NO. 97704-6

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAKOTA MIKALLE COLLINS,

Petitioner.

Appeal from the Superior Court of Pierce County
The Honorable Stephanie Arend
06-1-02182-6

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

During a robbery, sixteen-year-old Dakota Collins shot and murdered a man. Based on plea negotiations, Collins pled guilty to reduced murder charges where the State agreed to recommend a standard range sentence and Collins was permitted to request an exceptional sentence downward based on the mitigating qualities of youth. Collins submitted one hundred pages of documentation in support of his request for a mitigated exceptional sentence. The trial court acknowledged that it was required to consider the mitigating qualities of youth outlined in *Houston-Sconiers,* and that it had given "a great deal of thought" into those factors and whether an exceptional sentence was appropriate. After meaningfully considering the materials, the trial court exercised its discretion and determined that an exceptional mitigated sentence was not warranted and imposed a standard range sentence. The Court of Appeals correctly held that this was a proper exercise of the trial court's decision. The decision of the Court of Appeals does not conflict with any Supreme Court decision or published decision of the Court of Appeals. This Court should deny review.

II. RESTATEMENT OF THE ISSUE

A. The Court of Appeals affirmed Collins' standard range sentence and concluded that the trial court did not abuse its discretion by refusing to impose an exceptional sentence downward based on youth after considering all of the mitigation materials provided by Collins. Does this decision conflict with a Supreme Court decision or a published decision of the Court of Appeals?

III. STATEMENT OF THE CASE

In May 2016, sixteen-year-old Dakota Collins and his accomplices decided to find a victim to rob. CP 3-4. Collins was armed with a .45 caliber semi-automatic pistol when they encountered Lorenzo Parks and told him to give them everything in his pockets. CP 1-4. Mr. Parks turned his pockets inside out to show them he had nothing of value. CP 4. During this interaction, Collins aimed his gun at Mr. Parks and pulled the trigger, killing him. CP 4. The State charged Collins with murder in the first degree with a firearm enhancement. CP 1-2.

Based on plea negotiations, the State amended the charges to murder in the second degree with a firearm enhancement, attempted robbery in the first degree, and two counts of unlawful possession of a firearm in the second degree (involving two different guns on two different dates). CP 272-75, 285; RP 3.[1] Collins pled guilty and made the following statement:

> Between May 17th and 18th 2016, I, Dakota Collins, did intentionally shoot Mr. Lorenzo Parks while my codefendants and I were attempting to take his property by force and while Mr. Parks was resisting the taking of his property. The gun I used to shoot Mr. Parks was a real gun, and Mr. Parks died from the gunshot wound. I also should not have been in possession of the firearm because I had previously been convicted of a felony offense as a

[1] The relevant Verbatim Report of Proceedings (RP) include the September 15, 2017 guilty plea hearing and the October 5, 2017 sentencing hearing. These transcripts are consecutively paginated and will be referred to as "RP."

> juvenile which prohibited me from having in my possession a firearm. I also had in my possession a firearm on June 16, 2016 when I was arrested for the offense related to Mr. Parks when my rights to possess a firearm had not been restored to me. All acts occurred in the state of Washington. My shooting of Mr. Parks was my intent to commit Assault 1°.

CP 285; *see* CP 276-87.

Pursuant to the plea agreement, the State agreed to recommend a standard range sentence of 200 months plus 60 months for the firearm enhancement, and Collins was permitted to request an exceptional sentence downward of 66 months. CP 280.[2] Collins understood that the court was not required to follow either party's sentencing recommendation and that he was not entitled to appeal a standard range sentence. CP 280; RP 10-11; *see also* RP 6-8, CP 277.

At the time of his plea, Collins stipulated to his criminal history and sentencing consequences and agreed that if he is sentenced within the standard range, he "gives up his right to file any appeal or collateral attack based on the offender score, standard ranges, and sentencing consequences set out herein and in his plea form." CP 288-90. He also stipulated and agreed that he had been fully advised of the *Houston-Sconier*s[3] decision and

[2] At sentencing. Collins requested that the trial court impose a sentence of 96 months. CP 291-92, 305; RP 68-69.
[3] *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017).

his options regarding sentencing. CP 289; *see* RP 6-8. Collins' attorney discussed the plea with Collins at length, and the court accepted his plea as knowingly, intelligently, and voluntarily made. CP 286; *see* RP 16-17.

