealth v. Taylor*, 283 A.3d 178, 188 (Pa. 2022) (holding that “a new constitutional right must already have ‘been held’ by this Court to apply retroactively prior to the filing of the subject petition in order for Section 9545 (b)(1)(iii) to apply”).

The same procedural obstacle exists here. Unless and until this Court holds that *Lee* applies retroactively, petitioners who were subject to unconstitutional mandatory life without parole sentences for felony murder before *Lee* cannot satisfy § 9545(b)(1)(iii), and any PCRA petitions they may file are subject to dismissal as untimely. The result is a fundamental inequity. Defendants on direct appeal or whose judgments become final within the PCRA’s one-year filing period may obtain merits review of their *Lee* claims, while those who have spent decades serving sentences that *Lee* held are unconstitutional are barred from obtaining merits review. Accordingly, this Court should exercise its King’s Bench jurisdiction to remove the jurisdictional obstacle that presently prevents PCRA courts from reaching the merits of *Lee* claims.

Additionally, the question presented is not unique to Ms. Lassiter. More than one thousand individuals are currently serving unconstitutional mandatory life without parole sentences for felony murder. Continued enforcement of those sentences perpetuates a cruel punishment that violates Article I, Section 13, because it fails to account for their individualized circumstances and does not include an assessment of culpability. Each day the retroactivity question remains unresolved prolongs this unjust situation. People who have served decades in prison—many of whom, including Ms. Lassiter, are aging—are at risk of never seeing the benefit of this Court’s ruling with further delay. Resolution of this issue serves the public interest by preventing the continued enforcement of unconstitutional cruel sentences at substantial expense to taxpayers.

Without the Court exercising its King’s Bench authority, Ms. Lassiter and those similarly situated will be left in the untenable position of being unable to seek, let alone obtain, re-sentencing until the retroactivity question is resolved by this Court. They are currently stuck in a procedural catch-22.

IV. CLAIMS FOR KING'S BENCH RELIEF

Ms. Lassiter presents two independent but related grounds on which this Court should grant relief and hold that *Lee* applies retroactively on collateral review.

First, this Court should hold that *Lee* is fully retroactive to all defendants serving mandatory life without parole sentences for felony murder pursuant to federal retroactivity principles and/or Pennsylvania retroactivity doctrine, entitling Ms. Lassiter to resentencing relief.

Second, when this Court determines a sentence or sentencing scheme is unconstitutional pursuant to Article I, Section 13, that new rule should be automatically retroactive due to the injustice of permitting a cruel punishment to continue to be served after it has been recognized as unconstitutional.

A. *Lee* has retroactive application on collateral review under both federal and state retroactivity doctrines

Whether analyzed under federal or state retroactivity principles, *Lee* is fully retroactive. *Lee*'s holding rests entirely on Article I, Section 13 of the Pennsylvania Constitution. "When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions." *Alcatel-Lucent USA Inc. v.*

Commonwealth, 326 A.3d 816, 827 n.55 (Pa. 2024) (quoting *Am. Trucking Ass'ns v. Smith*, 496 U.S. 167, 177 (1990) (plurality)). Moreover, “[r]etroactive application of a new rule of [state] law is a matter of judicial discretion.” *Off. of Disciplinary Couns. v. Surrick*, 749 A.2d 441, 444 (Pa. 2000).

This Court has routinely applied federal retroactivity law as set forth in *Teague v. Lane*, 489 U.S. 288 (1989), when interpreting federal constitutional challenges implicating the legality of sentences. *See, e.g., Commonwealth v. Washington*, 142 A.3d 810, 815-16 (Pa. 2016); *Commonwealth v. Bracey*, 986 A.2d 128, 145 (Pa. 2009). In its judicial discretion, this Court may choose to apply these federal retroactivity standards to questions of the retroactivity of state constitutional rulings like that presented here. Pennsylvania also has its own body of state retroactivity law. *See Blackwell v. Commonwealth State Ethics Comm’n*, 589 A.2d 1094 (Pa. 1991). As explained below, whether analyzed under federal or state retroactivity doctrines, the conclusion is the same—*Lee* is fully retroactive, and Ms. Lassiter and those similarly situated are entitled to resentencing.

