Supreme Court No.: 90261-5
Court of Appeals No.: 69849-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JOHN W. FOLDS,

Petitioner.

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# PETITION FOR REVIEW

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## A. INTRODUCTION

In 1983, manslaughter was a class B felony with a ten-year maximum sentence and no minimum sentence. When the Sentencing Reform Act (SRA) became effective just a year later, the standard sentencing range for manslaughter with a single offender score point was 36 to 48 months. By 2013, manslaughter in the first degree had been reclassified as a class A felony, and the standard range had more than doubled to 86 to 114 months.

In 1983, Mr. Folds committed the manslaughter offense to which he later pled guilty. The law of indeterminate sentences applies to pre-1984 offenses and requires the sentencing court to attempt to set a minimum term reasonably consistent with the purposes, standards and sentencing ranges of the SRA. This petition presents the novel question of which sentencing range a court should look to when the time of offense and the time of sentencing are separated by 30 years and a change in classification for the underlying offense. The Court should grant review and hold that the time-of-offense range applies because the SRA policy is to apply the law in effect at the time of the offense; such application here comports with the SRA purposes of consistency among pre-SRA offenders and between pre-SRA and post-

SRA offenders; applying a statutory maximum from the time of offense while considering a minimum sentence based on the standards of an unrelated time period lacks reason and fairness; and classification of the underlying offense increased from a B felony at the time of the offense to an A felony at the time of sentencing.

B. IDENTITY OF PETITIONER AND THE DECISION BELOW

John Folds requests this Court grant review pursuant to RAP 13.4(b)(4) of the decision of the Court of Appeals in *State v. Folds*, No. 69849-4-I, filed April 21, 2014. Division One held that the trial court did not err as a matter of law when it refused to even consider the 1984 standard range and consulted only the 2013, class A felony standard range when sentencing Mr. Folds. A copy of the opinion is attached as an appendix.

C. ISSUE PRESENTED FOR REVIEW

Generally, at sentencing, the court should apply the law in effect at the time of the crime. Since 1986, sentencing courts set the minimum sentence for an offender convicted of an offense committed before the SRA's effective date. RCW 9.95.011 directs that a sentencing "court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges under

chapter 9.94A RCW of the sentencing reform act." RCW 9.95.011(1). This petition raises the legal question what "sentencing range" the court is to consider: the sentencing range in place closest in time to the commission of the offense or the sentencing range in place at the time of sentencing. This Court has never determined which SRA standard range the court should look to when setting the minimum range. Should the Court accept review of this novel question of substantial public interest?

D. STATEMENT OF THE CASE

John Folds spent 30 productive years as a painter, construction worker, public servant and church member living in Missouri and Florida. He started a family and raised his two- and four-year-old daughters alone when his wife passed away from cancer. Fifteen years later, he remarried. In 2010, he was charged in a death that occurred in 1983, when he was just 18 years old. This appeal concerns the sentencing for that charge.

In February 1983, at age 18, John Folds travelled from his home in California to Darrington, Washington to visit family. CP 104, 108; 1/25/13 RP 59-60. On the flight, he met 37-year-old Frank Kuony, who offered to give him a ride to Seattle from SeaTac the next morning

and a motel room to stay in overnight. CP 57, 104. Unbeknownst to Mr. Folds, Mr. Kuony was under investigation by the San Francisco Police Department for soliciting male prostitutes as young as 13 or 14 years old. CP 58 & n.1; CP 115-17. Mr. Kuony was also accused of having sexual intercourse with an underage male in King County on several occasions. CP 116-17. That night in 1983, Mr. Kuony checked into a motel near the airport, performed oral intercourse on Mr. Folds and then forcibly raped him. CP 37, 104, 115; 1/25/13 RP 60. Mr. Folds swung a knife at Mr. Kuony in self-defense, wounding him. CP 37, 104; 1/25/13 RP 60. Mr. Folds was hurt and frightened; he left the motel room. CP 104. Mr. Kuony died. CP 54, 57.

