NO. 102451-7
COA NO. 83896-2-I

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID CARPENTER ANDERSON,

Petitioner.

ANSWER TO PETITION FOR REVIEW AND CROSS-PETITION

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A. IDENTITY OF RESPONDENT

The State of Washington was the Appellant below and is the Respondent in this Court.

B. COURT OF APPEALS OPINION

The Court of Appeals decision at issue is State v. David Anderson, No. 83896-2-I, filed August 21, 2023 (unpublished). Reconsideration was denied September 12, 2023.

C. ISSUES PRESENTED FOR REVIEW

1. Although the Court of Appeals granted the State's appeal and remanded for resentencing, this case presents a significant constitutional question and issue of substantial public interest warranting this Court's review: Is a de facto life sentence for a juvenile offender permissible when his crime does not reflect the hallmark features of youth, even though he has adapted positively to prison and general statistics suggest he has reached an age correlated with a lower risk to reoffend? In other words, what is the proper relevance of prison adjustment

and recidivist statistics when resentencing a juvenile offender for crimes that did not bear any hallmarks of youth?

2. Anderson argues that remand is unwarranted despite the sentencing court's error of law. He bases this in part on an unsupported and irrelevant factual finding that experts "agreed" Anderson's murder spree resulted from adolescent conduct disorder. The Court of Appeals did not address this finding, but it should be considered along with the issue for which review is sought.

D. STATEMENT OF THE CASE

1. SUBSTANTIVE FACTS.

a. Anderson Murdered the Wilson Family for the Experience.

David Anderson and his close friend Alex Baranyi had a longstanding plan to "experience" murder. CP 466-67, 595.

They chose the Wilson family because Anderson was angry at Kim Wilson for insisting he repay a debt.[1] CP 467, 596.

Anderson was two months from turning 18 when he deliberately murdered the Wilsons to beat that adult clock. CP 571-72. He had researched punishments and knew juveniles could not receive a death sentence. 10/21/99 RP 73-76.[2] Anderson told an ex-girlfriend he was going to commit murder before he turned 18 "so he could get off with a lesser sentence." 10/21/99 RP 73-74. Anderson explained that the most a juvenile could get was life without parole. Id. at 75.

Anderson told close friends of his plans at least two years earlier. CP 571-72; 10/13/99 RP 173-75; 10/14/99 RP 26-27, 72; 10/21/99 RP 69; 12/9/99 RP 112-15. Anderson often said he wanted to kill people, and each time, he was serious. 10/13/99 RP 173-75, 181-82; 10/14/99 RP 26-27, 72; 10/21/99

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[1] Individuals are sometimes referred to by their first names for clarity. No disrespect is intended.

[2] The VRP from Anderson's *trial* is Ex. 3 and is cited by date. The VRP from Anderson's *resentencing* is cited as "RP."

RP 69-70, 79-80. Anderson appeared "laid back," "calm," and "matter of fact"; he was not joking. 10/21/99 RP 79-80; 12/9/99 RP 116, 177-78. He said he would kill multiple people with knives and "probably a baseball bat," and it would "be very brutal," violent, and very painful. 10/13/99 RP 176-77; 10/21/99 RP 81.

Anderson repeatedly said he would do it before he turned 18. 10/13/99 RP 178-81. He said he would enter houses at night, "knock the victims unconscious with a baseball bat" and then stab them in the throat. 10/21/99 RP 116; 12/9/99 RP 117. Anderson showed a friend an aluminum bat and several knives and told him not to tell anybody. 12/9/99 RP 118-19, 123.

Anderson told his brother about a promissory note for the debt he owed Kim. 11/23/99 RP 25-29. He was angry and believed Kim tricked him into signing it. Id. at 28-29. Anderson focused his murderous aspirations on Kim and said that the Wilson family was "targeted." CP 467; 12/9/99 RP 123-25.

In January 1997, Anderson decided it was time to act and lured Kim to a park where Baranyi was waiting. Baranyi strangled Kim while Anderson stomped her. CP 467, 597. Kim died from strangulation and was found in the bushes with a rope knotted around her neck. CP 467, 598; 10/14/99 RP 112. She suffered broken ribs and a lacerated kidney and spleen — blunt-force injuries usually seen in motor-vehicle collisions or high falls, but also consistent with Anderson dropping a knee down or stomping on Kim's prostrate body. Id. at 113, 151, 153-55. Kim was still alive when this happened, taking up to four minutes to die. Id. at 152, 183, 185, 191.