Prior to sentencing, Collins submitted a detailed sentencing memorandum requesting an exceptional sentence downward of 96 months based on the mitigating qualities of his youth and upbringing. CP 291-409. He provided the court with more than one hundred pages of argument and documentation in support of his request for a mitigated exceptional sentence. CP 291-409. Collins argued that the following information supported an exceptional sentence based on his youth and its attendant characteristics: his mother's drug and alcohol use during pregnancy; his diagnoses for attention deficit hyperactivity disorder and oppositional defiant disorder; his traumatic upbringing, including physical abuse while enrolled in a military academy; his diagnosis of post-traumatic stress disorder and history of self-medicating with drugs and alcohol; and his amenability to rehabilitation. CP 296-305, 324, 331, 341, 360, 394-409. He submitted an expert report detailing the impact of the above circumstances on his judgment and impulsivity. CP 394-409. His expert also testified at the sentencing hearing. RP 44-47.

The trial court reviewed all of the above mitigation materials prior to sentencing. RP 26. Both the State and Collins made extensive arguments

regarding how Collins' youth should impact the sentence imposed. *See* RP 26-72. Multiple witnesses spoke on behalf of both Collins and the victim, Mr. Parks, at sentencing. *See* RP 28-35, 47-51, 70-72.

Throughout its extensive ruling, the trial court made it clear that it recognized its discretion to impose an exceptional mitigated sentence based on Collins' youth. *See* RP 72-78. The court acknowledged that *Houston-Sconiers* requires it to consider all of the mitigating factors at sentencing, not just the criminal act itself, and indicated that it has given "a great deal of thought to that." RP 76. After giving considerable thought to these mitigating circumstances, and taking into account the goals of sentencing, the trial court exercised its discretion and denied Collins' request for an exceptional sentence. *See* RP 73-77. The trial court determined that a standard range sentence was appropriate and adopted the State's sentencing recommendation of 200 months—a sentence less than half of the mid-point of the standard range—plus a 60-month firearm enhancement. *See* RP 77-78; *see also* CP 280, 413-14. All other counts ran concurrent with this sentence. CP 414. Collins timely appealed. *See* CP 423-36. The Court of Appeals affirmed the standard range sentence, concluding that this was a proper exercise of the court's discretion.

IV. ARGUMENT

A. The Court of Appeals' decision that the trial court did not abuse its discretion by refusing to impose an exceptional sentence after considering the mitigating qualities of youth does not conflict with any Supreme Court decision or published decision of the Court of Appeals.

The Court of Appeals correctly concluded that the trial court did not abuse its discretion by refusing to impose an exceptional mitigated sentence downward based on Collins' youth and upbringing. As the Court of Appeals properly explained, the trial court was well aware of its discretion to impose an exceptional mitigated sentence based on Collins' youth, but instead determined that an exceptional sentence was not warranted after it considered all of the mitigating evidence. This decision does not conflict with any Supreme Court decision or published decision from the Court of Appeals. *See* RAP 13.4(b)(1), (b)(2).[4] This Court should deny review.

1. Collins may not appeal a standard range sentence that is a proper exercise of the trial court's discretion.

It is the Legislature's prerogative to determine the presumptive sentence ranges for crimes, and those ranges are presumed constitutional. *See State v. Ammons*, 105 Wn.2d 175, 180-81, 713 P.2d 719 (1986). The Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, prohibits the

[4] Although Collins argues that review is appropriate under both RAP 13.4(b)(1) and (b)(2), he does not identify any published Court of Appeals' decision that he believes conflicts with *Collins*. Thus, the State is unable to respond to this argument and will focus its answer on RAP 13.4(b)(1).

appeal of a standard range sentence. RCW 9.94A.585(1). But a defendant may appeal a standard range sentence if the trial court violated the constitution or failed to comply with the procedural requirements of the SRA. *State v. Osman*, 157 Wn.2d 474, 481-82, 139 P.3d 334 (2006). Thus, a defendant may challenge the procedure by which a standard range sentence is determined where he requests an exceptional sentence downward. *State v. Garcia-Martinez*, 88 Wn. App. 322, 329-30, 944 P.2d 1104 (1997). But "review is limited to circumstances where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range." *Id.* at 330.