A year later, Mr. Folds moved with his parents to Missouri. CP 106. He married a woman he met at church and they had two daughters. CP 109. A few years later, his wife died of ovarian cancer. CP 108-09. At just 26 years old, Mr. Folds was a widower and single parent. CP 109.[1]

After the untimely death of his wife, Mr. Folds focused on work and providing for his daughters, eventually moving to Florida to be

[1] Family tragedy was not unknown to Mr. Folds: his father died at a young age and his brother died just three months before his wife. CP 106-07, 110.

closer to his mother. CP 109-10. He remained active in his church. CP 109-10, 111, 137. He ran a painting and home repair business. CP 108, 110-11, 135. He also served as the Superintendent of Flinthill, Missouri, inspecting new-home construction and sewer and well pumps. CP 110.

In 2004, after his daughters were grown, Mr. Folds married his current wife. CP 110. He is now a grandfather. CP 130-32.

In 2010, DNA recovered from the motel room in 1983 was matched to Mr. Folds and he was arrested without resistance. CP 57, 105. The State disputed that Mr. Folds killed Mr. Kuony in self-defense, but the parties reached a plea deal. *See* CP 54, 57-59. Mr. Folds pled guilty to manslaughter in the first degree and, under *North Carolina v. Alford*,[2] to attempted theft in the first degree. CP 34-48.

The 2013 sentencing court sentenced Mr. Folds to a minimum term of 114 months on the manslaughter count and 4.5 months on the attempted theft count, to be served concurrently. CP 73-78. On each count, the minimum term imposed was the top of the standard range under the SRA as it existed at the time of sentencing. 1/25/13 RP 68-70; CP 74, 79-80. Mr. Folds argued that the court should look to the

[2] 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

standard sentencing range for each offense as it existed at the time the SRA became effective because such a sentence was closest in time to the offense and in line with legislative policy. CP 113-15; 1/25/13 RP 36, 41-58. The court refused, and consulted only the 2013 SRA ranges. 1/25/13 RP 68-70.

E. ARGUMENT

**The Court should grant review to decide the novel question of which standard range a sentencing court must consult when setting the minimum term for a pre-SRA offender.**

Mr. Folds's sentencing court committed legal error when it refused to consider the 1984 SRA sentencing range for manslaughter and instead applied the significantly higher 2013 range in setting Mr. Folds's minimum term of confinement.

1. Courts must set the minimum term for pre-SRA offenders under criteria set forth by the Legislature, including the standard SRA sentencing range.

Prior to 1981, criminal sentencing in this State focused on rehabilitation under an indeterminate scheme in which a minimum and maximum sentencing term was set. The minimum sentence was determined by the Board of Prison Terms and Paroles, redesignated the Indeterminate Sentence Review Board (collectively, the "Board"), under RCW 9.95.040. *See* RCW 9.95.001 & -.009. In 1981, the

Legislature enacted the SRA, which did not become effective until July 1, 1984. 1981 ch. 137 § 28 (enacting RCW 9.94A.905). The Legislature also set the terms and ranges that would apply to sentencing for offenses from July 1, 1984 until further amendment. *See id.* In 1986, the Legislature transferred the responsibility for setting minimum sentences under pre-SRA sentences to the sentencing court. RCW 9.95.011; *State v. Landon*, 69 Wn. App. 83, 94-95, 848 P.2d 724 (1993).

As mentioned, the SRA was adopted in 1981 but did not become effective until July 1, 1984; it applies only prospectively. An offender who commits a crime prior to the effective date of the SRA is sentenced under the indeterminate sentencing provisions of chapter 9.95 RCW. *In re Pers. Restraint of Stanphill*, 134 Wn.2d 165, 170, 949 P.2d 365 (1998). However, in sentencing the defendant, the court is to take the SRA into consideration. RCW 9.95.011. As with sentences imposed under the SRA, these post-SRA indeterminate sentences are intended to be more consistent; the process is standardized. RCW 9.95.011; *Stanphill*, 134 Wn.2d at 172. Minimum sentences under the indeterminate scheme are to be set in a manner "reasonably consistent" with the SRA. RCW 9.95.011; *In re Pers. Restraint of Myers*, 105

