

Commonwealth v. Lee (2023). Judge Dubow authored a separate concurrence.

Holding: The Court affirmed defendant's judgment finding that both federal and state constitutional challenges failed.

Background: The Court considered defendant's appeal from his mandatory life-without-parole sentence following his conviction for second-degree murder, robbery, and conspiracy. The case arose from an October 2014 home invasion during which Lee and another man, both armed, forced the victims into the basement; after a struggle with the accomplice, one victim was fatally shot. Although Lee was not the shooter, the jury found him guilty under Pennsylvania's felony-murder rule. He was sentenced in December 2016 to life without parole for second-degree murder and a consecutive 10–20 years for conspiracy. After post-conviction proceedings reinstated his appeal rights, Lee challenged the constitutionality of his mandatory life sentence under both the Eighth Amendment and Article I, § 13 of the Pennsylvania Constitution, arguing that because he neither killed nor intended to kill, he had diminished culpability and that such punishment was disproportionate.

Issues: Whether mandatory LWOP for felony murder violates the Eighth Amendment because Lee did not kill or intend to kill. Whether it violates Article I, § 13 of the Pennsylvania Constitution, which should afford broader protections than the Eighth Amendment.

Analysis: The Court first addressed Lee's Eighth Amendment claim, holding that Pennsylvania's mandatory life-without-parole sentence for second-degree murder does not constitute cruel and unusual punishment. It emphasized that the Eighth Amendment does not demand uniformity among states, that precedent does not recognize adults convicted of felony murder as having categorically diminished culpability, and that U.S. Supreme Court decisions such as *Graham*, *Miller*, and *Montgomery* apply only to juveniles, not adults like Lee. The Court found it was bound by its prior decision in *Commonwealth v. Rivera* (2020), the Court noted it could not depart from precedent. Looking to the Pennsylvania Constitution, the Court rejected Lee's argument that Article I, § 13 provides broader protection than the federal provision. Relying on precedent in *Henkel*, *Zettlemoyer*, and *Elia*, the Court reiterated that Pennsylvania's prohibition on cruel punishments is "coextensive with the Eighth Amendment." (p. 9) Because Lee's federal claim failed, his state constitutional claim necessarily failed as well.

Dubow's Concurring Memorandum: Judge Dubow agreed with the majority that existing precedent required the Superior Court to uphold the constitutionality of mandatory life without parole for second-degree murder. However, she wrote separately to suggest that the Pennsylvania Supreme Court should revisit the issue using the *Edmunds* factors, which guide independent state constitutional analysis. She reasoned that evolving case law from other states, policy concerns about the criminal justice system, and new research raise serious questions about whether Pennsylvania's protections against cruel punishments should remain merely coextensive with the federal Eighth Amendment. She argued that the mandatory nature of life without parole for all felony-murder convictions warrants fresh scrutiny. Judge Dubow concluded that, if she were not bound by precedent, she would have remanded the case for an evidentiary hearing on the *Edmunds* factors to reassess the constitutionality of the sentencing scheme under Article I, § 13.