1. *Lee* applies retroactively under federal *Teague* analysis

Under the federal retroactivity framework set forth in *Teague*, new procedural constitutional rulings are not given retroactive effect for post-conviction review while substantive rulings are. *See Teague*, 489 U.S. at 305-06; *see also, e.g., Montgomery v. Louisiana*, 577 U.S. 190, 197-99 (2016) (explaining the *Teague* framework and its applicability to state post-conviction law).¹¹ “Procedural rules . . . are designed to enhance the accuracy of a conviction or sentence by regulating ‘the *manner of determining* the defendant’s culpability.’” *Montgomery*, 577 U.S. at 201 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) (emphasis in *Schriro*)). Substantive rules, by contrast, are those that “set forth *categorical* constitutional guarantees that place certain criminal laws and punishments altogether beyond the State’s power to impose.” *Montgomery*, 577 U.S. at 201 (emphasis added); *see also, e.g., Schriro*, 542 U.S. at 353 (“A rule is substantive rather than procedural if it alters the

¹¹ *Teague* also provided that a “watershed” rule of criminal procedure could apply retroactively. *See* 489 U.S. at 311. In *Edwards v. Vannoy*, 593 U.S. 255, 272 (2021), the Supreme Court held that part of *Teague* to be “moribund.” That decision, however, does not prevent this Court from imposing greater retroactive effect, including continuing to recognize that a watershed procedural rule may apply retroactively.

range of conduct *or the class of persons* that the law punishes.” (emphasis added)).

The rule this Court articulated in *Lee* is substantive. *Lee* did not merely alter the procedures governing the imposition of second-degree murder sentences. Rather, it withdrew the Commonwealth’s authority to impose a mandatory life without parole sentence in second-degree murder cases. The court determined that “Section 13’s prohibition on cruel punishments *proscribes a sentencing model which mandates the imposition of life imprisonment without parole for felony murder.*” *Lee*, 357 A.3d at 396 (emphasis added). This proscription affects an entire class of people—all those convicted of felony murder and sentenced to mandatory life without parole without any individualized determination of culpability or the propriety of the sentence. *Id.* at 395-97; *see also Scott v. Pa. Bd. of Prob. & Parole*, 284 A.3d 178, 194-95 (Pa. 2022) (explaining that a challenge to a statute denying the possibility for parole for second-degree murder was a categorical challenge to a sentence because it applies to a class of offenders).

The United States Supreme Court’s analysis of retroactivity in the mandatory juvenile life without parole context is instructive. In *Miller v.*

Alabama, the Supreme Court held that the imposition of mandatory life without parole sentences on juveniles convicted of homicide offenses was unconstitutional. *See* 567 U.S. 460, 489 (2012). In *Montgomery*, the Court then considered whether the *Miller* rule applied retroactively and concluded that it did. *See* 577 U.S. at 206. The Court emphasized that *Miller* announced a substantive rule because “it rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.” *Id.* at 208 (internal quotation marks omitted). The rule announced in *Lee* is functionally identical to that announced in *Miller*; the only difference is the class of individuals affected.

Moreover, *Montgomery* rejected the state’s argument that because *Miller* required a sentencing hearing, it was only procedural. The Court reasoned: “*Miller* . . . did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of ‘the distinctive attributes of youth.’” *Id.* at 208 (quoting *Miller*, 567 U.S. at 472). *Lee* applied the same penological justification

analysis when determining “cruelty” under Article I, Section 13, concluding that in the absence of an individualized culpability assessment, “a mandatory sentence of life without parole for all individuals convicted of second degree murder cannot be reasonably justified by any of the traditional theories for punishment.” *Lee*, 357 A.3d at 395.

Finally, *Montgomery* also reasoned that *Miller* is substantive because it determined that sentencing a child to life without parole is excessive for all but “***the rare juvenile offender whose crime reflects irreparable corruption***,” thereby rendering life without parole an unconstitutional penalty for an entire “class of defendants.” *Montgomery*, 577 U.S. at 208 (quoting *Miller*, 567 U.S. at 479) (emphasis added). This Court similarly pronounced in *Lee* that “the permanent incarceration of an individual” should be reserved for situations where a sentencing court concludes, following an individualized culpability assessment, that “***he will forever be a danger to society, he is incorrigible***.” *Lee*, 357 A.3d at 395 (emphasis added). As a result, the decision in *Lee* is directly analogous to *Miller*. It announced a substantive rule requiring individualized sentencing for those convicted of felony murder and also

emphasized that life without parole sentences should be reserved for the rarest of cases.

