**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| v. | : | |
| KYLE WESLEY BARTRAM | : | |
| Appellant | : | No. 629 MDA 2025 |

Appeal from the Judgment of Sentence Entered April 23, 2025
In the Court of Common Pleas of Adams County Criminal Division at
No(s): CP-01-CR-0001472-2023

BEFORE: BOWES, J., OLSON, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.: **FILED: OCTOBER 27, 2026**

Appellant, Kyle Wesley Bartram, appeals from the aggregate judgment of sentence of life without the possibility of parole followed by a consecutive term of five to ten years of incarceration after he entered pleas of *nolo contendere* to one count of second-degree murder and one count of robbery. On appeal, Appellant contends that the mandatory sentence of life without parole for second-degree murder violates the Eighth Amendment to the United States Constitution's prohibition on cruel and unusual punishment and Article I, Section 13 of the Pennsylvania Constitution's prohibition on cruel punishment. Pursuant to our Supreme Court's recent decision in ***Commonwealth v. Lee***, 357 A.3d 356 (Pa. 2026), we vacate Appellant's judgment of sentence and remand for resentencing.

The trial court summarized the relevant facts and procedural history of this matter as follows:

On December 18, 2023, Appellant was arrested by members of the Pennsylvania State Police (hereinafter "PSP") and charged with criminal homicide and robbery, relating to the murder of Keith Monn (hereinafter "Victim"). The Victim's body was discovered on December 12, 2023, by members of PSP during a welfare check at his residence in Mt. Pleasant Township, Adams County, Pennsylvania.

On January 27, 2025, Appellant entered *nolo contendere* pleas to count 1, criminal homicide – second-degree murder as a felony of the first degree[FN1] and count 2, robbery - inflict serious bodily injury upon another as a felony of the first degree.[FN2] The pleas called for a sentence on count 1 of life imprisonment in a State Correctional Institution without the possibility for parole and count 2, five to ten years total confinement in a State Correctional Institution to run consecutive to count 1.

[FN1] 18 Pa.C.S. § 2501(a) and 2502(b).

[FN2] 18 Pa.C.S. § 3701(a)(1).

As part of the plea proceeding, Adams County District Attorney Brian Sinnett outlined the facts of the case to support the *nolo contendere* plea:

> [Assistant District] Attorney Sinnett: Yes, Your Honor. Just one clarification at least from the Commonwealth's theory is we're not alleging that [Appellant] with the intent to commit a robbery killed the victim. We're indicating that [Appellant] killed the victim and the[n] committed robbery afterwards. And, obviously, the definition of robbery talks about violence being used before, during, or after the commission of a theft.
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> The Court: I understand.
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> [Assistant District] Attorney Sinnett: Okay.
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> The Court: You understand that, Attorney Harper?
>
> Attorney Harper: Yes, sir.
>
> The Court: And do you understand that, Mr. Bartram, what the Commonwealth's theory is?
>
> [Appellant]: I do comprehend that, yes.
>
> The Court: Thank you.

Attorney Sinnett: So, Your Honor, on December the 11th or approximately December 11th of 2023, state police were called to a residence in Mount Pleasant Township, Adams County. And at that residence, they found the victim, Keith Monn, who had been beat[en] to death.

Through further investigation, it [was] revealed that a baseball bat, an aluminum baseball bat[,] was used to beat Mr. Monn to death. He had serious injuries to his head and other parts of his body.

An autopsy was performed by Forensic Pathology Associates in Allentown, specifically Dr. Michael Johnson, who opined that the manner of death was homicide and the cause of death was multiple blunt-force trauma.

Through investigation, it was revealed that [Appellant] was in fact the roommate of the victim because they had a very close relationship, including even [a] sexual relationship at times. However, [Appellant] was in a relationship with Amanda Weikel, who is a co-defendant, who just pled before you previously, at the time of the commission of the death. After [Appellant] struck and killed Mr. Monn, he then took items of property belonging to Mr. Monn, including an access device in the form of an ATM card, which he used to take approximately $800.00 from the victim's bank account, as well as the victim's cellular phone, which we believe we can show [Appellant] threw into Lake Codorus as part of flight away from the scene of the homicide.

