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STATE OF WASHINGTON
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NO. 96709-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

CRISTIAN DELBOSQUE,

Respondent.

**AMICUS BRIEF OF WASHINGTON ASSOCIATION
OF PROSECUTING ATTORNEYS (WAPA)**

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A. ISSUES PRESENTED¹

- 1) Did the Court of Appeals erroneously conclude that the trial court failed to sufficiently consider the Miller² factors?
- 2) Did the Court of Appeals erroneously convert Delbosque's direct appeal into a personal restraint petition?

B. FACTS³

Cristian Delbosque came to Washington in the early 1990s and lived in Shelton with his father. A childhood friend, Filiberto Sandoval, lived nearby with his brother, Santiago Sandoval and Santiago's 16 year-old girlfriend, Kristina Berg. Santiago was in Mexico when this crime was committed, so Filiberto and Kristina were the only people staying in the Sandoval apartment. Delbosque was 17 years old. Br. of Resp. at 2-3.

On the night of October 18, 1993, Delbosque went to Filiberto's apartment armed with a .25 caliber handgun. After some drinking, Delbosque and Filiberto apparently got into a fight and Delbosque shot Filiberto, killing him. Although the precise sequence of events may never be known, Kristina appears to have retreated to the bathroom and locked the door. Delbosque kicked in the door and shot Kristina once in an

¹ WAPA's interest in this case was set forth in the already-granted motion to file amicus brief.

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

³ These facts are based primarily on the "Facts and Statement of the Case" in the Brief of Respondent filed by the Mason County Prosecutor in the Court of Appeals, No. 49792-1-II. Citation will be made in this brief to the Respondent's Court of Appeals brief, which includes detailed citations to the record.

attempt to eliminate witnesses to Filiberto's murder. However, the gun jammed. Delbosque instructed Kristina to remove her shirt. He attacked Kristina in the bathroom with a meat cleaver, striking her about 68 times, including several blows to her head that caused deep wounds and broken bones in her face. Delbosque also nearly severed Kristina's head from her body. After the killings, Delbosque took the time to strip both victims naked, posed them in an obscene display, and concocted a fake suicide note to confuse investigators. Br. of Resp. at 3-5.

Police were summoned the next day when Filiberto's employer discovered the bodies. Authorities questioned Delbosque who denied killing the victims, claiming instead that he had also been attacked by the murderers. He later changed that story and admitted killing Filiberto and then killing Kristina. At trial, Delbosque recanted his confession and presented perjured testimony supported by fraudulent documents that attempted to shift blame for the murders onto his girlfriend. The jury convicted him of murder in the second degree and aggravated first degree murder. Delbosque received a life sentence. Br. of Resp. at 8-11.⁴

Years later Delbosque was granted a hearing pursuant to RCW 10.95.035 and .030 to consider whether youth justified a minimum-term

⁴ The second degree murder conviction was later reversed based on In re Personal Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002).

sentence less than life in prison. The sentencing court reviewed the entire trial record and conducted multiple hearings over several months. It heard from two expert witnesses on mitigation and heard from civilian witnesses concerning the nature of the crime. After taking evidence of Delbosque's upbringing, his mental health, his alcohol dependence, and the facts of the crime, the sentencing court announced its decision in a nearly 30-page oral ruling that reveals a deep familiarity with the complicated facts of the case, the nuances of the law, and with the mitigation evidence. See RP (11/17/16) 637, et seq. The court correctly summarized the legal framework that controlled its decision. RP (11/17/16) 642.

The court examined in great detail the specifics of the evidence in the case, including Delbosque's prior statements to police, his testimony at trial, and the testimony of his expert witnesses for sentencing. The court considered how a comparison of those sources bore on the credibility of Delbosque and, to some extent, his experts. RP (11/17/16) 646-54. As to Delbosque's motive for committing the crime and his expert's conclusion about that motive, the court found:

Based upon this analysis, Doctor Saint Martin's conclusion that Mr. Del Bosque's alcohol dependency was the predominant factor in the criminal offense is at best, questionable. This Court believes that anger and a desire to conceal guilt were the predominate factors.

RP (11/17/16) 654-55.