Wn.2d 257, 714 P.2d 303 (1986); *see State v. Whitaker*, 112 Wn.2d 341, 771 P.2d 332 (1989) (interpreting indeterminate sentencing scheme to apply to a pre-SRA offender in manner reasonably consistent with SRA). In relevant part, RCW 9.95.011 provides,

> The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040(1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW.[3]

The goal is to ensure that post-SRA indeterminate sentences for the same offense are consistent with each other as well as similar offenses sentenced under the SRA. *E.g.*, *In re Pers. Restraint of George*, 52 Wn. App. 135, 145, 758 P.2d 13 (1988).

Regardless of the minimum term, a pre-SRA offender is not released until the Board determines the inmate has been rehabilitated and is otherwise fit for release, or until the maximum sentence has been served. RCW 9.95.100 & -.110. If the Board determines the inmate is not fit to be released, it resets the minimum sentence. RCW 9.95.052. Thus the minimum sentence provides the first instance that the Board will review the inmate's rehabilitation and sentence. RCW 9.95.052; *In*

[3] The "limitations" discussed in the second clause are inapplicable in Mr. Folds's case.

*re Pers. Restraint of Powell*, 117 Wn.2d 175, 186 n.1, 189, 814 P.2d 635 (1991).

The maximum sentence, in cases such as this, is set by statute. RCW 9.95.010; RCW 9A.20.020; RCW 9A.32.060. In this case, the statutory maximum term for manslaughter in the first degree committed in 1983 is 10 years. RCW 9A.20.020; RCW 9A.32.060.

2. It is clear that the SRA range referred to in RCW 9.95.011 is the range closest in time to the crime.

Section .011 of the indeterminate sentencing law requires the sentencing court to set the minimum term consistent with the SRA sentencing ranges. RCW 9.95.011(1). But the statute does not directly indicate which sentencing ranges the court must consult in setting the minimum term. For several reasons, it is clear that the Legislature intended the court to look to the range in effect at or close to the time of the offense.

First, RCW 9.95.011 directs that any post-SRA indeterminate sentence is to be "reasonably consistent with the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act." To be reasonably consistent with the SRA, the laws closest in time to the offense should be imposed. The SRA makes this clear, commanding that "Any sentence imposed under this chapter [the

SRA] shall be determined in accordance with the law in effect when the current offense was committed." RCW 9.94A.345; *In re Pers. Restraint of Carrier*, 173 Wn.2d 791, 797 n.3, 272 P.3d 209 (2012) ("Unless indicated otherwise, we refer to the law in effect at the time [the defendant] committed his current offenses. RCW 9.94A.345."); *State v. Pillatos*, 159 Wn.2d 459, 475, 150 P.3d 1130 (2007) ("A defendant is subject to the penalty in place the day the crime was committed."). This is consistent with the Legislature's directive that absent explicit statutory language to the contrary, all offenses committed while a subsequently repealed or amended penal statute was in force shall be punished or enforced as if the former law remained in effect. RCW 10.01.040.

Before the SRA became effective, the Legislature set the SRA range for manslaughter in the first degree with one offender score point at 36 to 48 months. David Boerner, Sentencing in Washington, App. III-49 (1985) (scoring sheet for manslaughter, first degree). That sentencing range accurately reflects the Legislature's intended standard range sentence for manslaughter in the first degree at the time of Mr. Folds's offense.

Moreover, pre-SRA offenders should be sentenced consistently according to the offense committed. This Court has previously held the Legislature clearly intended to instill consistency among pre-SRA offenders. *Landon*, 69 Wn. App. at 96-97 & n.11; *see Stanphill*; 134 Wn.2d at 170. Only if a court considers the sentencing range in effect at the time closest to the offense will sentences among pre-SRA offenders, as well as across pre- and post-SRA offenders, be harmonized, in accordance with legislative intent. Under this regime, all offenders who committed manslaughter in the first degree in 1983 but were sentenced post-SRA would have the sentencing court consider a similar standard range when setting the minimum sentence, regardless of the relatively arbitrary date of sentencing. Moreover, post-SRA offenders who committed manslaughter in the first degree close in time to the 1983 offenders, such as in 1985, would receive similar post-SRA sentences to those pre-SRA offenders. On the other hand, an offender who committed manslaughter in 2013 would be sentenced under the law in effect at the time of his or her offense.