Accordingly, the Court should hold that *Lee* must be given retroactive effect and that Ms. Lassiter is entitled to resentencing relief from the mandatory life without parole sentence that she is serving in violation of Article I, Section 13 of the Pennsylvania Constitution.

2. *Lee* applies retroactively under general Pennsylvania retroactivity doctrine

Lee is also fully retroactive under state retroactivity principles. Pennsylvania's retroactivity doctrine traces back to the common law, with this Court previously highlighting that "at common law, a decision announcing a new principle of law is normally retroactive." *Blackwell*, 589 A.2d at 1099 (citing *August v. Stasak*, 424 A.2d 1328, 1330 (Pa. 1981)). This Court has nevertheless held "[r]etrospective application is a matter of judicial discretion which must be exercised on a case by case basis." *Id.*

In defining its discretionary review, this Court has identified four potential outcomes from the announcement of a new rule: (1) purely prospective effect; (2) prospective application to the parties before the court; (3) retroactive application to the case before the court and all cases

pending at the time of the decision; and (4) fully retroactive application. *Id.* at 1098-99. To assess which outcome is appropriate, this Court has adopted the three-factor standard set out by the United States Supreme Court in considering what application a new rule should have. *Id.* at 1099 (citing *Commonwealth v. Miller*, 417 A.2d 128, 136 (Pa. 1980)). The governing considerations are: “(1) the purpose to be served by the new rule, (2) the extent of the reliance on the old rule, and (3) the effect on the administration of justice by the retroactive application of the new rule.” *Id.* (citing *Desist v. United States*, 394 U.S. 244, 249 (1969)). Applying these principles, *Lee* should have fully retroactive application.

First, “[t]he purpose to be served by the new rule should receive primary consideration.” *Miller*, 417 A.2d at 136. The purpose of *Lee* is to withdraw from the Commonwealth the power to impose life without parole sentences for all people convicted of felony murder absent an individualized assessment of culpability. That purpose cannot be accomplished prospectively alone. Unless *Lee* is applied retroactively, more than one thousand individuals will continue serving sentences that the Commonwealth is now proscribed from imposing. Because the rule is designed to eliminate an unconstitutional punishment—not merely

regulate the procedures used to impose one—the first *Blackwell* factor overwhelmingly favors full retroactivity.

Second, although the Commonwealth may have relied upon then-existing precedent when seeking and imposing mandatory life without parole sentences for felony murder, that reliance cannot outweigh the constitutional interests at stake. Reliance interests are necessarily diminished where the prior practice authorized punishments that this Court has since determined the Constitution does not permit. Moreover, no legitimate reliance interest exists in maintaining a punishment after *Lee* established that mandatory life without parole sentences for felony murder were “cruel.”¹² Full retroactive application therefore does not upset legitimate reliance interests; rather, it ensures that sentences inconsistent with constitutional requirements are brought into conformity with the law.

¹² Notably, after this Court granted allowance of appeal in *Lee*, parties with a reliance interest, including some victims’ families (Family Members and Loved Ones of Victims Killed by Murder) and several former prosecutors and judges (Former Judges and Prosecutors of Pennsylvania) submitted *amicus* briefs in support of finding Pennsylvania’s felony murder sentencing scheme to be unconstitutional.

Third, while full retroactive application will require resentencing for the more than one thousand individuals serving unconstitutional mandatory life without parole sentences for second-degree murder, administrative burdens cannot justify the continued enforcement of unconstitutional judgments. The judicial system conducts resentencing proceedings when constitutional errors require them, *see, e.g., Miller*, 567 U.S. at 460 and *Montgomery*, 577 U.S. at 190, and any burden associated with those proceedings is the necessary consequence of ensuring that sentences conform to constitutional requirements. The alternative—permitting individuals to remain imprisoned under sentences the Constitution no longer authorizes and that have been expressly deemed to be “cruel”—would undermine, rather than promote, the fair administration of justice.

