

FILED
SUPREME COURT
STATE OF WASHINGTON
12/8/2021 11:34 AM
BY ERIN L. LENNON
CLERK

Supreme Court No. 99560-5

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

D'ANGELO SALOY,

Petitioner.

PETITIONER'S SUPPLEMENTAL BRIEF
RE STATE V. HAAG

Kathleen A. Shea
LUMINATA, PLLC
212 Broadway E. #22815
Seattle, Washington 98102
(206) 552-9234
kate@luminatalaw.com

Attorneys for D'Angelo Saloy

TABLE OF CONTENTS

A. INTRODUCTION 1

B. BRIEF FACTUAL AND PROCEDURAL SUMMARY ... 1

C. ARGUMENT 4

 1. This Court should reverse and remand to the trial court for resentencing because D’Angelo is serving an unconstitutional de facto life sentence under *State v. Haag*. 4

 2. D’Angelo’s case should be assigned to a different judge on remand. 8

 3. As in *Haag*, the trial court failed to meaningfully consider D’Angelo’s youth and satisfy its obligations under *Miller* when it applied the wrong legal standards at his resentencing. 11

D. CONCLUSION 15

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Bassett, 192 Wn.2d 67, 428 P.3d 343 (2018)..... 7, 10

State v. Haag, 198 Wn.2d 309, 495 P.3d 241
(2021) 4, 5, 8, 11, 15

State v. Ramos, 187 Wn.2d 420, 387 P.3d 650 (2017) 6, 12

State v. Solis-Diaz, 187 Wn.2d 535, 387 P.3d 703 (2017) 9

Washington Court of Appeals

State v. Bassett, No. 53721-4-II, 2021 Wash. App. LEXIS 2483
(Oct. 19, 2021)..... 9

United States Supreme Court

Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d
825 (2010) 5

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed.
2d 407 (2012). 2, 6, 12

Montgomery v. Louisiana, 577 U.S. 190, 136 S. Ct. 718, 93 L.
Ed. 2d 599 (2016)..... 6

Decisions of Other Courts

Casiano v. Comm’r of Corr., 317 Conn. 52, 115 A.3d 1031
(2015) 5

Statutes

RCW 9.94.730 11

A. INTRODUCTION

The trial court imposed an unconstitutional de facto life sentence on D'Angelo Saloy when it sentenced him to 41 years in prison for crimes he committed at age 16.¹ Even if D'Angelo survives to age 60 to see his release, the concept of "life" is broader than mere biological survival. A juvenile offender must have the opportunity to truly reenter society and the chance to engage in a meaningful life outside of prison. This Court should reverse D'Angelo's unconstitutional de facto life sentence and remand for resentencing.

B. BRIEF FACTUAL AND PROCEDURAL SUMMARY

D'Angelo shot at rival gang members from a car, killing one and injuring another. CP 5. A jury convicted him of first degree murder and attempted first degree murder. CP 375-76. Following D'Angelo's trial, the court imposed a standard range

¹ The state delayed charging D'Angelo for two years after obtaining a wire recording in which he admitted guilt. CP 1, 9-10. As a result, he was not detained on this case until age 19. CP 389 (FOF 24).

sentence of over 59 years in prison. CP 21. The Court of Appeals reversed and remanded for resentencing under *Miller v. Alabama*,² and ordered the trial court to meaningfully consider how children are different from adults. CP 29.

At D'Angelo's resentencing, the defense presented expert testimony from Tye Hunter, Ph.D., who explained how the brain of a 16-year-old is both deficient in judgment and highly prone to risk-taking behaviors. CP 175. In addition to this universal biological limitation, Dr. Hunter found D'Angelo suffered "a catastrophic accumulation of Adverse Childhood Experiences." CP 147; RP 53. He explained D'Angelo's executive function was poor relative to his teenage peers because of his untreated ADHD and resulting learning deficits, his parents' neglect and abuse, and the post-traumatic stress disorder he suffered as a result of growing up in a chaotic and abusive environment. CP 175. He also described how D'Angelo's developmental immaturity made D'Angelo unable

² 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

to consider the state's plea deal, which would have reduced the standard range to 26 to 34 years. RP 113.

The evidence at D'Angelo's resentencing demonstrated that, despite his catastrophic childhood and the closed custody prison conditions to which he was confined until shortly before the resentencing (21 hours a day locked in a cell), he read voraciously, obtained his GED, received certificates in self-awareness and food training, began conducting a weekly reading group, and helped plan a Juneteenth ceremony at the prison. CP 192-202, 206.