Investigators tracked [Appellant] down through the use of the U.S. Marshals and the Ohio State Police. [Appellant] was arrested. He indicated to the Ohio State Police at the time of his arrest that they would likely find the murder weapon, being the baseball bat, in the trunk of the car he was a passenger in. They did. A DNA analysis revealed that both Mr. Monn's DNA, as well as [Appellant's] DNA were contained on the baseball bat. And the Commonwealth would use that at the time of the trial.

And he made statements, essentially, admitting to the offense; however, [he] stopped just short of indication to the police that he actually caused the death of Mr. Monn. The Commonwealth would also have testimony from an inmate at the Adams County Prison, who provided information to authorities that in fact [Appellant] confessed

> to him that he had caused the death of Mr. Monn while using the baseball bat.
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> The Court: Attorney Harper, I understand this is a *nolo contendere* plea. But is there anything you or your client want to add to those facts?
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> Attorney Harper: No, sir.

N.T., Plea Hearing, 1/27/25 at 7-9.

Trial Court Opinion (TCO), 7/3/25, at 1-5 (some formatting altered).

On April 17, 2025, the trial court sentenced Appellant to a mandatory term of life without parole for second-degree murder and a consecutive term of five to ten years of incarceration for robbery with credit for time served. Sentencing Order, 4/17/25, at 1. The trial court ordered Appellant to pay $3,700 to the Victims' Compensation Assistance Program and $800 in restitution to the estate of the victim, Keith Monn. ***Id.*** at 2.

On April 23, 2025, while the trial court maintained jurisdiction, it filed an amended sentencing order clarifying which subsection of 18 Pa.C.S. § 3701 corresponded to Appellant's *nolo contendere* plea for robbery. ***See*** Amended Sentencing Order, 4/23/25 (single page) (stating Appellant "had previously entered a *nolo contendere* plea to Count 2, robbery inflicts serious bodily injury upon another, in violation of Section 3701(a)(1)(i) of the Crimes Code as a felony of the first degree").

No post-sentence motions were filed. On May 12, 2025, Appellant filed a timely notice of appeal. Both the trial court and Appellant have complied with Pa.R.A.P. 1925. However, before we reach the issues Appellant raised on appeal, we must first address a jurisdictional matter. More than 30 days

after the April 23, 2025 amended sentencing order and after Appellant filed his notice of appeal on May 12, 2025, the trial court purported to file a second amended sentencing order on June 4, 2025. Second Amended Sentencing Order, 6/4/25 (single page). In the second amended sentencing order, without any reasons for the amendment, the trial court endeavored to change the restitution payee from the estate of Keith Monn to the daughter of Keith Monn. ***Id.***

This Court has explained:

> We acknowledge that, generally, a court may "modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed." 42 Pa.C.S. § 5505. However, 18 Pa.C.S. § 1106(c)(3) states:
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> > The court may, at any time or upon the recommendation of the district attorney that is based on information received from the victim and the probation section of the county or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution, alter or amend any order of restitution made pursuant to paragraph (2), provided, however, that the court states its reasons and conclusions as a matter of record for any change or amendment to any previous order.
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> 18 Pa.C.S. § 1106(c)(3) (emphasis added). Thus, based on this section, "a sentencing court may modify restitution orders at any time if the court states its reasons as a matter of record." [***Commonwealth v.***] ***Dietrich***, 970 A.2d [1131,] 1135 [(Pa. 2009)] (citing 18 Pa.C.S. § 1106(c)(3) (emphasis omitted)).
>
> Despite the "at any time" language of section 1106(c)(3), we are compelled to conclude that in this case the trial court did not have jurisdiction to modify the order of restitution due to [the a]ppellant's timely filing of a notice of appeal.

