NO. 101544-5

**SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent/Cross-Petitioner

v.

DAKOTA MIKALLE COLLINS,

Petitioner/Cross-Respondent.

Appeal from the Superior Court of Pierce County
The Honorable Stephanie Arend

No. 16-1-02182-6

# ANSWER TO PETITION FOR REVIEW AND CROSS-PETITION FOR REVIEW

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## I. INTRODUCTION

Dakota Mikalle Collins received a standard range sentence for a murder he committed prior to his eighteenth birthday. This sentence was imposed by a sentencing judge who clearly understood she possessed the power to impose a mitigated sentence and who expressed a willingness to do so when a defendant demonstrates how his life experiences, youth, and potential for rehabilitation reduced his culpability with respect to the crime. Collins, however, failed to establish a link between *his* youth and *his* crimes.

Collins appealed his standard range sentence, arguing that the trial court did not fully and meaningfully consider the mitigating circumstances of youth. Appeals from the imposition of a standard range sentence, however, are barred by RCW 9.94A.585(1). The State sought the dismissal of the appeal as Collins's disagreement with the weight the trial court placed upon the information available to it before imposing the standard

range sentence did not satisfy any of the exceptions to RCW 9.94A.585(1).

The court of appeals rejected this argument, holding that a challenge to the weight the trial court placed on youth *is* subject to review in an appeal from a standard range sentence.[1] This holding conflicts with prior decisions of this Court and published decisions of the court of appeals. Review of the issue raised in the State's cross-petition, therefore, should be resolved by this Court on the merits. The State's cross-petition also involves an issue of substantial public interest—the judicious use of appellate and trial court resources and separation of powers.

Review should not be granted of the issue raised in Collins's petition for review. Collins's age when he murdered Lorenzo Parks is not a per se mitigating circumstance. Rather, the mitigating characteristics of youth will only support a mitigated exceptional sentence when they significantly impaired

[1] *See State v. Collins*, No. 56155-7-II, slip op. at 11-13, 2022 WL 17259226 at * 6 (Wash. Ct. App. Nov. 29, 2022) (unpublished).

the offenders' capacity to appreciate the wrongfulness of his conduct or his ability to conform his conduct to the requirements of the law. The sentencing judge determined that Collins did not establish the necessary link by a preponderance of the evidence.[2] Collins did not challenge this finding in the court of appeals or that he bore the burden of establishing that an exceptional sentence below the standard range should be imposed.

## II. COURT OF APPEALS DECISION

The State seeks review of the unpublished opinion of the Court of Appeals in *State v. Collins,* No. 56155-7-II (Nov. 29,

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[2] 4RP 48. The five volumes of the verbatim report of proceedings are not sequentially numbered as required by RAP 9.2(f)(2). The State has assigned numbers to each non-sequentially numbered volume:

1RP -- November 21, 2016

2RP -- September 15, 2017, and October 5, 2017

3RP -- June 25, 2021

4RP -- August 10, 2021

2022). A copy of the slip opinion is attached to Collins's petition for review.

## III. STATE'S ISSUE PRESENTED FOR REVIEW

Does RCW 9.94A.585(1) bar an appeal from a standard range sentence where the trial court understood its power to impose an exceptional mitigated sentence based upon the grounds asserted by the defendant, and the trial court did not categorically state it would never impose a mitigated exceptional sentence upon the grounds asserted by the defendant?

## IV. RESTATEMENT OF ISSUE PRESENTED FOR REVIEW BY PETITIONER

Whether further review of a standard range sentence should be denied where the defendant's complaint is directed at the weight the trial court gave to the potentially mitigating characteristics of youth, rather than to a violation of the procedural requirements set out in *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017).

