

IN THE SUPREME COURT OF PENNSYLVANIA

No. ____ EM 2026

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

CECIL HOLMES

Petitioner

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

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I. INTRODUCTION

Petitioner is Cecil Holmes, a 70 year old man who was convicted of second degree murder in 1980. The Commonwealth argued that he had acted as a lookout for Edgar Hudson, who fatally stabbed Joseph Melvin during an attempted robbery in 1979. Prior to this conviction, Mr. Holmes had no criminal record, and he was granted bail during the pendency of his trial. In a 1980 pre-sentence report, the Philadelphia Court of Common Pleas Probation Department found that Mr. Holmes could be successful on probation if his sentencing court so decided, noting specifically that he was of less than average risk for violence. Under Pennsylvania law, however, he was automatically sentenced to mandatory life without parole for second degree murder. Mr. Holmes has served over 46 years in prison, and now suffers from advanced dementia.

In *Commonwealth v. Lee*, 357 A.3d 356, 396 (Pa. 2026), this Court held that the statute under which Mr. Holmes 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 *34 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 *34. The 120 days have lapsed, and the General Assembly has taken no action. Meanwhile, Mr. Holmes is in dire health and is unlikely to survive years of litigation.

As a result, Mr. Holmes is serving an unconstitutional automatic life without parole sentence for a felony murder conviction entered over 46 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 Mr. Holmes’s PCRA resentencing.

II. FACTUAL BACKGROUND

Cecil Holmes was convicted of second degree murder in 1980. Under the Commonwealth’s theory, Mr. Holmes was an unarmed lookout.

On May 13, 1979, Joseph Melvin, a taxi driver, was stabbed to death at a gas station. The Commonwealth’s theory was that Edgar Hudson stabbed Mr. Melvin during an attempted robbery, and that Cecil Holmes was a lookout who remained across the street. The Commonwealth never argued that Mr. Holmes participated in the

stabbing or that he had foreknowledge that Hudson would kill Mr. Melvin.

Multiple eyewitnesses told police at the scene and later testified that they saw Edgar Hudson fatally stab Joseph Melvin while Mr. Melvin was refueling his taxi cab. Two of those witnesses confronted Hudson and chased after him. The eyewitnesses described Hudson as intoxicated and acting erratically. No witnesses identified Cecil Holmes as being present, nor did any witnesses see a second perpetrator.

Weeks later, Mr. Holmes was briefly detained by a Philadelphia Housing Authority officer. The officer said he confiscated a knife from the jacket Mr. Holmes was holding. Phillip Baltimore, who was dating Mr. Holmes's sister at the time, told police that he had lent a knife to Mr. Holmes prior to the murder of Mr. Melvin. Baltimore also testified that Mr. Holmes and Mr. Hudson had made inculpatory statements to him. Later, Mr. Holmes was questioned twice by homicide detectives. The detectives testified that in his second statement, Mr. Holmes had confessed to acting as Hudson's lookout. Following a jury trial, Mr. Holmes was convicted of second-degree murder, robbery, and criminal conspiracy, and sentenced to life imprisonment without the possibility of

parole. *Commonwealth v. Holmes*, 1964 EDA 2014, 2015 WL 6460092, at *1 (Pa. Super. Ct. Oct. 5, 2015).

Mr. Holmes dedicated his life before his incarceration to his family. He was 23 years old when he was arrested, and had no prior convictions. He served in the army reserves and was working at the Philadelphia airport at the time of his arrest. Over the decades he's spent in prison, Mr. Holmes has earned the trust of Department of Corrections employees, cooking for and serving them in the staff kitchen. He has incurred no serious misconducts in over three decades, and has maintained positive housing and work reports.

In recent years, Mr. Holmes' health has deteriorated. He is now suffering from advanced dementia, and other significant health issues. He is confused and not oriented to place or time. His continued incarceration is only exacerbating his condition, and requires significant resources and medical support. In the last several years, Mr. Holmes was assaulted by a younger prisoner and suffered a severe eye injury, has requested and gone into protective custody, has had multiple surgeries due to degenerative joint disease, and has become increasingly cognitively impaired.

Mr. Holmes has a meritorious claim under *Lee*. He is serving an unconstitutional mandatory LWOP sentence. He likewise has a meritorious claim that *Lee* applies retroactively and entitles him to resentencing. Mr. Holmes requests that this Court exercise its Kings Bench jurisdiction because he and numerous others convicted of second-degree murder are languishing and will likely die in prison while serving unconstitutional sentences absent this Court’s expeditious intervention. He is seeking to spend what remains of his life with suitable medical support, in the company of his wife, who has stood by him since his conviction in 1980, as well as his children, and grandchildren.

Overall, this case highlights the need for *Lee* to be fully retroactive: it would be a monumental injustice for Mr. Holmes 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 his 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 constitutional 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 Mr. Holmes'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, Mr. Holmes has no legal recourse to remedy his 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 Mr. Holmes, 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 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 Mr. Holmes. 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, some of whom, like Mr. Holmes, are at significant 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, Mr. Holmes and those similarly situated will be left in the untenable position of being unable to seek, let alone obtain, 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

Mr. Holmes 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 Mr. Holmes 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 adopt 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 Mr. Holmes 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).¹ “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.” *Id.* (emphasis added); *see also, e.g., Schriro*, 542 U.S. at 353 (“A rule is substantive rather than procedural if it alters the 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

¹ *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.

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, determining 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.” 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 Mr. Holmes is entitled to resentencing relief

from the mandatory life without parole sentence that he 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.”² 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.

Third, while full retroactive application will require resentencing for the more than one thousand individuals serving unconstitutional 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

² 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.

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 have 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 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).³

³ 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).

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 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

Mr. Holmes 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 constitutional 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,

<u>/s/ Jennifer Merrigan</u> Jennifer Merrigan (No. 318243) Elie Kirshner (No. 330863) Phillips Black 1901 S 9 th # 608 Philadelphia, PA 19148 917-255-5610	Bret Grote (No. 317273) Nia Holston (No. 327384) Rupalee Rashatwar (No. 331085) Quinn Cozzens (No. 323353) Abolitionist Law Center 990 Spring Garden Philadelphia, PA 19123 412-654-9070
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Attorneys for Petitioner

IN THE SUPREME COURT OF PENNSYLVANIA

No. ____ EM 2026

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

CECIL HOLMES

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/ Jennifer Merrigan

Jennifer Merrigan (No. 318243)

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917-255-5610

Date: September 10, 2026

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PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Application Requesting Relief Through The Exercise Of King's Bench Powers 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:

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