Anderson and Baranyi crept inside Kim's nearby home, where they used a baseball bat and knives to slaughter Kim's parents Bill and Rose, who were asleep in bed, and Kim's 17-year-old sister, Julia, who was awake. Ex. 3; CP 467, 599-600. It was "very violent," "very painful," and "very brutal," just as Anderson had said it would be.

The right side of Rose's head was caved in, and she suffered a massive skull fracture with bone driven into her brain. 10/27/99 RP 30-31, 34. Stab wounds behind Rose's ear penetrated so deeply they struck her skull. Id. at 45-46. Two more stab wounds lower down on Rose's neck were *completely through* and into her shoulder. Id. at 50, 52, 55. Rose was likely still alive when stabbed. Id. at 54, 143-44.

Bill died of multiple stab wounds to his head and neck and blunt-force injuries to his head. 10/27/99 RP 62. Bill awoke when Rose was attacked and got up from bed. Id. at 64. He was stabbed in the head with such force that the knife blade lodged in his skull, the broken tip left behind. Id. at 66. Bill was stabbed in the face by a strike that lacerated an artery, cut his spinal cord, and extended *completely through* his neck. Id. at 66-68, 78-80. This paralyzed Bill from the chest down, rendering him defenseless. Id. at 68-70.

Bill was beaten on the head and face by a large, heavy object — like a round bar (or a baseball bat). 10/27/99 RP 70-

73. His skull was broken into pieces and his brain was lacerated. Id. at 85. Bill was alive at the time. Id. at 85-86. His skull bore the indentation of the butt of a knife, an injury requiring "the maximum force" possible. Id. at 101.

Julia heard the noise from her parents' room and stepped into the hallway, where Anderson and Baranyi beat and stabbed her to death. 12/13/99 RP 10. Julia had 19 stab wounds on her head and neck and was beaten all over her body. Id. at 10-12. She suffered defensive injuries from raising her arms to protect herself. Id. at 10. A knife was driven *completely through* her hand and her forearm was broken. Id. at 10-31.

Like her father, Julia was stabbed in the head so ferociously a fragment of blade stuck in her skull. 12/13/99 RP 38, 60. Anderson and Baranyi stabbed Julia in the face and neck, severing her trachea and causing her to choke on her own blood. Id. at 39-41. When her jugular vein and carotid artery were cut, Julia was immobilized. Id. at 68-69. But even then, Anderson and Baranyi continued smashing her head with

repeated blows from the bat, breaking her nose, cheek, jaw, and knocking out her teeth — root and all. Id. at 43-50. They gratuitously stabbed her three times in the eyeball, collapsing it. Id. at 42-43, 46-47.

Afterwards, Anderson went home and fell asleep so soundly that his girlfriend could not wake him in the morning. 12/6/99 RP 78-79.

Four days later, detectives visited Anderson. 11/18/99 RP 34-35. Anderson yawned repeatedly, said he had heard about the murders, and that it was "too bad" because the neighborhood "had always been a safe place to live, where people could leave their doors unlocked." Id. at 35-40.

2. PROCEDURAL FACTS.

a. Anderson Admitted Guilt Only When Assured of Resentencing.

Anderson was convicted of four counts of aggravated murder and sentenced to life without parole. State v. Anderson, 112 Wn. App. 828, 830, 51 P.3d 179 (2002). For nearly two

decades, he lied to everyone about the murders, falsely insisting on his innocence. CP 463, 468, 591-92; RP 128.

After Miller v. Alabama,[3] Anderson knew he would be resentenced. But only after consulting his attorneys and hiring an expert did Anderson finally admit he murdered the Wilsons. CP 477, 591, 594; RP 129, 179, 182. See also CP 466 (Anderson knew maintaining his innocence at a resentencing hearing would be "ineffective.").

b. Anderson's Evidence at Resentencing.

