



## Judges asked to throw out mandatory life sentences for second-degree murder



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Attorneys for a man serving life without parole for a slaying committed by his partner in a robbery asked a state appeals court Tuesday to declare the statute mandating his automatic sentence unconstitutional.

The arguments sparked a philosophical discussion among the three-judge panel of the Pennsylvania Superior Court meeting in Pittsburgh and even touched on arguments being raised in the current U.S. Senate race.

In October 2014, Derek Lee entered a home in Elliott with the intention to steal, not kill, his attorneys say. Lee's partner, Paul Durham, killed a man in the basement using a gun, while Mr. Lee was upstairs. Although Lee had not killed the man, both he and Durham were found guilty of second-degree murder, also known as felony murder, which is when someone is

killed during the commission of another felony. Both were automatically sentenced to life without parole.

Bret Grote, a member of the Abolitionist Law Center who is representing Lee, told the judges that the statute is “excessively cruel.” According to the ALC about 5,000 people in the state are serving life without parole, with 1,100 of them being a result of felony murder convictions. Additionally, 70% of the individuals serving life without parole are Black.

Mr. Grote said the state Constitution should provide greater protections against cruel and unusual punishment, stating Pennsylvania is an “outlier.”

“The state ranks second behind only Louisiana in imposing mandatory life without parole for second-degree murder, Mr. Grote said. “Thirty states forbid such a sentence for that crime.”

Mr. Grote said Lee’s sentencing was cruel, because it was “excessive in relation to deterrence of rehabilitation.” He argued that the purpose of the prison system is to foster such rehabilitation.

But Allegheny County Assistant District Attorney Kevin McCarthy said that life without parole was a fair sentence for the crime, stating that Lee's decision to commit a serious crime may continue into further criminal activity.

“If you partake in a serious crime such as robbery or rape, we do not want to let you go free, because then you can go commit another crime and that is putting people at risk,” Mr. McCarthy said.

Mr. McCarthy further argued against Mr. Grote’s example of limits on life without parole for juveniles, by stating that Lee was an adult who committed a serious crime and has to face the consequences.

“We’re dealing with an adult not a juvenile here, where with a juvenile you can argue about a lack of maturity,” Mr. McCarthy said. “We’re dealing with an adult who made a bad choice and now must face the consequences of that choice.”

But Grote stated that a lack of intention should also decrease culpability.

Senior Judge James Gardner Colins said, “What we’re dealing with here is a philosophical issue more than anything else. You’re sentenced to prison

for 35-70 years ... it's basically death by imprisonment, so at what point can it be called a death sentence?"

Judge Judith Olson said she doesn't know if this is a matter for the courts, citing the current lieutenant governor's U.S. Senate race as a place to bring this matter to the forefront. Democrat John Fetterman's position urging paroles and pardons has drawn criticism from his opponent, Republican Mehmet Oz.

"One of the things we struggle with, isn't this a matter for the legislature?" asked Judge Olson. "Why is this a matter for the courts?"

Mr. Grote said while the ALC doesn't interfere in partisan politics, they don't wish to see this issue being used as a "political prop."

"While the Abolitionist Law Center won't say anything about partisan politics, we do certainly think that questions of public safety should be assessed on their merits and not used as political props," Mr. Grote said. "In terms of whether it should be legislative or decided by the courts it is not really an either-or. Just because it can be done through the legislature doesn't mean that the court doesn't have an obligation."

The judges will rule sometime in the future.

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