The court also expressly addressed the degree to which others might have influenced this juvenile to commit this crime. RP (11/17/16) 655. Based on the court's review of the record, it concluded that "Mr. Delbosque is entirely responsible for the murder of Kristina. No other person assisted him in the design or implementation of the murder." Id.

The court then turned to "Mr. Del Bosque's chances of becoming rehabilitated and the reflection of transient immaturity." RP (11/17/16) 655. This is how the court framed its analysis:

In this analysis the Court is looking at the murder to determine whether it is a reflection of transient immaturity associated with youth, or something more heinous, often characterized by words such as irreparable corruption, permanent incorrigibility, irretrievable depravity, such that rehabilitation is impossible, making life without parole justified.

It is clear that the standard is that life without parole is justified in only the rarest of circumstances. In this analysis, it's appropriate for the Court to consider the actual crime, as well as the life and actions of Mr. Del Bosque after he committed the crime.

Id. The court then examined the totality of the evidence before it to decide whether the crime illustrated "transient immaturity" that might justify a reduced sentence. RP (11/17/16) 655-60. The court noted that the jury verdict necessarily adopted the defendant's confession that he killed Kristina to keep her from testifying against him and the court observed that such facts suggested Delbosque was willing to sacrifice her life to further his own aims. RP (11/17/16) 656. The court also noted that

Delbosque altered documents in a sophisticated fashion and committed perjury at trial to blame the crimes on his girlfriend. RP (11/17/16) 656-57. The court considered Delbosque's leadership role in a prison gang at the age of 34, and the fact that 16 years after killing Filiberto and Kristina he continued to orchestrate violence against others. RP (11/17/16) 657-59. The court stressed the import of this finding:

[T]his Court considers this transgression as a third example of Mr. Del Bosque's view that others are expendable, even at great risk to their personal safety in order to promote his needs.

RP (11/17/16) 659. In light of these facts, the court found as follows:

The brutal murder that Mr. Del Bosque committed on October 1993 was not symptomatic of transient immaturity, but has proven over time to be a reflection of irreparable corruption, permanent incorrigibility, and irretrievable depravity.

RP (11/17/16) 661.

The court recognized that Del Bosque might be less dangerous with time as his physical strength waned, but decided that future dangerousness would best be weighed by the Indeterminate Sentence Review Board when considering release. Thus, the court settled on a minimum term sentence that would allow for Delbosque's release after 48 years, at the age of 65. RP (11/17/16) 661-62. The court concluded its Miller analysis with these remarks:

The Court recognizes that this sentence may be considered a de facto life without the possibility of parole sentence. However in

reaching this conclusion, the Court considered the factors required by RCW 10.95.030(3)(b) and the Miller factors required for consideration of a life without the possibility of parole sentence, and finds that the crime committed by Mr. Del Bosque is one of those rare cases where a life without the possibility of parole sentence would be appropriate, except for the potential reduction of risk caused by advancing old age.

RP (11/17/16) 662-63. The court then explained why the minimum-term sentence did not violate the State constitution. RP (11/17/16) 663-65. It also noted that it had summarized its oral ruling in a written order.

I did create a memorandum. This memorandum opinion sets forth the Court's findings and conclusions *in a very limited sense*. They are consistent with the oral decision that the Court just gave.

RP (11/17/16) 665 (italics added). See CP 30-31 (written order).

The Court of Appeals decision says that the lower court failed to meaningfully consider Miller, but the appellate opinion refers only in passing to the lower court's 30-page oral decision, fails to analyze the reasoning of that oral ruling, and fails to appreciate how the written order is simply a limited summary of the court's ruling and rationale. State v. Delbosque, No. 49792-1-II, slip op. (Court of Appeals, Division II, filed December 4, 2018).

C. REVIEW SHOULD BE GRANTED ON THE QUESTION WHETHER THE SETTING OF A MINIMUM TERM WAS PROPER AND ALSO ON THE QUESTION WHETHER DELBOSQUE COULD APPEAL THAT DECISION

The State of Washington has asked this Court to review the Court of Appeals' holding that the trial erred in setting a minimum term. Delbosque challenges the court's determination that he had to pursue a personal restraint petition rather than simply appeal the trial court's decision. WAPA respectfully asks this Court to grant review as to both questions presented. The decision below concerns the constitutional and statutory requirements for imposing sentence on juveniles convicted of aggravated murder and for appellate review of such sentences. RAP 13.4(1), (3), and (4) are met as to both issues presented.