The precept that the law in effect at the time of the offense governs sentencing is also consistent with the sentencing court's imposition of the maximum sentence from the time of Mr. Folds's

offense, rather than the maximum at the time of sentencing. RCW 9A.20.020; RCW 9A.32.060; CP 74.

In fact, it is entirely contradictory for the sentencing court to have applied the 1983 statutory maximum but to use the 2013 standard sentencing range to determine the minimum sentence. *Cf. Alleyne v. United States*, __ U.S. __, 133 S. Ct. 2151, 2155, 186 L. Ed. 2d 314 (2013) (treating mandatory minimum sentences the same as maximum sentences for purposes of the Sixth and Fourteenth Amendment rights to proof to a jury beyond a reasonable doubt). In 1983, at the time of the offense, manslaughter in the first degree was a class B felony. *Compare* 1975 1st ex. s. ch. 260 § 9A.32.060 (manslaughter in first degree is class B felony) *with* 1997 ch. 365 § 5 (amending RCW 9A.32.060 to make manslaughter in first degree a class A felony). The statutory maximum for a class B felony committed prior to July 1, 1984 is 10 years. RCW 9A.20.020. A class A felony committed prior to July 1, 1984 carries a 20-year statutory maximum. RCW 9A.20.020. The sentencing court plainly applied the statutory maximum from 1983. CP 74; *see* CP 35 (guilty plea notes 10-year statutory maximum). Yet, the court applied 2013 law to set Mr. Folds's

minimum sentence. CP 79-80; 1/25/13 RP 61-70. Neither the court nor the prosecutor provided any justification for this illogical result.

This illustrates an additional basis for applying the time-of-offense sentencing range to determine the minimum sentence. Manslaughter in the first degree was a class B felony in 1983, when Mr. Folds committed the offense. 1975 1st ex. s. ch. 260 § 9A.32.060. But as stated, in 1997, the Legislature amended the law to classify manslaughter in the first degree as a class A felony. 1997 ch. 365 § 5. It remains a class A felony today. RCW 9A.32.060. Thus, by applying the 2013 standard range as a guide in setting Mr. Folds's minimum sentence, the court applied a class A sentencing range to a class B offense. Imposing a penalty for a higher-classified crime is fundamentally unfair and without justification. *See Pillatos*, 159 Wn.2d at 475 ("A defendant is subject to the penalty in place the day the crime was committed.").

For all of these reasons, the sentencing court erred when it applied a 2013, class A felony sentencing range to determine Mr. Folds's minimum sentence for a 1983 class B manslaughter conviction. This Court should grant review.

3. This Court's opinion in *Stanphill* did not decide this issue.

The Court of Appeals and the State contend that *Stanphill* forecloses any argument that a pre-time-of-sentencing standard range must be considered. Slip Op. at 5-6; CP 56. The sentencing court agreed that it was not error to decline to consider the 1984 sentencing range. 1/25/13 RP 65.

This argument does not reflect the actual reach of *Stanphill*. In *Stanphill*, the Board set a minimum term in 1995 for a 1975 rape. 134 Wn.2d at 168. In doing so, the Board used the 1993 SRA sentencing range. *Id.* In a personal restraint petition, Mr. Stanphill argued using the 1993 range violated ex post facto laws and the Equal Protection Clause. *Id.* at 168-69. The Court held that application of a current-at-the-time-of-sentencing standard range does not violate the ex post facto laws because a pre-SRA offender had no expectation of a particular minimum sentence, let alone one lower than the standard SRA range at the time of sentencing. *Id.* at 171. Because Mr. Stanphill had no vested right in any particular release date, the Court held he could not show he had been disadvantaged by the Board's use of the SRA range. *Id.* at 173. Mr. Folds does not raise an ex post facto challenge.