Anderson hired psychologist Ronald Roesch to evaluate whether his crimes reflected "immaturity, impetuosity, and failure to appreciate risks and consequences." CP 470, 584. Roesch determined that Anderson had supportive parents and a non-dysfunctional childhood. CP 480. He concluded the murders were "not an impulsive act," and "that [Anderson] had thought about it for some time." CP 473, 480, 596.

[3] 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

Nevertheless, Roesch opined that Anderson's maturity and decision-making were "impaired" simply because he was 17 years old and had made several poor choices. CP 479. Roesch believed Anderson *may* have had a conduct disorder but concluded he no longer displayed antisocial traits. CP 476.

Anderson later hired psychologist Mark Cunningham. CP 526. Like Roesch, Cunningham found Anderson's childhood positive — he lived in a close middle-class family, was compliant at home, was well-integrated with peers, got good grades, and participated in youth baseball. CP 532. Cunningham credited Anderson's senseless murder of an entire family as merely "an outgrowth of adolescent rebellion and identity experimentation." CP 532.

Cunningham asserted that Anderson demonstrated immaturity because he committed murder with a peer, rather than alone, and had discussed his plans beforehand. CP 533-34; RP 32. Cunningham also opined (without explanation) that immaturity played a role because the murders typified a

profound lack of "empathy and judgment." CP 534; RP 34-35. In other words, to Cunningham, Anderson's acts showed immaturity because they were egregiously wrong.

Apparently unsatisfied with this assessment, Anderson's attorneys asked Cunningham to re-evaluate Anderson and "provide additional perspectives regarding adverse developmental factors" that might have impacted Anderson's "functional maturity" when he committed murder.[4] CP 546; RP 134.

With this directive, Cunningham decided Anderson was "functionally" less mature than other 17-year-olds. CP 547. Cunningham described Anderson's father as self-centered, controlling, and he portrayed Anderson's parents' marriage as unhappy and unaffectionate. CP 547, 553, 556. Cunningham found examples of family dysfunction in a lack of a "tuck-in ritual" at bedtime, group-family activities instead of one-on-one

[4] Roesch had already done this. RP 134-35.

time, Anderson being grounded for a bad grade, and the children being denied sugary snacks while Anderson's father enjoyed them. CP 553, 557-59.

Cunningham decided that Anderson exhibited "adolescent-limited conduct disorder." RP 49. Cunningham opined that the lack of a "deep connection" between Anderson and his parents rendered Anderson unable to "put the brakes" on antisocial behavior — and so he murdered the entire Wilson family. RP 58-59.

Yet, despite interviewing Anderson for nearly eight hours, Cunningham *never* asked Anderson about the circumstances of the murders, his planning and participation, or his thinking during or after. RP 152-55. Cunningham never asked Anderson about his perceptions or evaluation of the risks and consequences. RP 156-57, 160, 163. *Cunningham was unaware that Anderson had intentionally committed murder before age 18 to avoid adult punishment.* RP 159.

Anderson presented evidence at resentencing that in prison he had remained infraction free for some time and had pursued employment and education. CP 25-103, 535-36, 562; RP 82-83, 88-90, 175-78. Cunningham said Anderson was a low risk to reoffend.[5] CP 535-40; RP 81-83, 206. But Cunningham acknowledged that conclusion was based largely on Anderson's current age — likelihood of re-offense declines with age. CP 537; RP 78. Cunningham also conceded that murderers reoffend less often than others. CP 538; RP 126. Strikingly, Cunningham believed that whether Anderson accepted responsibility was irrelevant to his rehabilitation.[6] RP 129-30.

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[5] In the 20-25 "Miller evaluations" Cunningham had been hired for he concluded *every time* that the defendant was a below-average risk to reoffend compared to the "typical parolee." RP 103.

[6] Yet Roesch admitted that if Anderson had continued to deny the murders, Roesch would have been unable to render an opinion on the role of juvenile immaturity in Anderson's crimes. CP 595.

c. State's Evidence at Resentencing.

The State retained psychologist Brian Judd, who evaluated Anderson and his potential risk if released. RP 202. One of the instruments that Judd used was the Adverse Childhood Experiences (ACE) tool. RP 216. A greater density of adverse experiences before age 18 can affect neuromaturation. Id. A score of four or higher is predictive. Id. Anderson scored *only two*. RP 217.