1. THE COURT OF APPEALS DECISION CONFLICTS WITH RAMOS AND WILL MISLEAD LOWER COURTS AND LITIGANTS AS TO THE TRIAL COURT'S ROLE AND DUTIES IN SETTING MINIMUM-TERM SENTENCES.

RCW 10.95.030(3) requires that a court imposing sentence on a juvenile for aggravated murder must consider the principles articulated in Miller v. Alabama. This Court discussed those principles in State v. Ramos⁵ and held that a court should receive mitigation evidence on immaturity, that it was acceptable to place the burden on the offender to prove that a lesser sentence was mandated by considerations of youth, and that a court should consider how the circumstances of the homicide affect

⁵ State v. Ramos, 187 Wn.2d 420, 387 P.3d 650 (2017), as amended (Feb. 22, 2017), cert. denied, 138 S. Ct. 467 (2017).

his culpability. This Court also recognized that the sentencing court had broad discretion to set a minimum term sentence under Miller.

Ramos had not been decided when the court imposed a minimum term on Delbosque, but it *had* been decided before the Court of Appeals filed its decision. Yet, the decision by the Court of Appeals does not cite Ramos at all. This failure to address the conceptual framework set out in Ramos will likely cause confusion as to whether different rules apply to a sentencing on direct review, like Ramos, and one reviewed following the setting of a minimum term under RCW 10.95.035. Review is appropriate for this reason alone.

At a more fundamental level, however, the appellate decision will likely lead some to argue that a court imposing a minimum term under RCW 10.95.035 and .030 cannot root its decision in the egregious nature of the crime and/or on facts subsequent to the crime that tend to suggest the crime was not an isolated instance of transient immaturity. Such reasoning formed the core of the sentencing court's decision in this case. RP (11/17/16) 637-65; CP 30-31. But the Court of Appeals' opinion devotes only a single sentence to the facts of the crime. Delbosque, slip op. at 2 ("In 1994, Delbosque was convicted of aggravated first degree murder for the murder of a young woman."). This single sentence obscures the fact that this aggravated murder was committed to conceal

another murder; it fails to mention that the victim was 16 years old; it fails to acknowledge the lengths the defendant went to conceal his guilt. It thus fails to grapple with the heart of the superior court's rationale that the nature of the aggravated murder showed that Delbosque did not commit this crime simply because he was young. The appellate court's refusal to address the facts prevented a meaningful review of the lower court's order.

Similarly, the appellate court gave short shrift to the trial court's consideration of Delbosque's post-crime behavior, including the violence he orchestrated in prison. The appellate court examined only the lower court's 2- page written summary ruling instead of delving into its 30-page oral ruling.

The shortcomings in this published opinion will likely suggest to other courts that the setting of a minimum term by a superior court judge may not consider the facts of the crime or post-crime conduct that sheds light on whether the crime was a product of immaturity or some more fundamental defect. Moreover, the nature of this appellate decision will likely cause courts to confuse the setting of a minimum term with the release decisions of the Indeterminate Sentence Review Board. In the latter situation, the facts of the underlying crime are perhaps less significant than is an assessment of the offender's current suitability for release based on everything that has occurred since the crime and based on


modern assessments of dangerousness. In re Pers. Restraint of Brashear, 6 Wn. App. 2d 279, 430 P.3d 710 (2018). Review should be granted to correct any such misperception.

2. THIS COURT SHOULD GRANT REVIEW TO DECIDE WHETHER THE SETTING OF A MINIMUM TERM IS REVIEWABLE BY APPEAL OR BY PERSONAL RESTRAINT PETITION.

Delbosque argues that he is entitled to appeal the trial court's ruling setting a minimum term as a matter of right, and that the Court of Appeals erred by treating his challenge as a personal restraint petition. WAPA agrees that review should be granted to clarify how these hearings will be reviewed by appellate courts. This procedural question is intertwined with questions regarding the essential nature of a hearing to set a minimum term under RCW 10.95.035. Thus, it makes sense to grant review of this issue as well as the constellation of issues discussed above.

DATED this 15th day of March, 2019.

Respectfully submitted,

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