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SUPREME COURT  
STATE OF WASHINGTON  
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No. 96938-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BRANDON DALE BACKSTROM,

Petitioner.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR SNOHOMISH COUNTY

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REPLY TO STATE'S ANSWER TO PETITION FOR REVIEW

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A. ARGUMENT

**1. Brandon was denied his constitutionally protected right to appeal his sentence.**

The State concedes the Court of Appeals here improperly applied the Personal Restraint Petition (PRP) standard of review as opposed to the correct standard applicable to direct appeal.

In *Delbosque*, this Court ruled that applying the PRP standard violated the defendant's right to appeal:

The fact that Delbosque could seek review by PRP is therefore insufficient. The *Miller-fix* statute requires a full resentencing, and the sentence imposed must be subject to direct appeal. RCW 10.95.035(3) therefore violates the right to appeal in criminal cases guaranteed by article I, section 22.

*State v. Delbosque*, 195 Wn.2d 106, 130, 456 P.3d 806 (2020).

Although the State concedes on the one hand that Brandon has a right to appeal his resentencing, on the other hand the State contends Brandon fails to make a threshold showing of a constitutional violation, thereby wrongfully applying the PRP standard. State's answer at 4-5. The defendant in *Delbosque* did not make a constitutional challenge; rather he argued substantial evidence did not support the trial court's findings. *Id.* at 115-20. Nevertheless, this Court reversed finding, among other things, the trial court failed to adequately consider the

mitigation evidence presented by the defendant that would support a finding of diminished culpability. *Id.* at 119-20.

This Court should grant review and reverse Brandon's sentence for resentencing, or remand to the Court of Appeals to apply the correct standard for a direct appeal.

**2. The State misapprehends the holding of *Delbosque*.**

The State appears to argue in its Answer to the Petition for Review that since the trial court held a hearing and heard the evidence, that was sufficient for the purposes of complying with RCW 10.95.035(3).

In assessing whether the trial court's decision adequately and appropriately applied the factors listed in RCW 10.95.035(3) and *Miller*<sup>1</sup>, the *Delbosque* Court noted: "*Miller* hearings require sentencing courts to meaningfully consider 'mitigating factors that account for the diminished culpability of youth,' including 'the youth's chances of becoming rehabilitated.'" *Delbosque*, 195 Wn.2d at 120.

While the court here made findings that were for the most part favorable to Brandon, its application to those findings was as insufficient as in *Delbosque*. The court's conclusion did little to

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<sup>1</sup> *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

acknowledge Brandon's mitigation evidence demonstrated his capacity to change and his chances of rehabilitation. *Delbosque*, 195 Wn.2d at 118-20.

In light of this Court's decision in *Delbosque*, and its analysis of the manner in which a *Miller* hearing should be conducted and reviewed, Brandon urges this Court to grant review of his petition and reverse his sentence with instructions to resentence him accordingly.

**B. CONCLUSION**

For the reasons stated in this reply brief as well as the previously filed Petition for Review, Brandon asks this Court to grant review, reverse his sentence, and remand for resentencing in light of this Court's decision in *Delbosque*.

DATED this 21<sup>st</sup> of April 2020.

Respectfully submitted,

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 96938-8**, 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:

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- Attorney for other party

  
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Washington Appellate Project

# WASHINGTON APPELLATE PROJECT

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