Applying rational basis review, the *Stanphill* Court also determined it did not violate equal protection to apply different SRA sentencing ranges to pre-SRA offenders depending upon the year the offender appeared before the Board. *Stanphill*, 134 Wn.2d at 174-76. The Court found the application rationally related to the legitimate state objective "to set consistent sentences and to create certainty within the indeterminate sentencing scheme." *Id.* at 175. Mr. Folds does not raise an equal protection challenge.

*Stanphill* holds only that application of the current sentencing range does not violate the Equal Protection Clause or ex post facto laws. The question of which sentencing range RCW 9.95.011(1) requires to be considered was not before the *Stanphill* Court.

4. The sentencing court erred as a matter of law by refusing to consider the 1984 sentencing range for manslaughter when setting Mr. Folds's minimum term.

"Appellate review exists to correct legal errors in the imposition of sentences." Boerner, Sentencing in Washington at App. § 6.24 at 6-34. The range of discretionary choices available to the lower court is a question of law that this Court should decide. *Compare State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001) (court reviews as a matter of law the range of choices available to a lower court making a

discretionary determination); *State v. Parker*, 132 Wn.2d 182, 189, 937 P.2d 575 (1997) (failure to property calculate the sentencing range is a legal error subject to de novo review) *with* Slip Op. at 4-5 (contending appeal does not set forth error of law).

The sentencing court's minimum sentence on the first-degree manslaughter count was defined by the current SRA standard sentencing range.[4] The court explicitly rejected Mr. Folds's argument for a lower sentencing range based on the 1984 SRA. 1/25/13 RP 68-69. Under the initial SRA, the standard sentencing range for first degree manslaughter with a single point for other current offenses was 36 to 48 months. Boerner, Sentencing in Washington at App. III-49 (scoring sheet for manslaughter, first degree); *see* CP 74 (listing offender score of one). Instead, the court imposed the high end of the current sentencing range, 114 months, as Mr. Folds's minimum sentence. 1/25/13 RP 68-70; *see* 1/25/13 RP 69 (rejecting minimum term that exceeded the then-current standard range sentence).

[4] The same legal argument set forth herein applies to the sentence for attempted theft in the first degree. However, the 1985 SRA standard sentencing range for this offense is the same as the current range, 75 percent of two to six months. *Compare* Boerner, Sentencing in Washington at App. III-82; 1975 1st ex. s. c 260 § 9A.56.030 *with* RCW 9A.28.020; RCW 9A.20.021; RCW 9A.56.030. Attempted theft in the first degree remains a Class C felony. *Compare* RCW 9A.56.030 *with* 1975 1st ex. s. ch. 260 § 9A.56.030. Thus, even if the court had considered the earlier standard range, it likely would have imposed the same sentence for the attempt count.

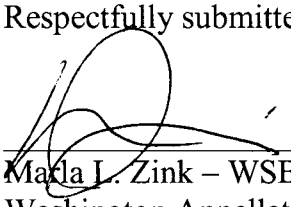
RCW 9.95.011 directs the court "shall" consider the time-of-offense sentencing range when setting the minimum term. Mr. Folds's court refused to do so. This was error; the remedy is to vacate the sentence and remand. *Parker*, 132 Wn.2d at 189.

F. CONCLUSION

This Court should accept review because although the SRA directs sentencing courts to look to SRA ranges in setting the minimum term for a pre-SRA offender, the law is not settled as to which sentencing range the court should consult. By determining the issue, this Court will provide guidance to the lower courts and give effect to the Legislature's intent.

DATED this 14th day of May, 2014.