Judd described research that divided criminal offenders generally into two groups — "life-course persistent" and "adolescent-onset." RP 218-19. "Adolescent-onset" showed greater desistence, response to interventions, and ability to incorporate prosocial values. Id. Judd testified that if he were to fit Anderson into one of those groups, it would be the adolescent-onset group because Anderson did not exhibit any problematic behavior at ages 11 or 12. RP 220.

But Judd also testified that neuroscience research of brain development "provides group data showing a developmental

trajectory in brain structure and function during adolescence and into adulthood." CP 579-80; RP 220-22. Judd said there is a great deal of variance and "it's very difficult to say what the maturational level of an individual at a given point in time is." RP 221.

Judd concluded that Anderson's positive adjustment to prison as he aged "was suggestive of ongoing neuromaturational processes with concomitant improvements in executive functioning." CP 580. In other words, Anderson's brain had developed. But Judd said that absent a contemporaneous brain scan, any expert who offered an opinion that a particular juvenile offender was less mature than another "is exceeding the limits of science." CP 579-80; RP 221-22. Judd believed "the only legitimate use of adolescent brain research in individual cases is to provide decision makers with general descriptions of brain maturation." Id.

In other words, expert Cunningham's conclusion that Anderson premeditatedly murdered four people *because of* his

juvenile brain was significant overreach. Judd said that factors such as what a juvenile was thinking at the time of the crimes, what they did, and how they did it, would be important in assessing whether, and if so how, immaturity played a role in the crimes. RP 222. Cunningham did not address these factors.

d. Anderson's Sentencing Recommendation.

Anderson declared that he felt remorse but also claimed there was no legal benefit to confessing when he did. RP 239. He asked the court to set a 25-year minimum term, arguing it was the only appropriate sentence under State v. Haag.[7] CP 2, 22; RP 259. He contended that the experts had described a situation where "many people are psychopaths between the ages of 14 and 17 and they have no control over that, and then that just goes away," and thus "the minimum amount of retribution is appropriate." RP 356. Because, according to Anderson, his purported conduct disorder was now "gone" and he was a lower

[7] 198 Wn.2d 309, 495 P.3d 241 (2021).

risk to reoffend, he need not serve more than the statutory minimum of 25 years, which he had already served. CP 3-7; RP 256-59, 261.

e. State's Sentencing Recommendation.

At the time of resentencing, the State felt constrained by Haag to recommend only a 45-year-minimum sentence. CP 434. The State asked the court to meaningfully consider how the mitigating qualities of youth applied, or did not, to the facts of Anderson's crimes. CP 443-44; RP 244-45, 247-48. The State maintained youthful immaturity played no role in Anderson's decision to murder the Wilson family, which was tremendously calculated and informed by the risks and potential consequences. CP 445, 455, 457-60; RP 243-44. Anderson had fulfilled his long-standing design to experience murder for "murder's sake," and to time it before age 18 to save his life if caught. CP 439, 445-47, 455, 457-58; RP 245, 247. Just like he promised many times, Anderson killed multiple people with

knives and a baseball bat, inflicting great violence and pain. 10/13/99 RP 176-77; 10/21/99 RP 81, 116.

The State argued for a 45-year sentence, not because of retribution, but because there was no evidence that immaturity played any role in Anderson's crimes. CP 444-45; RP 244-45, 247-48, 252. To be clear, the State believed at the time that Haag categorically prohibited a 46-year sentence, *not* that 45 years was the appropriate minimum sentence for Anderson.

f. Court's Re-Sentence.

The court determined the Wilson murders were "carefully planned and executed . . . They were *very premeditated and not the product of youthful impulsiveness*." RP 272 (emphasis added). Anderson's chronological age notwithstanding:

> Anderson *understood at a significant level* the consequences of his crimes and the responsibility he would bear. He wanted to avoid the death penalty, and so he acted before his 18th birthday. He took careful steps [to avoid detection]. These are indications of higher[-]level brain functioning.

Id. (emphasis added). The only thing the sentencing court believed might show a deficit in Anderson's decision-making ability at the time was "the openness with which he discussed his plans for committing murder."[8] RP 274.