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## V. STATEMENT OF THE CASE

Between May 17th and 18th, 2016, Dakota Collins shot and killed Lorenzo Parks. CP 3, 18. At the time of the murder, Mr. Parks had walked some distance away from Collins and his six coparticipants and was bending down after Collins's attempt to rob him yielded nothing of value. 2RP 54-56. Despite posing absolutely no risk to Collins, Collins shot and killed Mr. Parks. *Id.* The decision to shoot and kill Mr. Parks, may have been influenced in some part by the urging of a co-defendant. 2RP 55-56; 4RP 32, 46. Collins was 16 years, 6 months, and 25 days old on the day of the murder. CP 1; 4RP 41.

The State originally charged Collins with first degree murder while armed with a firearm. CP 1. This charge carried a mandatory 25-year sentence, without the possibility of earned early release. RCW 9.94A.540(1)(a); RCW 9.94A.533(3). In consideration of Collins's youth at the time of the crime, the State reduced the charge to murder in the second degree with firearm enhancement, providing Collins with the ability to earn early

release credits. *See* CP 5; 2RP 58; 4RP 10-11, 20. The State further committed itself to a below mid-range standard sentence recommendation that would ensure Collins would leave prison before his fortieth birthday. CP 13 ¶ (j); 2RP 61-62; 4RP 20.

Collins, in his statement on plea of guilty, reserved the right to seek a mitigated sentence. CP 13. At sentencing, Collins urged the imposition of an exceptional sentence based upon "the mitigating circumstances of his youth" and "his acceptance of responsibility for his illegal conduct." CP 25. Collins's supporting evidence, however, was not compelling. 4RP 41-49. Collins, moreover, never provided any linkage between his life experiences and how they impacted his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law at the time of the murder. 4RP 45-46, 48.

Acknowledging that youth can provide a basis for imposing a mitigated sentence and that the State's consideration of the defendant's youth in the amendment of charges did not

preclude a mitigated sentence, the court denied Collins's request for an exceptional sentence below the standard range. 2RP 74-75, 78. The court determined that the State's recommendation properly balanced deterrence, rehabilitation, just punishment, and protection of the public. 2RP 77-78; CP 145.

Collins appealed the denial of his requested exceptional sentence. CP 156. The State overlooked RCW 9.94A.585(1) and did not argue that Collins's appeal was not authorized. Ultimately the court of appeals granted Collins's appeal and remanded "for the trial court to reconsider Collins's youth as a mitigating factor with the benefit of recent appellate decisions." CP 173.

Collins submitted an additional seven pages of legal argument prior to resentencing, and a revised request for a slightly longer mitigated sentence. *See* CP 192-198. Collins offered no new evidence in support of his request for a mitigated sentence beyond unsworn statements regarding his conduct since the last sentencing hearing and the current hearing. Collins

admitted that there had been "some minor infractions" while in custody, but did not identify the number of infractions, whether they had decreased as he aged, or the specific rules violated. *See* 4RP 9-10, 25. Collins identified some educational progress and participation in voluntary group therapy but offered no official proof in support of his unsworn statements. *See* 4RP 18, 22-25, 47-48.

The sentencing court, which incorporated its previous oral ruling, 4RP 30, carefully considered the evidence tendered by Collins, the court of appeals opinion, and the applicable law. *See generally* 4RP 28-49. Ultimately the court found that Collins had not met his burden of establishing by a preponderance of the evidence that an exceptional sentence below the standard range is justified. 4RP 48.

Specifically, the court found that Collins's self-serving statement to Dr. Gerlock of feeling threatened and fearful at the time of the shooting was not supported by the facts of the crime. 4RP 43-44. The court found that Collins offered no evidence of

how his life experiences impacted what happened the night of the murder. 4RP 45-46. Collins failed to produce any records from DOC to support his rehabilitative efforts. 4RP 47-48. Collins also provided no analysis regarding how his proposed sentence would impact public safety. 2RP 77.