A sentencing court's decision will be reversed only if there is "a clear abuse of discretion or misapplication of the law." *State v. Delbosque*, No. 96709-1, 456 P.3d 806, 812 (2020). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Id.* A trial court does not abuse its discretion as a matter of law by sentencing a defendant within the standard sentencing range set by the Legislature. *State v. Williams*, 149 Wn.2d 143, 146-47, 65 P.3d 1214 (2003).

Under the SRA, a trial court may impose a sentence outside the standard range if it finds "substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.535. Mitigating circumstances

justifying a sentence below the standard range must be established by a preponderance of the evidence. RCW 9.94A.535(1). A defendant's youth can amount to a substantial and compelling reason to mitigate a sentence if it significantly impairs his capacity to appreciate the wrongfulness of his conduct or conform his conduct to the law. *State v. O'Dell*, 183 Wn.2d 680, 696, 358 P.3d 359 (2015). Although a defendant's youthfulness can support an exceptional sentence below the standard range, it is within the sentencing court's discretion to decide when that is. *Id.* at 698-99.

Although every defendant is entitled to ask the court for an exceptional sentence below the standard range and to have the court consider the request, no defendant is entitled to such a sentence. *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). A trial court abuses its discretion if it categorically refuses to impose an exceptional sentence below the standard range under any circumstances. *Id.*; *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017). A trial court also abuses its discretion if it mistakenly believes it lacked discretion to impose a mitigated exceptional sentence. *O'Dell*, 183 Wn.2d at 696-97; *McFarland*, 189 Wn.2d at 56. But a trial court that has considered the facts and concluded that there is no basis for an exceptional sentence has exercised its discretion, and the defendant may not appeal that ruling. *Garcia-Martinez*, 88 Wn. App. at 330.

Here, the trial court neither refused to exercise its discretion nor mistakenly believed that it lacked discretion to impose a mitigated exceptional sentence below the standard range. The trial court considered the extensive sentencing materials submitted by Collins in support of a mitigated exceptional sentence based on youth and acknowledged that it put "a great deal of thought" into his request for an exceptional sentence below the standard range. *See* RP 26, 76-77; *see also* CP 291-409. After hearing extensive argument from counsel, the trial court appropriately exercised its discretion to deny Collins' request for a mitigated exceptional sentence and instead imposed a sentence within the standard range. *See* RP 26-72, 73-78.

The Court of Appeals properly determined that this was an appropriate exercise of sentencing discretion. As the Court of Appeals correctly explained, the trial court "was well aware of its ability and discretion to impose an exceptional mitigated sentence" based on Collins' youth, but instead determined that a standard range sentence was appropriate after considering all of the mitigation materials and extensive arguments regarding youth and *Houston-Sconiers*. *State v. Collins*, No. 51511-3-II, 2019 WL 4034638 at *4 (Wash. Ct. App. August 27, 2019). The Court of Appeals affirmed the standard range sentence, noting that the trial court did not categorically refuse to exercise its discretion, but rather properly exercised its discretion and determined that the facts and

circumstances did not warrant an exceptional mitigated sentence. *Id.* This decision does not conflict with any decision of the Supreme Court. It was within the trial court's discretion to determine if Collins' youth and mitigation materials supported an exceptional sentence downward. *See O'Dell*, 183 Wn.2d at 698-99. The trial court did not abuse its discretion by sentencing Collins within the standard range. There is no basis for review.

2. The unpublished Court of Appeals' decision does not conflict with any Supreme Court decision.

Collins appears to argue that this Court should accept review because the unpublished decision in *Collins* conflicts with both *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012) and *O'Dell*, 183 Wn.2d 680. *See* Pet. for Rev. at 11-13. He is wrong.

In *Miller*, the United States Supreme Court held that the Eighth Amendment's prohibition on "cruel and unusual punishments" forbids *mandatory* life without parole sentencing schemes for juvenile offenders. *Miller*, 567 U.S. at 465, 470-74. *Miller* expanded the principles in two prior United States Supreme Court decisions dealing with juvenile sentences and the Eighth Amendment. *See Roper v. Simmons*, 543 U.S. 551, 578, 125 S. Ct. 1183, 161 L.Ed.2d 1 (2005) (Eighth Amendment forbids imposition of the death penalty on juveniles); *see also Graham v. Florida*, 560 U.S. 48, 82, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010) (Eighth Amendment prohibits life without parole sentences on juvenile nonhomicide offenders).