The court determined D'Angelo did not fall into the rare category of incorrigible offenders. CP 392 (COL 1). But it found a 41-year exceptional sentence was appropriate to give D'Angelo more time to "reach... maturity" due to D'Angelo's tragic childhood and developmental immaturity at age 16 relative to his peers. RP 310. The judge used D'Angelo's mitigating circumstances of youth as a basis to impose the

maximum sentence it believed would pass constitutional muster. RP 309.

D'Angelo appealed and argued that condemning him to prison for 41 years constituted a de facto life sentence. The Court of Appeals affirmed, and this Court stayed D'Angelo's petition for review pending its decision in *State v. Haag*, 198 Wn.2d 309, 327, 495 P.3d 241 (2021).

This Court reversed in *Haag*, finding a 46-year sentence imposed upon a juvenile constitutes a de facto life sentence. *Id.* at 327. Following the reversal in *Haag*, the Court requested the parties provide supplemental briefing.

C. ARGUMENT

- 1. This Court should reverse and remand to the trial court for resentencing because D'Angelo is serving an unconstitutional de facto life sentence under *State v. Haag*.**

The trial court imposed a sentence upon D'Angelo that condemned him to prison until the age of 60. CP 386 (FOF 2, 3). The Court of Appeals rejected D'Angelo's argument that

releasing him “after his most productive years” equates to an unconstitutional de facto life sentence. Slip Op. at 6.³ The court held his 41-year sentence was constitutional because D’Angelo failed to show “he is likely to die before his release from prison.” *Id.*

This Court has now rejected that reasoning in *State v. Haag*, 198 Wn.2d 309, 327, 495 P.3d 241 (2021). The concept of “life” is, indeed, broader than biological survival. *Id.* (citing *Casiano v. Comm’r of Corr.*, 317 Conn. 52, 78, 115 A.3d 1031 (2015); *Graham v. Florida*, 560 U.S. 48, 75, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)). A child is incarcerated for life when “he will have no opportunity to truly reenter society or have any meaningful life outside of prison.” *Id.*

In *Haag*, the petitioner received a 46-year sentence for the aggravated first degree murder of his 7-year-old neighbor. *Id.* at 313. Haag’s crime was unquestionably horrific. The trial

³ Division One’s opinion is attached to D’Angelo’s petition for review as Appendix A.

court described it as a “particularly heinous multi-step strangulation and drowning of a defenseless... little girl.” *Id.* at 323. But Haag was only 17 at the time he committed the offense, and the court’s sentence imprisoned him until age 63. *Id.* at 313, 329. This Court held that length of incarceration, imposed upon a juvenile who is “not irretrievably depraved or irreparably corrupt,” is an unconstitutional de facto life sentence that violates both the Eighth Amendment and article I, section 14. *Id.* at 329 (citing *Montgomery v. Louisiana*, 577 U.S. 190, 208, 136 S. Ct. 718, 93 L. Ed. 2d 599 (2016); *Miller*, 567 U.S. at 479-80; *State v. Ramos*, 187 Wn.2d 420, 437, 387 P.3d 650 (2017)).

This Court explained, “A sentence of 46 years to life amounts to a de facto life sentence for a juvenile offender because it leaves the incarcerated individual without a meaningful life outside of prison.” *Id.* at 327. It further held:

a juvenile offender sentenced to a 46-year minimum term simply has little chance to meaningfully engage with society as an adult. A

juvenile sentenced to be released at the age of 63 has lost incalculably more than an adult in the same circumstances, the ability to work, to vote, or even to operate a motor vehicle....

given the shortened life expectancy and compromised health associated with life in prison, releasing Haag from confinement at the age of 63 deprives him of a meaningful opportunity to return to society, depriving him of a meaningful life.

Id. at 328-29 (citing *State v. Bassett*, 192 Wn.2d 67, 81, 428 P.3d 343 (2018) (*Bassett I*)) (other internal citation omitted).

D'Angelo's 41-year sentence cannot stand following *Haag*. Just as in *Haag*, D'Angelo's sentence, which imprisons him until age 60, costs him incalculably more than an adult in the same circumstances, and deprives him of the opportunity to truly reenter and engage with society.

Any distinctions the state attempts to draw between *Haag* and this case should be rejected. In the life of a juvenile, there is no meaningful difference between 46 years and 41 years, or release at age 63 rather than at age 60. Like *Haag*, D'Angelo's sentence of 41-year imprisonment will give him little chance to

engage with society in a meaningful way as an adult. *Haag*, 198 Wn.2d at 328-29. D'Angelo's ability to work, vote, drive, or engage in the countless other activities that allow an individual to become a full member of the community will be forever lost to D'Angelo if he is released at age 60. *See id.* at 329. This is particularly true "given the shortened life expectancy and compromised health associated with life in prison." *Id.* at 329.