Collins filed a timely notice of appeal from his standard range sentence of 260 months. CP 320, 331. The State sought the dismissal of the appeal pursuant to RCW 9.94A.585(1), which precludes appeals from standard range sentences based upon criticisms regarding the judgment the trial court exercised in rejecting a request for a mitigated exceptional sentence. *See* Brief of Respondent at 13-18. The appellate court rejected this argument. *See Collins*, slip op. at 12. The court nonetheless affirmed Collins's sentence, finding that the resentencing court did not abuse its discretion. *Id.* at 13.

Collins filed a timely petition for review. The State has filed a timely cross-petition for review. *See* RAP 13.4(d).

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## VI. ARGUMENT

It is true that one sentencer may weigh Collins's youth differently than another sentencer or an appellate court would, given the mix of all the facts and circumstances in his case. Some sentencers may decide that Collins's youth supports a mitigated exceptional sentence. Other sentencers presented with the same facts might decide that a standard range sentence remains appropriate despite Collins's youth. But the key point remains that the legislature has expressly declared that Collins and similarly situated defendants are not entitled to repetitive appeals and resentencings until they ultimately obtain an exceptional sentence below the standard range.

This Court should grant the State's cross-petition for review and issue an opinion that holds an appellate court may only review a standard range sentence imposed on a "juvenile defendant"[3] when the trial court totally fails to consider the

[3] The phrase "juvenile defendant" refers to persons who were tried in adult court for offenses committed prior to their eighteenth birthday, rather than offenders who were adjudicated

mitigating factors of youth or fails to appreciate the discretion to impose a sentence below the SRA range. The trial court's assessment of credibility, other factual findings, and balancing of the facts of the crime and defendant's youth are not grounds for review.

The Court should deny Collins's petition for review as the trial court's determination that Collins failed to meet his burden of proving by a preponderance of the evidence that his youth impacted his commission of the murder of Mr. Parks is unchallenged. *See* 4RP 48.

### A. A Standard Range Sentence Imposed Upon a Juvenile Defendant is Not an Exceptional Sentence Upward.

When sentencing a juvenile defendant, the trial court retains its discretion to impose a standard range sentence and is entitled to start with a general presumption that a standard range sentence is appropriate. *State v. Gregg*, 196 Wn.2d 473, 486, 474 P.3d 539 (2020). This is because "age is not a per se mitigating

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in the juvenile courts.

factor automatically entitling every youthful defendant to an exceptional sentence." *State v. O'Dell*, 183 Wn.2d 680, 695, 358 P.3d 359 (2015); *State v. Ramos*, 187 Wash.2d 420, 434, 387 P.3d 650 (2017) (youth is not a per se mitigating factor, even for juvenile defendants). The standard range provisions of the SRA apply until the sentencing court determines that youth has been established as a mitigating factor as to the specific crime. *State v. Rogers*, 17 Wn. App. 2d 466, 476, 487 P.3d 177 (2021).

The burden of proving youth as a mitigating factor lies with the defendant. RCW 9.94A.535; *Gregg*, 196 Wn.2d at 478; *Ramos*, 187 Wn.2d at 433; *accord Jones v. Mississippi*, ___ U.S. ___,141 S. Ct. 1307, 209 L. Ed. 2d 390 (2021). Only when a youthful defendant satisfies his burden and the standard range sentence amounts to a de facto sentence of life without parole is a trial court *required* to impose an exceptional sentence below the standard range. *Ramos*, 187 Wn.2d at 442-43. In cases with lesser sentences, the trial court *may* but is not *required* to impose a mitigated exceptional sentence.

In the instant case Collins tried, but failed, to establish that his life circumstances, and youthfulness significantly impaired his capacity to appreciate the wrongfulness of his conduct when he murdered Mr. Parks, or to conform his conduct to the requirements of the law. *O'Dell*, 183 Wn.2d at 698-99; RCW 9.94A.535(1)(e); 4RP 48. His current standard range sentence of 260 months did not become an appealable exceptional sentence upward merely because it was imposed on a juvenile defendant. *State v. Anderson*, 200 Wn.2d 266, 285, 516 P.3d 1213 (2022); *Gregg*, 196 Wn.2d at 482-83; *State v. Rogers*, 17 Wn. App. 2d 466, 472, 487 P.3d 177, 181 (2021). Neither in the court of appeals nor in this Court has Collins challenged the finding that he failed to demonstrate a link between his youth and his crime. The absence of such a link prevents Collins's petition from satisfying any of the RAP 13.4(b) considerations for review.