Regardless, the sentencing court concluded that Haag categorically barred a 45-year-minimum sentence for *all* 17-year-olds, regardless of whether the crime reflects the immaturity of youth. RP 271-72. The court imposed a minimum 33-year sentence. CP 683; RP 277.

The Court of Appeals agreed with the State that the sentencing court fundamentally misconstrued the relevant legal standard, as later clarified in State v. Tonelli Anderson.[9] It also determined that the record was not clear the same sentence would have been imposed had the court correctly understood the law. Slip op. at 7, 9.

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[8] Something the State noted that many adults also do. RP 243.
[9] 200 Wn.2d 266, 516 P.3d 1213 (2022).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Although the Court of Appeals correctly reversed, a significant constitutional issue of substantial public interest remains — how to square Haag's penultimate focus on rehabilitation with Tonelli Anderson's directive to meaningfully consider the hallmarks of youth in relation to the crime. This issue compels a critical analysis of what it means to be "rehabilitated," a recognition that such a determination is not one-size-fits-all, and a consideration of the proper weight to give such evidence.

Anderson offers no sound basis for his argument that the constitution forbids de facto life sentences for juveniles who can offer *any* mitigation, however slight. This Court's guidance is necessary because uncertainty about the proper role of "rehabilitation" evidence in a case such as this is untenable. Courts cannot know what sentence will be approved until appellate review is complete, causing repeat sentencing hearings in cases involving the most egregious offenders, and

inflicting unnecessary trauma on victim families long after they have settled into some semblance of acceptance. Review should be accepted. RAP 13.4(b)(3), (4).

1. POSITIVE PRISON ACCLIMATION AND LOW STATISTICAL RISK OF REOFFENSE BASED ON AGE DOES NOT COMPEL A CONCLUSION THAT THE ORIGINAL PREMEDITATED MURDER REFLECTED THE IMMATURITY OF YOUTH.

There is admittedly tension between Haag (an RCW 10.95 case) and Tonelli Anderson (an SRA case). Haag directs that a resentencing hearing under former RCW 10.95.030(3)(b)[10] must be "forward looking, focusing on rehabilitation rather than on the past." 198 Wn.2d at 321. The Haag court did not consider the facts of Haag's crime or discuss how youthfulness contributed to it. Instead, it extrapolated that Haag's infraction-free prison behavior, pursuit of educational

[10] The statute has since been amended and renumbered to remove reference to the death penalty, but there are no substantive changes relevant here.

opportunities, and low recidivism risk demonstrated that his crime reflected immaturity. Haag, 198 Wn.2d at 324-25.

By contrast, Tonelli Anderson recognized the constitutional requirement that sentencing courts determine whether and to what extent the "hallmarks of youth" are *reflected in the commission of the crime* — because that is what makes a juvenile less culpable. Anderson, 200 Wn.2d at 285-86.

Haag commits the logical fallacy of post-hoc inflated causation by falsely identifying a potential, single cause where there may be multiple causes in a complex process. It does not always follow that youthful immaturity played a role in a crime merely because the juvenile later adapts positively to prison and statistically becomes a lower risk to reoffend due to age. The most obvious evidence of this is the fact that many fully mature adults are incarcerated for serious offenses but go on to follow prison rules and present a low recidivism risk as they get older.

Anderson appeared to agree at oral argument that Tonelli Anderson's focus is on the crime while Haag's is on the offender.[11] But the distinction Anderson offered — that Tonelli Anderson applies to SRA cases and Haag to RCW 10.95 sentences — cannot be right. That would mean that a statute applicable *only* to aggravated murderers offers more protection than the baseline constitutional right at stake and treats the worst offenders more leniently than everyone else.

Anderson's case reflects the tension between Haag and Tonelli Anderson. Contrary to Anderson's assertion, consideration of the details of his crimes is not a "backward-looking focus" on retribution impermissible under Haag. A sentencing court must meaningfully consider the extent to which a juvenile's crime reflects youthful immaturity, impetuosity, or failure to appreciate risks and consequences.

[11] https://www.courts.wa.gov/content/OralArgAudio/a01/20230726/1.%20State%20v.%20Anderson%20%20%20838962.mp3 (9:00 to 10:35) (last accessed October 27, 2023).