Respectfully submitted,



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# APPENDIX

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| STATE OF WASHINGTON, Respondent, v. JOHN WAYNE FOLDS, Appellant. | ) | NO. 69849-4-I<br>DIVISION ONE<br>UNPUBLISHED OPINION<br>FILED: April 21, 2014 |

LAU, J. — Under RCW 9.95.011, a sentencing court committing an offender to prison for a crime committed before July 1, 1984, must fix a minimum term and must "attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act . . . ." John Folds contends the sentencing court erred as a matter of law by considering the standard range listed in the current version of the Sentence Reform Act of 1981 (SRA), chapter 9.94A RCW, to fix the minimum term on his conviction of first degree manslaughter committed on February 15, 1983. Because Folds fails to demonstrate error, we affirm.

FACTS

In November 2012, John Folds pleaded guilty to first degree manslaughter and attempted first degree theft based on incidents that occurred in February 1983. At

sentencing, the parties agreed that the trial court should set the required maximum sentence of 10 years for the manslaughter and 5 years for the attempted theft. Under RCW 9.95.011, the trial court was to then "attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges" of the SRA, which became effective on July 1, 1984. RCW 9.94A.905. The State asked the court to fix the minimum term at 120 months, equal to the maximum term. Folds requested a minimum term of 36 months, referencing the 36- to 48-month standard range which would have been applicable if the offense had been committed after July 1, 1984, under the first version of the SRA. Defense counsel argued:

> The Court has enormous discretion in this case, and the Court can look to the SRA, as the State pointed out in its brief, and it can choose to impose a range that is consistent with today's punishment. The Court could also look at the SRA back in 1984 and 1987 and impose a sentence that is consistent with what the legislature deemed would have been appropriate punishment back then.
>
> A defendant should not be sentenced to a range that is in effect at the sentencing date. That just doesn't seem fair, Your Honor. If this Court were put in a position to sentence someone who actually committed a crime in 1987, and was in front of them to be sentenced, the Court would have to impose that range back in 1987. So this is completely consistent, it's fair, and it's just.

Verbatim Report of Proceedings (Jan. 25, 2013) (VRP) at 46.

The court then asked defense counsel whether the Supreme Court's decision in In re Pers. Restraint of Stanphill, 134 Wn.2d 165, 171-72, 949 P.2d 365 (1998), allows consideration of current SRA standard ranges when fixing a minimum term for an offense committed before July 1, 1984 under RCW 9.95.011. Defense counsel responded that the Stanphill decision

> doesn't say that the Court must follow that range; it doesn't say that the Court even should follow that range. The holding . . . is that the Court can choose to follow that range if it wishes.

> And I'm in complete agreement with that, Your Honor. But I don't believe there's any case law that says the Court must or should consider current sentencing ranges as opposed to sentencing ranges that were enacted at the time or became law shortly after that.
>
> So the Court has discretion. And for all the arguments that we're making, obviously we're asking the Court to consider the ranges based nearer in time to the incident . . . .

VRP at 48.

Following argument, the court referenced RCW 9.95.011 and reviewed and discussed the items listed in RCW 9.94A.010 describing the purpose of the SRA. With regard to its attempt to fix a minimum term reasonably consistent with the purposes, standards, and sentencing ranges of the SRA, the court stated:

> [B]oth parties acknowledge that the Court has discretion there. It does appear the Court could, but is not required to accept the Defense analysis that the Court should look to the standard range sentences applicable close in time to the charged offense here.
>
> However, [Stanphill] does make clear that it is not error either for the Court to relate its decision to current standard range sentences in both cases as long as the sentence imposed by the Court does not exceed the statutory maximum.
>
> . . . .
>
> . . .
>
> Accordingly, consistent with the purposes of the SRA, the Court believes that it is appropriate in this case for the Court to refer to the sentencing ranges as they exist today, and the Court will decline to accept the argument of Defense that the Court should go back in time to a lower sentencing range.

VRP at 64-65, 68-69.

The trial court imposed the maximum term of 10 years on the manslaughter and 5 years on the attempted theft, and it fixed minimum terms of 114 months on the manslaughter and 4.5 months on the attempted theft. The court ordered the terms to run concurrently.

Folds appeals.

ANALYSIS

Despite repeatedly acknowledging the trial court's discretion under RCW 9.95.011 at the sentencing hearing, Folds now claims that the court erred as a matter of law by considering the 2013 SRA sentencing range when fixing his minimum term.

