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No. 34 EAP 2026

IN THE SUPREME COURT
OF THE COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

JEROME COFFEY,

Appellant.

On appeal from the December 24, 2025 memorandum and order of the Superior Court at No. 1452 EDA 2024, affirming the April 25, 2024 order of the Court of Common Pleas of Philadelphia County at No. CP-51-CR-0441911-1993

BRIEF OF FORMER PROSECUTORS AND JUDGES OF PENNSYLVANIA AS AMICI CURIAE SUPPORTING APPELLANT

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November 9, 2026

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INTEREST OF THE AMICI CURIAE

Amici curiae ("Amici") are former Pennsylvania prosecutors and judges who have charged and tried serious crimes, recommended and imposed sentences, and reviewed criminal judgments on appeal. They have no stake in Mr. Coffey's case and take no position on his guilt or sentence. Their interest is institutional: that sentences in this Commonwealth reflect the individualized judgment the Constitution requires, applied evenly. In *Commonwealth v. Lee*, Amici urged this Court to restore that judgment to prosecutors and judges. The Court did. The question now is whether it will reach the people sentenced without it.

INTRODUCTION

In *Lee*, this Court held that Article I, Section 13 "proscribes a sentencing model which mandates the imposition of life imprisonment without parole for felony murder." *Commonwealth v. Lee*, 357 A.3d 356, 396 (Pa. 2026). People convicted of second-degree murder "must receive a meaningful consideration of release, based upon their individual culpability and the circumstances surrounding their crime." *Id.* at 396 n.18. Because *Lee* arose on direct appeal, the Court left retroactivity open. *Id.* at 397 n.20.

Lee should reach everyone serving the sentence it condemned. More than 1,000 people are serving mandatory life without parole for felony

murder, and most of their judgments are final.[1] If *Lee* is not retroactive, the individualized judgment the Constitution requires will go only to the few whose cases happened to be pending in March 2026. Everyone else, serving the same sentence under the same unconstitutional scheme, will go without it.

The parties will brief the doctrine. Amici offer a different view: that of people who have made sentencing judgments from both sides of the courtroom, many of whom carried out the mandatory scheme *Lee* struck down. Three conclusions follow. First, discretion that turns on the date a judgment became final is not discretion exercised fairly. Second, a *Lee* resentencing is not a procedural refinement; it decides whether a person may constitutionally be imprisoned until death. Third, Pennsylvania's courts and prosecutors can do the work retroactivity requires, and its cost cannot justify enforcing sentences this Court has held as cruel.

ARGUMENT

I. The Discretion *Lee* Requires Must Reach Everyone Serving The Sentence *Lee* Held Unconstitutional.

Lee condemned a sentence imposed without judgment. The scheme imposed life without parole "regardless of the culpability and characteristics

[1]In *Lee*, the Commonwealth reported that 1,063 people were serving life without parole for second-degree murder. 357 A.3d at 377.

of the defendant," "without individualized assessment either at sentencing or through parole." 357 A.3d at 395–96. It did "not distinguish between the lookout, and the killer who pulls the trigger." *Id.* at 392. The Court's remedy restores the judgment the statute forbade: the sentencing court must weigh the defendant's individual culpability and decide whether to reimpose life without parole or set a minimum term. *Id.* at 397.

Amici know that judgment from the inside, and they know what it meant to be denied it. As the Court observed, most crimes allow the sentencer some discretion, and "[s]uch discretion allows for consideration of the offender's characteristics and culpability in fashioning an appropriate punishment." *Id.* at 392. Second-degree murder was the exception. For decades, prosecutors could not recommend, and judges could not impose, a sentence that reflected what a particular defendant actually did.

The people serving these sentences show what that exception cost. Nearly three-quarters were 25 or younger when the offense occurred, more than half were 21 or younger, and the most common age was 19.[2] The

[2] Andrea Lindsay, *Second-Degree Murder in Pennsylvania: An Objective Assessment of Sentencing* 12–13, Phila. Lawyers for Soc. Equity (Jan. 2021), *available at* https://plsephilly.org/wp-content/uploads/2021/01/PLSE-Second-Degree-Murder-Audit-Jan-19-2021.pdf (last accessed Nov. 5, 2026) (of the 1,166 people serving life without parole for second-degree murder as of Sept. 25, 2019, 73.3% were 25 years old or younger at the time of the offense; 50.9% were 21 or younger).

younger the defendant, the more likely he acted with others.[3] Each participant in a felony resulting in death could be convicted of second-degree murder. Yet the system already treated some defendants one way and others another: of the co-defendants in the same felonies whose sentences are known, about one in three received a term of years rather than life or death.[4] The crime was the same, but the culpability was not, and the mandatory scheme could not tell the difference. *Lee* lets the sentencer see it. Without retroactivity, most of these people never will be seen.