Miller explained that the mandatory sentencing scheme of life without parole removes youthfulness from the balance and prohibits a sentencing court from assessing whether the harshest possible penalty for juveniles is a proportionate sentence. *Miller*, 567 U.S. at 474, 479. The Court did not foreclose life sentences for juveniles, but it held that a sentencing court must have the opportunity to consider the mitigating circumstances of a juvenile's youth and its attendant characteristics before imposing the *harshest possible penalty* for juveniles of life without the possibility of parole. *Id.* at 479-80, 489. *Miller* held that it was the mandatory nature of a life without parole sentence—the harshest penalty for a juvenile—that violated the Eighth Amendment and the principle of proportionality:

> *Graham*, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.

Id. at 489.

This Court subsequently held that *Miller* applies to juvenile homicide offenders facing de facto life without parole sentences and that every juvenile facing a literal or de facto life without parole sentence is entitled to a *Miller* hearing. *State v. Ramos*, 187 Wn.2d 420, 434, 437, 387 P.3d 650 (2017). At the *Miller* hearing, the court must meaningfully

consider how juveniles are different from adults, how those differences apply to the facts of the case, and whether those facts present the uncommon situation where a life without parole sentence for a juvenile is constitutionally permissible. *Ramos*, 187 Wn.2d at 434-35. The juvenile must prove by a preponderance of the evidence that his crimes reflect transient immaturity justifying a sentence below the standard range. *Id.* at 435.

Thus, the Eighth Amendment requires that in those cases where the juvenile faces either a literal or de facto life sentence, the court must conduct an individualized hearing to consider the mitigating qualities of youth. *Id.* at 428-29. The Eighth Amendment is concerned with "excessive sanctions" and is implicated when a sentencing scheme denies juvenile offenders a "meaningful opportunity" for release by "sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 469, 479-80; *see Ramos*, 187 Wn.2d at 438-40.

In *Houston-Sconiers*, two juvenile defendants faced sentencing ranges of 36.75-40.25 years and 41.75-45.25 years, a large portion of which was based on mandatory firearm enhancements. *Houston-Sconiers*, 188 Wn.2d at 8. Relying entirely on the Eighth Amendment, and noting the lengthy sentences that these juveniles faced, this Court held sentencing courts must have complete discretion to consider the mitigating qualities of a juvenile's youth and to depart from the sentencing guidelines and other

mandatory sentence enhancements. *Id.* at 18-21. In reaching its decision, this Court cited to cases where juveniles faced mandatory sentences of 52.5 years, 50 years, and 45 years. *Id.* at 25-26. Thus, it was the length of the sentence that triggered the application of the Eighth Amendment in *Houston-Sconiers*. *See State v. Bacon*, 190 Wn.2d 458, 467, 415 P.3d 207 (2018) (recognizing that the "holding in *Houston-Sconiers* was based squarely on the United States Constitution" and that the decision "concerned only the length of the sentence").

This Court explained that *Miller* provides guidance for trial courts on how to use their discretion:

> [*Miller*] holds that in exercising full discretion in juvenile sentencing, the court must consider mitigating circumstances related to the defendant's youth—including age and its hallmark features, such as the juvenile's immaturity, impetuosity, and failure to appreciate risks and consequences. It must also consider factors like the nature of the juvenile's surrounding environment and family circumstances, the extent of the juvenile's participation in the crime, and the way familial and peer pressures may have affected him [or her]. And it must consider how youth impacted any legal defense, along with any factors suggesting that the child might be successfully rehabilitated.

Houston-Sconiers, 188 Wn.2d at 23 (citing *Miller*, 567 U.S. at 477-78) (internal citations and quotations omitted). But as the Court of Appeals correctly noted, "*Houston-Sconiers* does not *require* the trial court to impose a sentence outside of the standard range if the trial court considers

the qualities of youth at sentencing and determines that a standard range sentence is appropriate." *See Collins,* No. 2019 WL 4034638 at *3 (citing *Houston-Sconiers*, 188 Wn.2d at 21) (emphasis in original). Rather, the trial court must "meaningfully consider youth as a *possible* mitigating circumstance." *O'Dell*, 183 Wn.2d at 696 (emphasis added).