### B. Collins's Appeal from His Standard Range Sentence Was Barred by RCW 9.94A.585(1)

Collins appealed his 260-month standard range sentence. He did not contend that the trial court was unaware that the

mitigating circumstances associated with youth can support an exceptional sentence below the standard range. He did not claim that the trial court prevented him from offering any evidence regarding the mitigating circumstances of youth and how they may have impacted him at the time of the crime. He did not claim that he received a de facto life without parole sentence. Instead, Collins challenged the weight the trial court gave to his evidence and arguments. Disagreement with how the trial court exercised its discretion by denying a mitigated sentence is not, however, an exception to the prohibition upon appeals from standard range sentences.

The court of appeals' contrary holding conflicts with cases issued by both this Court and published opinions of the court of appeals. The holding also involves issues of substantial public interest—appellate and trial court resources and respect for the legislature's preeminence in establishing sentencing regimes. *See, e.g., In re Pers. Restraint of Forcha-Williams*, __ Wn.2d ___, 520 P.3d 939, 946 (2022) (judiciary may only encroach on

the legislature's plenary authority to set criminal punishment when the chosen procedure violates the federal or state constitution).[4] Review of the issue raised in the State's cross-petition is warranted by RAP 13.4(b)(1), (2) and (4).

Under the Sentencing Reform Act (SRA), a defendant generally may not appeal a standard range sentence. RCW 9.94A.585(1) ("A sentence within the standard sentence range for the offense shall not be appealed."). "This precept arises from the notion that, so long as the sentence falls within the proper presumptive sentencing ranges set by the legislature, there can be no abuse of discretion as a matter of law as to the sentence's length." *State v. Williams*, 149 Wn.2d 143, 146-47, 65 P.3d 1214 (2003). This prohibition does not bar a party's right to challenge the underlying legal conclusions and determinations by which a

[4] Collins has presented no argument that RCW 9.94A.585(1) is either facially unconstitutional or unconstitutional as applied to him.

court comes to apply a particular sentencing provision. *Id.* at 147.

A defendant whose request for an exceptional mitigated sentence is denied may only obtain review of the denial under two grounds. These two grounds mirror the procedural aspects announced in *Houston-Sconiers*. *See generally Forcha-Williams*, 520 P.3d at 949 (failing to consider the mitigating factors of youth or failing to appreciate the discretion to impose a sentence below the SRA range).

First, the defendant may obtain review if the trial court erroneously believed that it lacked the authority to depart from the standard range. *See, e.g., State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017). This exception to RCW 9.94A.535(1) was present in the youth-related cases of *Houston-Sconiers*,[5]

[5] In *Houston-Sconiers*, this Court noted that the trial court believed it lacked the ability to impose a mitigated sentence with respect to the multiple firearm sentence enhancements. 188 Wn.2d at 20-21.

*O'Dell*,[6] and *State v. Ronquillo*, 190 Wn. App. 765, 773-74, 361 P.3d 779 (2015),[7] and in other non-youth related cases. *See, e.g., State v. Graham*, 181 Wn.2d 878, 881, 337 P.3d 319 (2014)

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[6] In *O'Dell*, this Court found that:

> [T]he trial court did not meaningfully consider youth as a possible mitigating circumstance. As detailed above, the trial court clearly believed that the Court of Appeals' decision in *Ha'mim* absolutely prohibited it from considering whether youth diminished O'Dell's capacity to appreciate the wrongfulness of his conduct or conform that conduct to the requirements of the law. *See* VRP (Mar. 6, 2013) at 74–75 ("'a defendant's incapacity to appreciate the wrongfulness of the criminal conduct cannot be based on the youthfulness of the Defendant ...'" (emphasis added)).
>
> This failure to exercise discretion is itself an abuse of discretion subject to reversal. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005) (the trial court's failure to consider an exceptional sentence authorized by statute is reversible error).