Refusing retroactivity would preserve that exception for nearly everyone it harmed. Pennsylvania law distinguishes between applying a new rule to cases pending on direct review and giving it "fully retroactive effect," so that it reaches judgments already final. *Blackwell v. Commonwealth, State Ethics Comm'n*, 589 A.2d 1094, 1099 (Pa. 1991), *overruled on other grounds*, *Bugosh v. I.U. North America, Inc.*, 971 A.2d 1228 (Pa. 2009). Here, the interests of justice militate full retroactivity. Without it, two people convicted of the same felony murder, for the same role, under the same mandatory term, will be treated differently because one's appeal was open

[3] *Id.* at 15–16 (82.1% of individuals serving second degree murder sentences who acted with co-defendants were 25 years old or younger at the time of offense).

[4] *Id.* at 29–30 (160 of 482 co-defendants with known sentences received confinement less than life without parole or death). Strikingly, the average *upper* limit for individuals sentenced to a term of years is 19.0 years – less than the 21.9 years the average individual sentenced for second-degree murder has served to date. *Id.* at 32–33.

on March 26, 2026, and the other's was not. That date says nothing about culpability.

The record here shows how arbitrary finality can be, and Amici cite it because it is typical of what they saw in practice. Mr. Coffey was convicted in 1994; after an incomplete record, a dismissal for appointed counsel's failure to file a brief, and reinstatement nunc pro tunc, his direct appeal was decided in 2013. *Commonwealth v. Coffey*, No. 1452 EDA 2024, 352 A.3d 1008, at 2 (Pa. Super. 2025) (non-precedential). The Superior Court acknowledged "procedural missteps at nearly every level, for an unacceptable amount of time," and that "the court system is not free from fault." *Id.* at 21 & n.9. Such delays turn on the conduct of counsel and courts, not of the defendant. Distributing constitutionally required discretion by them would favor the defendant whose appeal stalled over the one whose appeal moved efficiently.[5]

Nor does executive clemency cure the unfairness. Clemency is an act of grace, not the individualized sentencing Section 13 requires. *Lee* itself recognized that the remote possibility of clemency does not mitigate the

[5]Amici take no position on the merits of Mr. Coffey's underlying claims or on his individual culpability. Those questions are for the sentencing court if *Lee* applies.

harshness of life without parole. *Lee*, 357 A.3d at 393 (quoting *Graham v. Florida*, 560 U.S. 48, 69–70 (2010)).

II. To Those Who Impose Sentences, A *Lee* Resentencing Is A Substantive Judgment About Who May Be Imprisoned Until Death, Not A Procedural Refinement.

One might answer that *Lee* prescribed only a process: it did not forbid life without parole, and a resentenced offender may receive that sentence again. *See* 357 A.3d at 397. The point has surface appeal, because life without parole remains lawful for some second-degree murder convictions. But the United States Supreme Court rejected the same argument in *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

Louisiana made that argument about juvenile homicide offenders in *Montgomery*, because *Miller v. Alabama* required a hearing and left life without parole available to juvenile homicide offenders. *Miller v. Alabama*, 567 U.S. 460, 479–80 (2012). The Court in *Montgomery* held that the argument "conflates a procedural requirement necessary to implement a substantive guarantee with a rule that 'regulate[s] only the *manner of determining* the defendant's culpability.'" *Montgomery*, 577 U.S. at 210 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004)) (emphasis original). The hearing "does not replace but rather gives effect to *Miller*'s substantive holding[.]" *Id.* at 210. Before *Miller*, every juvenile homicide

offender could receive life without parole; after it, only the rare offender could. *Id.* at 209.

Lee rests on the same foundation. *Montgomery* found *Miller* substantive because it established that "the penological justifications for life without parole collapse" for most juvenile offenders. *Id.* at 208. *Lee* likewise held that a mandatory life-without-parole sentence for all second-degree murder "cannot be reasonably justified by any of the traditional theories for punishment," and that permanent incarceration presupposes that the offender "will forever be a danger to society, he is incorrigible." 357 A.3d at 395. A rule confining a punishment to a narrowed class is one "prohibiting a certain category of punishment for a class of defendants because of their status or offense." *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989).

Amici's experience confirms the distinction. Procedural rules "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*, 542 U.S. at 353) (emphasis original). A *Lee* resentencing does something else. The judge does not revisit how the verdict was reached. The judge decides, for the first time, whether this person belongs among those who may constitutionally die in prison. No one made that

decision for anyone sentenced before *Lee*. Where a substantive rule is at stake, "[t]he same possibility of a valid result does not exist." *Id.* at 201.

Pennsylvania's own retroactivity doctrine leads to the same place. Under *Blackwell*, the Court considers "(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." 589 A.2d at 1099. *Lee*'s purpose is to ensure that no one serves life without parole for felony murder without an assessment of individual culpability. That purpose fails for everyone sentenced before *Lee* unless *Lee* reaches them.