The continued incarceration of more than one thousand aging incarcerated persons, over half of whom have served at least 20 years, would put additional and unnecessary strain on the Department of Corrections and state resources. *See* Nazgol Ghandnoosh, *Felony Murder: An On-Ramp for Extreme Sentencing* at 8 (updated July 2026), available at <https://www.sentencingproject.org/app/uploads/2026/07/Felony->

[Murder-An-On-Ramp-for-Extreme-Sentencing-.pdf](#) (last accessed Aug. 30, 2026). For example, as former Department of Corrections Secretaries John Wetzel and George Little explained, “[c]onfining [Lifers] simply comes with a higher price tag” and “cost[s] far more money on average than their younger counterparts with fewer and less expensive medical needs.” Br. of *Amici Curiae* Former Department of Corrections Secretaries John Wetzel and George Little and Executives Transforming Probation and Parole, at 6, 14. As a result, “the cost of incarcerating the oldest prisoners who require regular medical attention can far exceed \$100,000 per person, per year—substantially more than the state average [of \$60,000 per person].” *Id.* at 7 (citing Danielle Ohl, Broken ‘compassionate release’ rules strand Pa.’s sickest prisoners as costs to taxpayers soar, *Spotlight PA* (March 30, 2022), *available at*: <https://www.spotlightpa.org/news/2022/03/pa-prison-life-sentence-compassionate-release/> (last accessed Aug. 30, 2026)). Yet, older individuals are substantially less likely than younger people to commit crimes following release. *See* U.S. Sentencing Comm’n, *The Effects of Aging on Recidivism Among Federal Offenders*, at 3 (Dec. 2017), *available at* <https://www.ussc.gov/research/research-reports/effects-aging->

[recidivism-among-federal-offenders](#) (last accessed Aug. 30, 2026).¹³

Accordingly, non-retroactive application of *Lee* would not only leave in place the more than one thousand sentences this Court determined were unconstitutional but perpetuate existing economic and social costs of the criminal legal system without any tangible public safety benefit.

Indeed, *Blackwell* itself identified *Gideon v. Wainwright* as an example of a new rule that was determined to be fully retroactive despite the significant burden such relief necessarily imposed on the judicial system. *Blackwell*, 589 A.2d at 1099 (citing *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963)). Those decisions demonstrate that where a constitutional rule goes to the fundamental validity of a criminal judgment or sentence, the interest in ensuring constitutionally sound adjudications supersede concerns about finality. See *Mackey v. United States*, 401 U.S. 667, 693 (1971) (“There is little societal interest in

¹³ Approximately 200 former juvenile lifers reentered Philadelphia following *Miller* and *Montgomery*, and the recidivism rate among that group even years after many had been released was measured at just 1.14 percent in 2022. See Tarika Daftary-Kapur and Tina M. Zottoli, Reentry Experiences of Released Juvenile Lifers in Philadelphia, Montclair State Legal Decision Making Lab (2022) available at <https://www.msudecisionmakinglab.com/lifers-policy-brief> (last accessed Aug. 30, 2026).

permitting the criminal process to rest at a point where it ought properly never to repose”). The same reasoning applies to *Lee*: continuing to enforce a sentence that this Court has declared “cruel” would itself undermine public confidence in the administration of justice.

Ultimately, Pennsylvania courts that continue to enforce the more than one thousand sentences determined to be unconstitutional under Article I, Section 13, are inflicting the same cruel punishment *Lee* repudiated. *Lee* must therefore be treated as fully retroactive.

B. Any sentence or sentencing scheme struck down as unconstitutional under Article I, Section 13 should be automatically retroactive

Ms. Lassiter further requests that when this Court determines that a sentence or sentencing scheme is “cruel” under Article I, Section 13 of the Pennsylvania Constitution, any and all unconstitutional sentences stemming from that disposition should be automatically voided, and Pennsylvania courts should be expressly precluded from enforcing a sentence that they lack constitutional authority to impose.

As discussed above, this Court may choose to grant broader rights for collateral review than federally required and apply its own governing framework when deciding state retroactivity questions. *See Danforth v.*

Minnesota, 552 U.S. 264, 288-89 (2008) (federal law merely “sets certain minimum requirements” and states are free to “give broader retroactive effect”). The Court should do so here and expand its retroactivity doctrine to adopt a categorical rule whereby any sentence or sentencing scheme struck down as unconstitutional under Article I, Section 13, is automatically retroactive.

Void ab initio doctrine declares that an unconstitutional law is “as no law,” see *Ex parte Siebold*, 100 U.S. 371, 376 (1880), meaning any offense created by it is not a crime, and any conviction or penalty imposed under it is not merely erroneous, but entirely void including on collateral review, see *Commonwealth v. McIntyre*, 232 A.3d 609, 619 (Pa. 2020) (holding that a conviction and sentence based upon a statute later determined to be unconstitutional “cannot stand” and “must be regarded as void from the time of its enactment”); see also *Commonwealth v. Wolfe*, 140 A.3d 651, 661 (Pa. 2016) (“a sentence based on an unconstitutional statute that is incapable of severance is void”).