183 Wn.2d at 696-97 (footnote omitted).

[7] Sentencing court determined that it was constrained by the law to deny the defendant's request for an exceptional sentence based upon youth or the "clearly excessive" nature of the sentence. *Ronquillo*, 190 Wn. App. at 773-74.

(judge stated on the record there was no authority to impose an exceptional sentence).

Second, a defendant may appeal a discretionary sentence within the standard range where the court has refused to hear or consider the proffered evidence or refuses to ever impose a mitigated sentence for certain offenses or offenders. *See, e.g., McFarland*, 189 at 56; *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). Where a trial court has considered the facts and has concluded that the facts do not justify an exceptional sentence in a specific case, the defendant may not appeal that ruling. *State v. Mandefero*, 14 Wn. App. 2d 825, 833, 473 P.3d 1239 (2020) (*quoting Garcia-Martinez*, 88 Wn. App. at 330); *State v. Khanteechit*, 101 Wn. App. 137, 5 P.3d 137 (2000) (criticisms regarding the judgment the trial court exercised in imposing a standard range sentence are not a proper subject for appeal).

This rule applies equally to the rejection of youth-based claims as to other grounds for a mitigated exceptional sentence.

*Mandefero*, 14 Wn. App. 2d at 833-34. Only when a judge refuses to hear or consider any evidence regarding the mitigating circumstances of youth may a defendant appeal from a standard range sentence. *See, e.g., In re Pers. Restraint of Kennedy*, 200 Wn.2d 1, 20 n. 4, 513 P.3d 769 (2022). The weight to which the judge ascribes to such evidence, however, will only support an appeal in non-SRA cases. *See generally State v. Delbosque*, 195 Wn.2d 106, 456 P.3d 806 (2020) (setting of minimum term pursuant to RCW 10.95.030). Even in non-SRA cases, an appellate court does not reweigh the evidence on appeal. *State v. Backstrom*, 15 Wn. App. 2d 103, 109, 476 P.3d 201 (2020), *rev. denied*, 198 Wn.2d 1032 (2022) (RCW 10.95 aggravated murder case).

Here, the record establishes that the trial court understood it possessed the authority to consider the mitigating circumstances of youth in fashioning an appropriate sentence for Collins. 2RP 74-77; 4 RP 34. The sentencing judge acknowledged that her power to impose an exceptional sentence

based upon Collins's youth at the time of the crime was not diminished or otherwise impacted by the State's consideration of youth in its plea offer. 2RP 74-75.

The trial court placed no limitations upon the evidence Collins could offer in support of his request for an exceptional sentence below the standard range. The trial court considered Collins's tendered evidence, the *Houston-Sconiers* factors, numerous youth sentencing cases, the facts of the crime, and the purposes of the SRA as set out in RCW 9.94A.010. *See* 4RP 35-49; 2RP 76-78. The trial court acknowledged that peer pressure played some part in the commission of the murder but that the peer pressure alone did not present a substantial and compelling basis for a sentence below the standard range. 4RP 46, 48-49. Its decision to ultimately impose a 260 month standard range sentence was not appealable. *Mandefero*, 14 Wn. App. 2d at 834.

## VII. CONCLUSION

The court of appeals' denial of the State's request to dismiss Collins's second appeal of his standard range sentence

pursuant to RCW 9.94A.535(1), if emulated, will divert limited appellate and trial court resources to sentences that the legislature has determined are presumptively reasonable. This Court should deny Collins's petition for review and should grant the State's cross-petition for review.

This document contains 3,377 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 17th day of January, 2023.

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# PIERCE COUNTY PROSECUTING ATTORNEY

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## Transmittal Information

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