Anderson, 200 Wn.2d at 286 (quoting Miller, 567 U.S. at 477). David Anderson is an uncommon offender whose crimes did not reflect youthful characteristics, so the constitution does not preclude him from receiving any lawful adult sentence.[12] Anderson, 200 Wn.2d at 289 n.9.

Although the sentencing court analyzed the applicable statutory factors, it did not resolve (or at least did not determine the significance of) whether Anderson's crimes "reflected youthful immaturity, impetuosity, or failure to appreciate risks and consequences." As Tonelli Anderson clarifies, such analysis is crucial to whether a de facto life sentence is permitted.

Before brutally slaying four people, Anderson was a capable, White teen from a middle-class suburban family with a

[12] The question for Anderson is not whether an *adult* sentence is permitted. Aggravated murder for adults requires a mandatory life-without-parole sentence, which is impermissible for juveniles. State v. Bassett, 192 Wn.2d 67, 428 P.3d 343 (2018). No matter what, Anderson will receive a sentence applicable *only* to juveniles.

childhood like many others. But unlike most, Anderson spent nearly two years planning and premeditating murder just to experience what it felt like. He considered and even researched the consequences, carrying out his plan on the eve of his 18th birthday so the law would treat him more leniently if caught. This was not the rash behavior of a teenager. It was calculating and deliberate.

Moreover, Anderson spent more than two decades insisting on his innocence, only admitting he savagely murdered four people after the law changed and he benefitted by coming clean. Now, after he achieved his appalling "experience," generalized statistics suggest Anderson is unlikely to kill anyone else because of his current age and the *classification* of his crime (without looking at the circumstances of what he did). Those statistics — which apply to all murderers who reach Anderson's age regardless of when they committed their murders — cannot alone dictate a conclusion that Anderson himself is rehabilitated.

Rehabilitation cannot be judged in the abstract. It must be assessed in context, with reference to what the offender did, because the nature of the crime establishes a baseline from which an offender must return. The level of violence, callousness, and premeditation establishes the relative point at which the offender started down the road to "rehabilitation." The more serious the offender's pattern of violence, the stronger the evidence of rehabilitation that should be required.

Anderson's argument relies almost entirely on an assumption that good prison behavior subsequently proves that a crime was the product of a juvenile brain. But nothing about Anderson's crime and its circumstances reflects youthful immaturity, impetuosity, or the failure to appreciate risks or consequences — instead, Anderson's crime epitomizes the opposite. It is unsurprising that the sentencing court concluded as much. See RP 272.

Youthful immaturity may undercut the need for lengthy prison sentences in many or even most cases. But there are

some crimes that are simply not the product of youthful immaturity and in fact demonstrate the opposite. Of perhaps all cases in this state's history, Anderson's most starkly demonstrates the dividing line. This Court's opinion in Tonelli Anderson affirms our society's right to address such cases harshly. For offenders whose crimes are devoid of youthful impulse, future brain development — even as demonstrated through good prison behavior — does not strip a court's ability to impose a sentence that reflects the community's condemnation of the crime or to ensure community safety. When a person plans and carries out a mass murder, deliberately scheduling it to escape the harshest punishment, the constitution does not forbid society from imposing a severe penalty on that person.

This Court should accept review and clarify the proper standard to apply on remand.

2. THE RECORD DOES NOT CLEARLY ESTABLISH THAT THE COURT WOULD HAVE IMPOSED THE SAME SENTENCE HAD IT CORRECTLY APPLIED THE LAW.

In arguing that remand is unnecessary despite the sentencing court's legal error, Anderson erroneously cites to the standard for prejudice on collateral attack. But in this direct appeal, a discretionary sentencing decision premised on a mistake of law is reversible unless the record clearly establishes that the sentencing court would have imposed the same sentence anyway. State v. Parker, 132 Wn.2d 182, 189, 937 P.2d 575 (1997).

Anderson argues the sentencing court could not have imposed a different sentence had it better understood the law. In so doing he asks for a rule that limits a court's ability to weigh the mitigating qualities of youth as reflected in the crime and instead elevates above all else an offender's ability to adapt positively to a controlled prison environment as he ages. Even if such factors reflect true "rehabilitation," there is no constitutional imperative to elevate it above other sentencing

rationales, or to devalue retribution or deterrence as legitimate goals of juvenile sentencing.