The Supreme Court in *Montgomery* emphasized that, pursuant to *void ab initio* principles, an “*unconstitutional law is no less void because the prisoner’s sentence became final before the law was held*

unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution’s substantive guarantees.” 577 U.S. at 204 (emphasis added). As support, the Court relied upon the underlying reasoning espoused in *United States v. United States Coin & Currency*, where Justice Harlan declared that “[n]o circumstances call more for the invocation of a rule of complete retroactivity than when the conduct being penalized is constitutionally immune from punishment.” *Id.* (citing *United States v. United States Coin & Currency*, 401 U.S. 715, 724 (1971)).

Those same *void ab initio* principles apply in equal force to not just *Lee*, but to any sentence or sentencing scheme deemed unconstitutional pursuant to Article I, Section 13. Unconstitutional sentencing schemes, like *Lee*, limit the Commonwealth’s authority to punish; therefore, sentences held to be “cruel” should be similarly voided because courts cannot, and should not, be permitted to enforce a punishment that the law unequivocally does not permit. Accordingly, under *void ab initio* principles, sentences declared unconstitutional under Article I, Section 13 should be deemed retroactive automatically.

Additionally, as a matter of due process and fundamental fairness, the law must provide meaningful relief when a punishment has been determined to be unconstitutional. Sentences that violate evolving standards of decency, proportionality principles, or other constitutional protections cannot be left in place simply because they were imposed before the constitutional defect was recognized. To require more than one thousand Pennsylvanians presently serving a life without parole sentence for felony murder to serve out the remainder of a “cruel” sentence until their death would be not just unjust but unconscionable. Therefore, sentences deemed unconstitutional under Article I, Section 13 should receive automatic retroactive application.

V. RELIEF SOUGHT

Petitioner requests that this Court hold that its decision in *Lee* is retroactive, entitling petitioner and those similarly situated with felony murder mandatory life without parole sentences to PCRA resentencing relief.

Respectfully submitted,

/s/Nilam A. Sanghvi

Nilam A. Sanghvi (No. 209989)

Ryan Grosso (No. 323359)

Pennsylvania Innocence Project

1515 Market Street, Ste. 300
Philadelphia, PA 19102
215-204-4255
nilam.sanghvi@painnocence.org
ryan.grosso@painnocence.org

Elizabeth A. DeLosa (No. 309521)
Pennsylvania Innocence Project
914 Fifth Avenue
Pittsburgh, PA 15219
412-482-2069
elizabeth.delosa@painnocence.org

Bret Grote (No. 317273)
Nia Holston (No. 327384)
Rupalee Rashatwar (No. 331085)
Quinn Cozzens (No. 323353)
Abolitionist Law Center
990 Spring Garden Street, Ste. 306
Philadelphia, PA 19123
412-654-9070
bretgrote@alcenter.org
nia@alcenter.org
rupalee@alcenter.org
qcozzens@alcenter.org

Jennifer Merrigan (No. 318243)
Elie Kirshner (No. 330863)
Phillips Black
1901 S 9th Street #608
Philadelphia, PA 19148
917-255-5610
j.merrigan@phillipsblack.org
e.kirshner@phillipsblack.org

Date: Sept. 10, 2026

Attorneys for Petitioner

IN THE SUPREME COURT OF PENNSYLVANIA

No. ____ EM 2026

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

LORI LASSITER,

Petitioner

CERTIFICATE OF COMPLIANCE

I hereby certify that the preceding application complies with the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that requires filing confidential information and documents differently than non-confidential information and documents.

/s/ Nilam A. Sanghvi

Nilam A. Sanghvi

Attorney for Petitioner

Date: Sept. 10, 2026

IN THE SUPREME COURT OF PENNSYLVANIA

No. ____ EM 2026

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

LORI LASSITER,

Petitioner

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Application upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R. App. P. 121.

Service by PACFile and U.S. Mail as follows:

Philadelphia District Attorney's Office
Three S. Penn Square
Philadelphia, PA 19107

Attorneys for Respondent Commonwealth of Pennsylvania

/s/ Nilam A. Sanghvi
Nilam A. Sanghvi

Attorney for Petitioner

Date: Sept. 10, 2026