***Commonwealth v. Weathers***, 95 A.3d 908, 911–12 (Pa. Super. 2014) (some formatting altered).

Here, Appellant filed his appeal on May 9, 2025, nearly one month prior to the June 4, 2025 second amended sentencing order. Pursuant to ***Weathers***, we conclude that the trial court lacked jurisdiction to enter the June 4, 2025 order.[1] ***Id.*** As such, the second amended sentencing order is a nullity. ***See Commonwealth v. Thompson***, 333 A.3d 461, 470 (Pa. Super. 2025) (providing that an amended judgment of sentence entered when the court lacks jurisdiction is a legal nullity). Accordingly, Appellant's appeal is properly from the first amended judgment of sentence entered on April 23, 2025.[2] ***See Commonwealth v. Garzone***, 993 A.2d 1245, 1254 n.6 (Pa. Super. 2010) (explaining that when the trial court amends the judgment of sentence during the period it maintains jurisdiction, the direct appeal lies from the amended judgment of sentence).

On appeal, Appellant presents the following issues:

> I. Did the mandatory life-without-parole sentence the trial court imposed on [Appellant] following a *nolo contendere* plea to second[-]degree [murder] violate the 8th

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[1] The ***Weathers*** Court also explained that Pa.R.A.P. 1701 did not permit a trial court to amend an order of restitution after an appeal was filed. ***Weathers***, 95 A.3d at 912, n.2.

[2] However, we acknowledge that the ***Weathers*** Court further explained: "Under section 1106(c)(3), the trial court may subsequently amend the order of restitution when it regains jurisdiction, following the conclusion of this appeal, provided that the court states its reasons for doing so as a matter of record." ***Weathers***, 95 A.3d at 913.

> Amendment to the United States Constitution's guarantee against cruel and unusual punishment?
>
> II. Did the mandatory life-without-parole sentence the trial court imposed on [Appellant] following a *nolo contendere* plea to second[-]degree [murder] violate Article I, Section 13 of the Pennsylvania Constitution's guarantee against cruel punishment?

Appellant's Brief at 5-6.

Appellant's issues challenge the mandatory sentence of life without parole set forth in 18 Pa.C.S. § 1102(b).[3] After review, we vacate the mandatory sentence of life without parole for second-degree murder and remand for resentencing pursuant to our Supreme Court's decision in ***Lee***.

The ***Lee*** Court addressed a facial challenge to the mandatory sentence of life without parole for second-degree murder. Our Supreme Court first concluded that a mandatory sentence of life without parole for second-degree murder did not constitute cruel and unusual punishment under Eighth Amendment jurisprudence. ***Lee***, 357 A.3d at 372. However, the ***Lee*** Court held that the sentence is unconstitutional under Article I, Section 13 of the

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[3] Section 1102(b) states in relevant part as follows: "…a person who has been convicted of murder of the second degree … shall be sentenced to a term of life imprisonment." 18 Pa.C.S. § 1102(b). While the statute omits any reference to parole eligibility, "the inability to set a minimum period of incarceration means that by operation of law the offender is serving a mandatory sentence of life imprisonment without parole." ***Scott v. Pennsylvania Bd. of Prob. & Parole***, 284 A.3d 178, 193 (Pa. 2022).

Pennsylvania Constitution.[4] ***Lee***, 357 A.3d at 361, 396. In reaching its conclusion, the ***Lee*** Court explained:

> In sum, we find that 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. While the justifications for punishment may support life-long incarceration for some convicted of this crime, such justification cannot support life without parole for all offenders, as individuals who have lessened culpability are less deserving of the most severe punishments, necessitating individualized assessment of culpability.
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> Although the judgment of the General Assembly is entitled to a presumption of constitutionality, it is for our Court, ultimately, to determine whether Section 13 permits the mandatory imposition of a life of imprisonment without parole for second degree murder. We find that the sentencing framework imposing a **mandatory** sentence of life without parole for second degree murder convictions in **all** cases, regardless of the culpability and characteristics of the defendant — including such as the extent of an offender's participation in the conduct, and the details of his offense — without individualized assessment either at sentencing or through parole, prevents the sentencer from considering whether this harshest of sentences proportionately punishes the offender. Furthermore, this mandatory sentencing scheme runs afoul of notions of individualized sentencing for defendants facing

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[4] Our Supreme Court explained that the prohibition against "cruel punishments" set forth in the Pennsylvania constitution is broader than the prohibition against "cruel and unusual punishments" clause in the Eighth Amendment to the United States Constitution:

> It follows that the omission of the term "unusual" from Article I, Section 13 of the Pennsylvania Constitution excludes the requirement that a challenged sentence be contrary to long-standing practice or contrary to the common law. This pronounced limit found in the Eighth Amendment is meaningful and substantive, supporting a finding that our Constitution provides broader protections than its federal counterpart.