III. The Burden Of Resentencing Cannot Justify Enforcing Sentences *Lee* Held Cruel, And Pennsylvania Courts Can Carry It.

The strongest practical objection to retroactivity is the number of resentencings. Amici take that concern seriously; they have managed crowded dockets and staffed prosecutors' offices on limited budgets. But cost cannot sustain a sentence the Constitution forbids: "no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of power to impose." *Montgomery*, 577 U.S. at 205. In such cases, "[t]here is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose." *Id*. (quoting *Mackey v. United States*, 401 U.S. 667, 693 (1971) (opinion of Harlan, J.)); *accord Penry*, 492 U.S. at 330.

The work is also familiar. *Lee* prescribed the remedy, drawing on its post-*Miller* juvenile decisions in *Batts*: the sentencing court weighs individual culpability and either reimposes life without parole or sets a minimum term. 357 A.3d at 397 (citing *Commonwealth v. Batts*, 163 A.3d 410, 442–44 (Pa. 2017)). Pennsylvania's courts and prosecutors have already resentenced juveniles serving mandatory life without parole under that framework, and the results speak for themselves.

Philadelphia offers the clearest example. After *Montgomery*, 305 juvenile lifers in Philadelphia became eligible for resentencing. All but ten have been resentenced, and 236 have been released. Two were re-sentenced to life without parole, which shows that these hearings were genuine exercises of judgment, not automatic releases. Many of those released had been convicted of the same offense at issue here: of the juvenile lifers released by the end of 2019, 38% had originally been convicted of second-degree murder.[6] And their release has not endangered the public. As of March 2025, only about 4% of all those resentenced and released had been convicted of any new offense.[7]

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[6] Tarika Daftary-Kapur & Tina M. Zottoli, *Reentry Experiences of Released Juvenile Lifers in Philadelphia* 4 n.4 (2022), Montclair State Legal Decision Making Lab, *available at* https://www.msudecisionmakinglab.com/_files/ugd/0b1549_a752b9885e8442bdb86f5a4c17063253.pdf (last accessed Nov. 5, 2026) (figure as of December 2019).

[7] Tarika Daftary-Kapur & Tina M. Zottoli, *An Update on the Release and Recidivism of Juvenile Lifers in Philadelphia* 1–2 (Apr. 2025), Montclair State Legal Decision Making

The *Lee* population is older still: nearly half are 50 or older. Pennsylvania's own data show that people released at that age, including lifers released by commutation, rarely reoffend.[8] A *Lee* resentencing is ordinary sentencing work: weighing a defendant's role, intent, history, and circumstances. Judges and prosecutors do that work every day.

The Commonwealth also has other tools. *Montgomery* recognized that extending parole eligibility, rather than resentencing, can remedy such a violation without imposing "an onerous burden on the States" or disturbing "the finality of state convictions." 577 U.S. at 212. And *Lee* left the General Assembly free to amend the governing statutes consistent with Section 13. 357 A.3d at 397.

Finally, uncertainty has its own cost. The Philadelphia District Attorney's Office has warned that, without statewide guidance, lower courts will reach different conclusions on retroactivity.[9] A clear holding that *Lee* reaches every sentence imposed under the mandatory scheme will spare

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Lab, *available at* https://30c74989-3b0f-47d1-9ae4-cac416299991.filesusr.com/ugd/2455f9_47986b6b416d4b1fb8afc10f7a55252a.pdf (last accessed Nov. 5, 2026) (reconviction rate of 4.23%).

[8] Lindsay, *supra*, at 21–22, 24–25 (47.1% age 50 or older as of Sept. 1, 2020) (citing J. State Gov't Comm'n, *Report of the Advisory Committee on Geriatric and Seriously Ill Inmates*, 185th Pa. Gen. Assembly, S. Res. 149, Printer's No. 2175 at 81–82 (2005)) (finding a 1.4% new-conviction rate for parolees released at 50 or older and 2.5% overall for the 285 parolees commuted from life sentences).

[9] Commonwealth's Combined Response to Petitions for Exercise of King's Bench Powers, at 4–5.

the courts uneven, case-by-case litigation and let resentencing proceed under one standard.

CONCLUSION

This Court has held that mandatory life without parole for felony murder is cruel because it denies the individualized judgment that just sentencing requires. Amici, who served in the system that applied that scheme, respectfully urge the Court to hold that *Lee* applies retroactively, so that everyone serving that sentence receives the consideration *Lee* requires.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify the foregoing is governed by the provisions of Pa. R. App. P. 531(b)(3), 2135(b), and 2135(d). I certify the forgoing contains 2,344 words in compliance with the aforementioned Rules. I further certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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