Relying on the *Roper, Graham,* and *Miller* decisions citing studies establishing a link between youth and decreased criminal culpability, this Court has recognized that the neurological differences between adolescent and mature brains make young offenders, *in general*, less culpable for their crimes and *might* justify a trial court's finding that youth diminished a defendant's culpability. *See e.g. O'Dell*, 183 Wn.2d at 691-93. *O'Dell* held that a defendant's youthfulness can support an exceptional sentence below the standard range and that the sentencing court must exercise its discretion to decide when that is. *Id.* at 698-99. In *O'Dell*, because the trial court believed it was *prohibited* from considering whether youth diminished the defendant's culpability and supported an exceptional sentence downward, the case was remanded for the trial court to meaningfully consider youth as a possible mitigating circumstance. *Id.* at 685-86, 696-97; *see also State v. Gilbert*, 193 Wn.2d 169, 177, 438 P.3d 133 (2019) (remanded for resentencing because trial court incorrectly believed it lacked discretion to

consider whether the mitigating qualities of the defendant's youth warranted an exceptional sentence).

Here, consistent with *O'Dell*, the Court of Appeals correctly recognized that the trial court was aware of its discretion to impose an exceptional sentence downward based on Collins' youth, but exercised its discretion and imposed a standard range sentence. *See* RP 72-78. This decision does not conflict with *O'Dell*. The trial court meaningfully considered the mitigating qualities of Collins' youth and properly exercised its discretion in determining that an exceptional sentence was not warranted.

Collins claims that the trial court did not consider how his "maturity, culpability, and decision making abilities (or lack thereof) compared to adult offenders" and that by failing to do so, the trial court "did not give effect to the mandate of the SRA, *Miller* or *O'Dell*." Pet. for Rev. at 12. First, none of the decisions cited by Collins require an explicit *comparison* between the juvenile defendant and adults. Rather, the trial court must consider the mitigating circumstances related to the individual defendant's youth and its attendant characteristics. *Miller*, 567 U.S. at 476-78. This is what the court did at Collins' sentencing.

Second, Collins misconstrues the mandate of *Miller*. *See* Pet. for Rev. at 10-12. *Miller* held that the Eighth Amendment prohibits a sentencing scheme that mandates life in prison without the possibility of

parole for juvenile offenders. *Miller,* 567 U.S. at 479. *Miller* requires sentencing courts to have the opportunity to consider the mitigating circumstances of a juvenile's youth before imposing *the harshest possible penalty* of life without parole. *Id.* at 479-80, 489. Thus, *Miller* applies only to mandatory life without parole sentences. Here, the Court of Appeals decision does not conflict with *Miller* because Collins was not sentenced to life without parole. In fact, Collins received neither a literal nor de facto life sentence. *See* CP 414. Rather, the court sentenced seventeen-year-old Collins to a total of 260 months incarceration with credit for 490 days of time served. CP 414.[5] Collins will be released from prison in his mid-thirties. Thus, he not only has a "meaningful opportunity" for release but is assured of release in his mid-thirties.

Here, the trial court acknowledged that it read and considered all of the mitigation materials and that it was familiar with *Houston-Sconiers,* which requires the court to consider all of the mitigating factors, not just the crime itself. RP 26, 73-77. The court explicitly stated that it put "a great deal of thought" into the mitigation materials submitted by Collins and recognized that it had discretion to impose an exceptional sentence downward based on Collins' youth. *See* RP 76-77. The court noted that

[5] Collins may receive earned early release time of ten percent off from his 200-month sentence for second-degree murder. *See* RCW 9.94A.729(3).

consideration of immaturity and failure to appreciate risks and consequences is not made in a vacuum, and noted that Collins appeared to have a good appreciation of the risks involved in his crime. RP 75-77. The court also noted the discrepancies between Collins' guilty plea and his expert's report that he was in fear for his life. RP 74. Finally, the court noted that rehabilitation should be a part of the court's decision, as are the other goals of sentencing, but that there was scarce information about rehabilitation as it applies to Collins. *See* RP 73-74, 77.