RCW 9.95.011(1) provides in pertinent part:

> When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.
>
> The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act .... The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Before July 1, 1986, review of a parole board decision setting a minimum term "was obtained by filing a personal restraint petition." In re Pers. Restraint of Rolston, 46 Wn. App. 622, 623, 732 P.2d 166 (1987); RCW 9.95.040. A petitioner challenging such a decision could obtain relief, in the form of remand for a new hearing, "upon showing the Board set a minimum term in violation of a statute or regulation." In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 140, 866 P.2d 8 (1994). Accordingly, under RCW 9.95.011, to obtain remand to the trial court to fix a new minimum term, Folds must establish that the court set his minimum term in violation of a statute or regulation.

Essentially, Folds argues that RCW 9.95.011 requires the trial court setting the minimum sentence for a pre-SRA offense to consider the sentencing range closest in time to the offense. In this case, as the State acknowledges, there is a significant difference between the prior and current standard ranges because the legislature increased first degree manslaughter from a class B felony to a class A felony in 1997.

See LAWS OF 1997, ch. 365, §§ 4-5. But Folds fails to identify any authority requiring a trial court setting a minimum term under RCW 9.95.011 to consider any particular standard range other than the one currently in effect at the time of sentencing. And nothing in the language of RCW 9.95.011 directing courts to "attempt" to set minimum terms "reasonably consistent" with the SRA supports his claim of error as a matter of law.

Folds's reliance on statutes and cases requiring reference to laws in effect at the time the crime is committed is unavailing because the crime occurred before the effective date of the SRA and would not have been subject to any SRA standard range absent the requirements of RCW 9.95.011. And Folds's claim that the trial court's consideration of the current standard range here was "contradictory" and "fundamentally unfair" does not establish error as a matter of law.

The Supreme Court rejected certain constitutional challenges to the use of the current version of the SRA for the purposes of setting minimum terms for pre-SRA offenders in Stanphill. In 1995, the Indeterminate Sentence Review Board (Board), the successor to the parole board, considered the 1993 SRA sentencing grid and manual to set a minimum term for a rape committed in 1975. Stanphill, 134 Wn.2d at 168. In 1975, "the sentencing court was required to impose an indeterminate maximum sentence of life," and "the Board possessed the ability to set a minimum term of any length, provided it did not exceed the maximum sentence." Stanphill, 134 Wn.2d at 171. "When the Board set Stanphill's minimum sentence in 1994, the Board retained the discretion to impose a minimum term of up to life, provided it did so after consideration of the standards, purposes, and ranges of the SRA." Stanphill, 134

Wn.2d at 171. Rejecting Stanphill's ex post facto challenge, the Supreme Court noted that the Board imposed a minimum term "within the bounds of a permissible 1975 sentence." Stanphill, 134 Wn.2d at 173. The court also rejected Stanphill's equal protection challenge, observing that the "use of the current SRA is a deliberate and rational attempt to converge two distinct sentencing schemes, to transition from determinate to indeterminate sentencing, and to set consistent sentences for similar offenders," particularly in view of changes in sentencing ranges and changes in the legislature's view of criminal punishment over time. Stanphill, 134 Wn.2d at 175-76.

Here, as in Stanphill, the trial court appropriately exercised its broad discretion under RCW 9.95.011 and set a minimum term reasonably consistent with the SRA. Folds fails to demonstrate grounds for relief.

Folds has filed a brief statement of additional grounds for relief. In his first ground, Folds refers to his version of the events of February 1983 and expresses sorrow and grief but does not request any relief. In his second ground, Folds claims he has not received any jail good time credit and asks this court to "look at" his good time credit. But because this allegation rests on matters that are outside the record, it cannot be considered on direct appeal. State v. McFarland, 127 Wn.2d 322, 337-38, 899 P.2d 1251 (1995).

Affirmed.

WE CONCUR:

## DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 69849-4-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Erin Becker, DPA
King County Prosecutor's Office-Appellate Unit

☒ petitioner

☐ Attorney for other party



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