Just as in *Haag*, D'Angelo's confinement to age 60 results in a confluence of factors that "deprives him of a meaningful opportunity to return to society, depriving him of a meaningful life." *Id.* D'Angelo's 41-year sentence is an unconstitutional de facto life sentence. This Court should reverse and remand to the trial court for resentencing under *Haag*.

2. D'Angelo's case should be assigned to a different judge on remand.

D'Angelo requests his case be assigned to a different judge on remand.

In *State v. Bassett (Bassett II)*, the Court of Appeals noted, “Reassignment to a new judge on remand is appropriate where the trial judge will exercise discretion on remand regarding the issue that triggered the appeal and has apparently prejudged the issue.” No. 53721-4-II, 2021 Wash. App. LEXIS 2483 (Oct. 19, 2021) at *9 (citing *State v. Solis-Diaz*, 187 Wn.2d 535, 540, 387 P.3d 703 (2017)).⁴ In that case, the judge had authority to impose a sentence as low as 25 years but imposed three life sentences at the original sentencing and a 60-year term of confinement at resentencing. *Id.* “Under these circumstances, it is reasonable for an objective observer to conclude that the trial judge has prejudged the issue and at the third resentencing would look to impose the maximum constitutional sentence rather than fairly considering the factors

⁴ *Bassett II* is cited pursuant to GR 14.1. The court’s unpublished opinion has no precedential value and is not binding, but it may be accorded such persuasive value as this Court deems appropriate.

required under the *Miller-fix* statute.” *Id.* The court remanded to a different judge for resentencing.

D’Angelo’s resentencing court, like Bassett’s, felt constrained by *Bassett I* and sought to impose the maximum constitutional sentence. The trial court explained D’Angelo’s original sentence of over 59 years would be unconstitutional under *Bassett I* and therefore required the court to impose an exceptional sentence in order to avoid reversal by the Court of Appeals. RP 309 (the court explains it does not wish to be reversed and “back here in another four years”); *see also* CP 392 (COL 4) (citing *Bassett I*, 192 Wn.2d at 73). However, when it imposed 41 years, the trial court misjudged what constitutes a life.

D’Angelo should be remanded for another resentencing because 41 years of imprisonment is a de facto life sentence. As in *Bassett II*, D’Angelo respectfully requests the Court order his case be assigned to a different judge on remand.

3. As in *Haag*, the trial court failed to meaningfully consider D'Angelo's youth and satisfy its obligations under *Miller* when it applied the wrong legal standards at his resentencing.

It is unnecessary for the Court to consider the other issues raised in D'Angelo's petition for review if it reverses and remands to remedy the trial court's imposition of a de facto life sentence against D'Angelo. However, if this Court considers the other issues raised in D'Angelo's petition, *Haag* further supports D'Angelo's request for review of the trial court's failure to apply the correct standards at sentencing and conduct a resentencing that satisfies the requirements of *Miller*. See Petition at 13-16; *Haag*, 198 Wn. At 321.⁵

In *Haag*, this Court held the trial court committed reversible error when it neglected its obligations under *Miller* by focusing on retribution rather than the overwhelming mitigation evidence presented by the defense. *Haag*, 198 Wn.2d at 321. Important mitigation evidence at Haag's sentencing

⁵ The third issue presented in D'Angelo's petition, challenges an exemption in RCW 9.94.730(1). See Petition at 16-19.

included defense expert testimony explaining Haag would have had difficulty making decisions at age 17, “even more so than the average juvenile.” *Id.* at 324-25. The state, in contrast, presented no expert testimony and “produced only victim impact testimony.” *Id.* at 325.

Here D’Angelo’s expert, Dr. Hunter, testified to the factors the trial court must consider under *Miller*, including: (1) “incompetencies associated with youth” and D’Angelo’s ability to consider a plea offer, and (2) the hallmark features of youth, such as impetuosity. RP 63, 113. *Ramos*, 187 Wn.2d at 443-44 (citing *Miller*, 567 U.S. at 477) (describing what the court must consider at a *Miller* hearing). As in *Haag*, the state presented no conflicting expert testimony, relying only on victim impact testimony at D’Angelo’s resentencing. *See* RP 293.