The legislature did not establish a hierarchy simply by spelling out Miller-related sentencing factors in RCW 10.95.030. The statute mandated new sentencing hearings so there was a need to ensure that courts would apply the relevant factors. RCW 10.95.030 directs only that sentencing courts "take into account mitigating factors" related to youth and does not purport to include an exhaustive list of those factors. The plain language of the statute does not say rehabilitation is of greater importance than other sentencing purposes, as that is a stark departure from traditional sentencing and a significant limit on judicial discretion. Although it is correct that courts must meaningfully consider youth, it is incorrect to say that either the constitution or statutory law has elevated rehabilitation above other sentencing concerns.

Anderson also cites, to a lesser degree, the sentencing court's unsupported finding that the three experts "agreed" that

Anderson murdered four people due to a "form of transient adolescent conduct disorder." The Court of Appeals did not resolve that issue, but it is important because Anderson relies on it to argue that the resentencing court's mistake of law was of no consequence. This Court should address it. RAP 13.4(d).

A court's sentencing decision is an abuse of discretion when based on factual findings unsupported by substantial evidence. State v. Delbosque, 195 Wn.2d 106, 116, 456 P.3d 806 (2020). Substantial evidence is that sufficient to persuade a fair-minded person of the truth of the asserted premise. State v. Homan, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014).

Cunningham (who, at Anderson's behest, retreated from conclusions regarding Anderson's "positive childhood adjustment") was the *only* expert to theorize about a cause for Anderson's crimes. CP 532, 551-62. But, as discussed above, Cunningham never asked Anderson about the circumstances, his planning and participation, his thought processes, or his perceptions and evaluation of the risks and consequences. RP

152-57, 160, 163. Cunningham did not even know that Anderson intentionally timed the murders to avoid harsher punishment. RP 159.

In contrast, Roesch stated Anderson *may* have exhibited a conduct disorder, but did not guess what caused Anderson to kill the Wilsons. CP 469-83.

The State's expert, Dr. Judd, did not opine that Anderson suffered from a teenage conduct disorder or that it caused him to commit murder. He testified only that *were* he to fit Anderson into "the typology" of two categories of teens with conduct disorders, he would choose adolescent-onset over life-course persistent. RP 220. Judd said that consideration of what Anderson was thinking, what he did, and how he did it would be useful in assessing whether and how immaturity played a role — factors that Anderson's own expert was unwilling to explore. RP 222. Simply put, the experts did not "agree" that Anderson murdered the Wilsons due to a transient conduct disorder.

Importantly, having a "conduct disorder," transient or otherwise, is *not a natural hallmark of youth*. Juvenile constitutional sentencing protections exist because there are points in time during brain development when individuals are less mature, and thereby less culpable. The standard is whether a juvenile's crime reflects the *natural* hallmarks of youth. A conduct disorder is not a *natural* part of brain development; a young brain is not necessarily a disordered brain. Contrary to Anderson's sentencing argument, diminishing psychopathy was not the basis of the Miller decision.

The sentencing court abused its discretion to the extent it relied on an unsupported and irrelevant factual finding. This Court should accept review of that issue.

F. CONCLUSION

Anderson's youth does not account for the Wilson murders. His calculated crimes were neither impetuous nor impulsive, were done with deliberate knowledge of the risks and potential consequences and were timed to avoid greater

punishment if caught. To declare Anderson's ability to adapt to a controlled prison environment paramount vastly oversimplifies the complexities of juvenile crime.

This Court should accept review, affirm the Court of Appeals' remand order, and clarify the legal standard that the resentencing court should apply.

I certify this document contains 4990 words, excluding those portions exempt under RAP 18.17.

DATED this 31st day of OCTOBER, 2023.

Respectfully submitted,

LEESA MANION (she/her)
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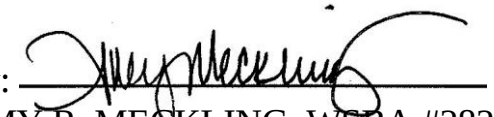

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