The trial court meaningfully considered *Houston-Sconiers* and the mitigation materials submitted by Collins and subsequently determined that there was no basis for an exceptional sentence downward based on youth. *See* RP 73-78. The court adopted the State's recommendation of a standard range sentence. RP 77-78. As the Court of Appeals correctly held, this was a proper exercise of the trial court's discretion. And the decision of the Court of Appeals does not conflict with any Supreme Court decision.

3. *Delbosque* involved a resentencing under the *Miller*-fix statute for aggravated first-degree murder and is inapplicable to Collins' case.

In response to *Miller*, the Washington Legislature enacted the "*Mille*r-fix statute," which requires sentencing courts to consider the *Miller* factors before sentencing a 16- or 17-year old convicted of aggravated first-degree murder to life without parole. *See* RCW 10.95.030; *see also*

Delbosque, 456 P.3d at 810. One of these provisions provides that in setting a minimum term of confinement for aggravated first-degree murder, the court must take into account the mitigating factors of youth as provided in *Miller*, including the juvenile's age, his childhood and life experience, the degree of responsibility he was capable of exercising, and his chances of becoming rehabilitated. RCW 10.95.030(3)(b).

In *Delbosque*, seventeen-year-old Delbosque was convicted of aggravated first-degree murder and received a mandatory life without parole sentence. *Delbosque*, 456 P.3d at 810. He was resentenced under the *Miller*-fix statute and received a minimum term of 48 years without the possibility of parole. *Id.* This Court held that the trial court abused its discretion at the resentencing hearing because substantial evidence did not support the trial court's findings that Delbosque continued to exhibit an attitude that is reflective of the underlying murder or that the crime was not symptomatic of transient immaturity. *Id.* at 812-13.

This Court remanded to give the trial court the benefit of its subsequent decisions in *Ramos* and *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018),[6] which significantly altered juvenile sentencing in Washington. *Delbosque*, 456 P.3d at 814. Both *Ramos* and *Bassett* discuss factors that

[6] *Bassett* held that sentencing juveniles to life without the possibility of parole is unconstitutional. *Bassett*, 192 Wn.2d at 91.

are relevant in setting a minimum term of confinement for aggravated first-degree murder. *Delbosque,* 456 P.3d at 814.

Delbosque is inapplicable to Collins' case. First, *Delbosque* involved a resentencing pursuant to the *Miller*-fix statute and setting a minimum term for aggravated first-degree murder, as opposed to a sentencing under the SRA where the juvenile bears the burden of proving by a preponderance of the evidence that an exceptional sentence downward is justified. *Delbosque*, 456 P.3d at 816. Here, Collins was not sentenced pursuant to the *Miller*-fix statute. He was sentenced under the SRA for a crime that did not involve either a literal or de facto life sentence. *Miller* is inapplicable as Collins was not facing the equivalent a life sentence. The central tenets of *Graham* and *Miller* are that children are "less deserving of the most severe punishments[.]" *See id.* As this Court explained, the "very purpose of the *Miller*-fix statute is to correct unconstitutional mandatory life without parole sentences in accordance with *Miller*." *Id.* at 817.

Second, Delbosque's resentencing occurred 22 years after his initial sentencing, and his behavior throughout this 22-year period of prison confinement was highly relevant at the resentencing hearing. *See Delbosque,* 456 P.3d at 810, 813-15. But the trial court's findings failed to take into account Delbosque's behavior in prison and the mitigating

evidence he presented since his crime. *See id.* at 812-14. These concerns are not present in Collins' case.

Finally, even assuming the dictates of *Miller* apply, Collins received a constitutionally adequate *Miller*-hearing when the trial court meaningfully considered the materials submitted by Collins in support of a mitigated exceptional sentence based on youth and exercised its discretion to impose a standard range sentence.

V. CONCLUSION

For the foregoing reasons, this Court should deny Collins' petition for review because the decision of the Court of Appeals does not conflict with any decision of the Supreme Court.

RESPECTFULLY SUBMITTED this 31st day of March, 2020.

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3-31-20 s/Therese Kahn
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

March 31, 2020 - 3:22 PM

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