

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Commonwealth v. Costa

472 Mass. 139 (2015) · No. SJC-11828 · Decided July 9, 2015

SUMMARY

The Massachusetts Supreme Judicial Court held that a juvenile offender sentenced to multiple consecutive terms of life without parole may be resentenced under Mass. R. Crim. P. 30(a) after Miller, Diatchenko, and Brown. The resentencing judge may consider whether to impose concurrent rather than consecutive sentences, along with the Miller factors, evidence of the defendant’s psychological state at the time of the offense, and post-sentencing conduct. The court remanded the matter for entry of judgment denying the Commonwealth’s petition for relief under G. L. c. 211, § 3.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Judicial Court of Massachusetts                                                                                                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Lenk, J.; Gants, C.J.; Spina, J.; Cordy, J.; Botsford, J.; Duffly, J.; Hines, J.                                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Massachusetts                                                                                                                                                                                                                                                                                                                                                                                    |
| DECIDED               | July 9, 2015                                                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | SJC-11828                                                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | writ_denied                                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | The Commonwealth sought relief under the Supreme Judicial Court's general superintendence jurisdiction from a Superior Court order granting a juvenile offender's Mass. R. Crim. P. 30(a) motion to hold a resentencing hearing concerning whether two consecutive life sentences should be made concurrent. A single justice reserved and reported the case to the full Supreme Judicial Court. |
| STANDARD OF REVIEW    | De novo review of the reported legal questions concerning the Superior Court judge's authority under Mass. R. Crim. P. 30(a) to correct an unconstitutional sentence and conduct resentencing.                                                                                                                                                                                                   |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Massachusetts Supreme Judicial Court.                                                                                                                                                                                                                                                                                                                      |
| PARTIES               | Commonwealth v. Louis R. Costa                                                                                                                                                                                                                                                                                                                                                                   |

TOPICS

cruel and unusual punishment

sentencing

parole

post-conviction relief

criminal procedure

## PRACTICE AREAS

criminal procedure

sentencing

juvenile sentencing

post-conviction relief

parole

## QUESTIONS PRESENTED

1. Whether a trial court may use Mass. R. Crim. P. 30(a) to resentence a juvenile offender whose consecutive life-without-parole sentences became unconstitutional after Miller, Diatchenko, and Brown.
2. Whether resentencing may include reconsideration of the original judge's discretionary decision to impose consecutive rather than concurrent sentences.
3. What factors a judge must or may consider at a resentencing hearing for a juvenile offender originally sentenced to multiple consecutive life-without-parole terms.

## HOLDINGS

1. When a juvenile offender's life-without-parole sentence is unconstitutional under Miller, Diatchenko, and Brown, a trial court has authority under Mass. R. Crim. P. 30(a) to correct the sentence and conduct resentencing while leaving the convictions intact.
2. In resentencing a juvenile offender originally sentenced to multiple consecutive life-without-parole terms, a trial judge may amend the consecutive aspect of the sentence and impose concurrent terms.
3. At the resentencing hearing, the judge should consider ordinary sentencing factors, the Miller factors, evidence concerning the defendant's psychological characteristics at the time of the offense, and favorable or unfavorable post-sentencing conduct.

## KEY QUOTATIONS

*“A trial court judge, in resentencing a defendant who was under the age of eighteen at the time of his or her crime under Mass. R. Crim. P. 30 (a) and this court's decisions in Diatchenko and Brown, may amend that aspect of the original sentence that imposed consecutive life sentences to impose instead concurrent life sentences.”*

*“At the resentencing proceeding, in addition to the factors considered at any sentencing, the judge should consider: (a) the Miller factors; (b) evidence regarding the defendant's psychological state at the time of the offense; and (c) evidence concerning the defendant's postsentencing conduct, whether favorable or unfavorable.”*

## FACTUAL BACKGROUND

Costa was sixteen when he participated with two adult individuals in the shooting deaths of two people in a Boston public park in 1986. After an initial conviction was vacated for a Confrontation Clause violation, he was retried in 1994 and convicted of two counts of first-degree murder as a joint venturer based on deliberate premeditation. The sentencing judge imposed consecutive life-without-parole sentences, exercising discretion to make them consecutive because the offenses were especially serious. Following Diatchenko and Brown, the

consecutive structure meant Costa would become parole eligible after approximately thirty years rather than fifteen years.

## PROCEDURAL HISTORY

Costa was convicted of two counts of murder in the first degree and received consecutive life sentences without parole in 1994. After *Miller v. Alabama* and the Massachusetts decisions in *Diatchenko* and *Brown* invalidated the parole-ineligibility component of the sentencing scheme for juvenile offenders, Costa moved under rule 30(a) for resentencing. The Superior Court judge converted each sentence to life with parole eligibility after fifteen years and ordered a hearing on consecutive versus concurrent sentences. The Commonwealth petitioned for relief under G. L. c. 211, § 3; the county court single justice reserved and reported the matter.

## DISPOSITION

writ\_denied

## REMAND INSTRUCTIONS

The matter was remanded to the county court for entry of a judgment denying the Commonwealth's petition for relief under G. L. c. 211, § 3. The Superior Court may conduct a resentencing hearing at which it may consider concurrent versus consecutive sentences and the specified *Miller*, psychological, and post-sentencing factors.

## CASES CITED

- *Miller v. Alabama*, *Miller v. Alabama*, 132 S. Ct. 2455 (2012)
- *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655 (2013), S.C., 471 Mass. 12 (2015)
- *Commonwealth v. Brown*, 466 Mass. 676 (2013)
- *Commonwealth v. DiBenedetto*, 414 Mass. 37 (1992)
- *Commonwealth v. DiBenedetto*, 427 Mass. 414 (1998)
- *Commonwealth v. Parrillo*, 468 Mass. 318 (2014)
- *Commonwealth v. Cumming*, 466 Mass. 467 (2013)
- *Commonwealth v. Talbot*, 444 Mass. 586 (2005)
- *Commonwealth v. Renderos*, 440 Mass. 422 (2003)
- *Commonwealth v. Lykus*, 406 Mass. 135 (1989)
- *Commonwealth v. Donohue*, 452 Mass. 256 (2008)
- *Commonwealth v. Power*, 420 Mass. 410 (1995), cert. denied, 516 U.S. 1042 (1996)
- *Commonwealth v. White*, 436 Mass. 340 (2002)
- *Commonwealth v. Amirault*, 415 Mass. 112 (1993)
- *Commonwealth v. Layne*, 386 Mass. 291 (1982)
- *Commonwealth v. Sitko*, 372 Mass. 305 (1977)
- *Matter of a Grand Jury Investigation*, 470 Mass. 399 (2015)
- *Martin v. Commonwealth*, 451 Mass. 113 (2008)

- Casiano v. Commissioner of Correction, 317 Conn. 52 (2015)
- State v. Null, 836 N.W.2d 41 (Iowa 2013)
- Bear Cloud v. State, 334 P.3d 132 (Wyo. 2014)

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