The evidence showed D’Angelo was unable to consider a plea offer that would have reduced his standard range to 26 to 34 years, despite the fact the state’s evidence included a recording of D’Angelo describing the shooting and admitting

guilt. CP 183; RP 113. Dr. Hunter explained D'Angelo's inability to consider the state's offer was "evidence of incompetence that was based on his developmental immaturity." RP 113. He further explained, "While the standard for incompetency in adult [sic] may hinge on the presence of mental disease or defect, in juveniles immaturity should be considered as a basis for incompetence." CP 179.

However, the trial court failed to evaluate D'Angelo's actions within the context of juvenile brain science, as required by *Miller* and described by Dr. Hunter, the only expert to testify at D'Angelo's sentencing. Instead, it wrongly considered the legal standards governing mitigating circumstances for adults and a defendant's competency to stand trial, and found D'Angelo had not satisfied those standards. CP 393 (COL 8, 9).

Dr. Hunter also explained how an immature brain causes adolescents to act with deliberation but fail to consider long-term consequences. RP 63. He took care to describe how an individual could act both deliberately and impulsively,

providing the court with the example of someone planning a wedding and getting married only two days after meeting their spouse. RP 63. Dr. Hunter also explained he believed D'Angelo was even more impulsive and less able to consider the consequences of his actions than his average peer due to D'Angelo's devastating childhood experiences. RP 124.

Despite this unrefuted evidence, the trial court failed to accept D'Angelo's impetuosity as a hallmark feature of his youth and instead found it needed "to weigh Dr. Hunter's conclusions" against the facts of the "crime that reflect deliberate, not impulsive acts." CP 390 (FOF 35). In sentencing D'Angelo to 41 years in prison, the court wrongly placed significant emphasis on the facts it found demonstrated the deliberateness with which D'Angelo acted during the commission of the crimes. CP 390-92 (FOF 35-36).

As in *Haag*, the trial court failed to satisfy its obligations under *Miller* when it focused on the facts of the crime and legal standards applicable to adults over the unrefuted mitigating

evidence provided by Dr. Hunter. *See Haag*, 198 Wn.2d at 325 (holding “the uncontroverted evidence of change and maturity produced by Haag was impermissibly discounted by the resentencing court in its focus on the crime and the role of retribution”). As set forth in D’Angelo’s petition for review, this Court should accept review because the trial court committed reversible error when it applied the wrong legal standards at D’Angelo’s resentencing and neglected to meaningfully consider how D’Angelo’s youth made him less culpable and worked to his detriment during the prosecution of the case.

D. CONCLUSION

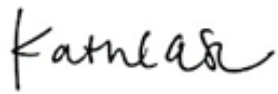
D’Angelo Saloy’s 41-year sentence for crimes he committed at age 16 is an unconstitutional de facto life sentence under *Haag*. This Court should reverse and remand to the trial court for resentencing. Because an objective observer could reasonably conclude the trial judge assigned to D’Angelo’s case

has prejudged the issue, D'Angelo respectfully requests this Court order a different judge be assigned on remand.

This document contains 2,496 words excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 8th day of December, 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathleen A. Shea", enclosed in a thin black rectangular border.

Kathleen A. Shea – WSBA 42634
Luminata, PLLC
212 Broadway E. #22815
Seattle, WA 98102
(206) 552-9234
kate@luminatalaw.com
Attorneys for D'Angelo Saloy

CERTIFICATE OF SERVICE

I certify that on today's date, I filed this supplemental brief electronically with the Supreme Court, and delivered an electronic version of this brief using the Court's filing portal, to:

King County Prosecuting Attorney

paoappellateunitmail@kingcounty.gov
jessica.berliner@kingcounty.gov
julie.kline@seattle.gov
ian.ith@kingcounty.gov

Signed in Seattle, Washington, this 8th day of December, 2021.



Kathleen A. Shea – WSBA 42634
Attorney for Appellant

LUMINATA, PLLC

December 08, 2021 - 11:34 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 99560-5
Appellate Court Case Title: State of Washington v. D'Angelo A. Saloy

The following documents have been uploaded:

- 995605_Briefs_20211208113045SC715822_4276.pdf
This File Contains:
Briefs - Petitioners Supplemental
The Original File Name was Saloy Supplemental Brief re Haag.pdf

A copy of the uploaded files will be sent to:

- ian.ith@kingcounty.gov
- jessica.berliner@kingcounty.gov
- julie.kline@seattle.gov
- paoappellateunitmail@kingcounty.gov

Comments:

Sender Name: Kathleen Shea - Email: kate@luminatalaw.com
Address:
212 BROADWAY E, #22815
SEATTLE, WA, 98102
Phone: 206-552-9234

Note: The Filing Id is 20211208113045SC715822