***Lee***, 357 A.3d at 380.

> the second most severe punishment after death, and the harshest type of incarceration. Finally, the mandatory nature of the sentencing scheme without individualized sentencing lacks adequate penological justification. Ultimately, we find that the mandatory sentencing scheme for second-degree murder poses too great a risk of disproportionate punishment, and, thus, find it to be cruel.

***Id.*** at 395-96 (some formatting altered) (emphasis in original).

The ***Lee*** Court vacated the mandatory sentence of life without parole for second-degree murder and remanded to the trial court for resentencing. ***Id.*** at 396-97. The Court stated:

> On remand, the sentencing court must, after consideration of [the appellant's] individual culpability, determine whether he should be resentenced to life imprisonment without the possibility of parole; or to a maximum sentence of life imprisonment, as required by 18 Pa.C.S. § 1102(b), accompanied by a minimum sentence determined by the court.

***Id.*** at 397.

The ***Lee*** Court did not state that its holding only applies prospectively, and we conclude that Appellant is entitled to the retroactive application of the rule announced in ***Lee***. ***See Commonwealth v. Cabeza***, 469 A.2d 146, 148 (Pa. 1983) (stating "we hold that where an appellate decision overrules prior law and announces a new principle, unless the decision specifically declares the ruling to be prospective only, the new rule is to be applied retroactively to cases where the issue in question is properly preserved at all stages of adjudication up to and including any direct appeal."); ***Commonwealth v. Grooms***, 247 A.3d 31, 37 n.8 (Pa. Super. 2021) (explaining that a new rule of law applies retroactively to cases pending on direct appeal when the issue

was preserved at all stages of adjudication).[5] Moreover, the entitlement to retroactive application is presumably not waivable as the underlying claim goes to the legality of the sentence. ***See Commonwealth v. L. Brown***, 71 A.3d 1009, 1015–16 (Pa. Super. 2013) (explaining "that a claim that a sentence violates an individual's right to be free from cruel and unusual punishment is a challenge to the legality of the sentence, rendering the claim unwaivable"). In any event, we need not decide that point because Appellant has preserved the challenge. ***See*** Appellant's Rule 1925(b) Statement, 5/30/25, at 1.

For these reasons, we vacate Appellant's mandatory sentence of life without parole for second-degree murder and remand for the trial court to resentence Appellant consistent with our Supreme Court's decision in ***Lee***. Moreover, because our decision today disturbs the trial court's overall sentencing scheme, we also vacate Appellant's sentence for robbery to allow the trial court to resentence Appellant on that conviction.[6] ***See Commonwealth v. Thur***, 906 A.2d 552, 569 (Pa. Super. 2006) (explaining that "[i]f our disposition upsets the overall sentencing scheme of the trial court, we must remand so that the court can restructure its sentence plan.").

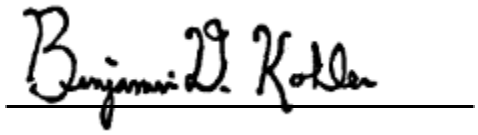
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[5] ***See also Commonwealth v. J. Brown***, 794 MDA 2025, 2026 WL 2665408, at *8 (Pa. Super. filed September 10, 2026) (unpublished memorandum) (explaining retroactive application of ***Lee***); Pa.R.A.P. 126(b) (providing that unpublished non-precedential decisions of the Superior Court filed May 1, 2019, may be cited for persuasive value).

[6] Regarding restitution upon resentencing, we refer to footnote 2, ***supra*** (citing ***Weathers***, 95 A.3d at 913).

Judgment of sentence vacated. Case remanded for resentencing. Jurisdiction relinquished.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/27/2026