

FILED
Court of Appeals
Division III
State of Washington
5/6/2021 2:47 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
5/6/2021
BY SUSAN L. CARLSON
CLERK

99744-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 36213-2-III

STATE OF WASHINGTON, Respondent,

v.

JEREMIAH SMITH, a.k.a. GLENN A. AKERS, Petitioner.

PETITION FOR REVIEW

Andrea Burkhart, WSBA #38519
Two Arrows, PLLC
8220 W. Gage Blvd. #789
Kennewick, WA 99336
Tel: (509) 572-2409
Email: Andrea@2arrows.net
Attorney for Petitioner

TABLE OF CONTENTS

Authorities Cited.....iii

I. IDENTITY OF PETITIONER.....1

II. DECISION OF THE COURT OF APPEALS.....1

III. ISSUES PRESENTED FOR REVIEW1

1. Whether Smith’s life without parole sentence is categorically or individually disproportionate under article I, section 14.

2. Whether Smith’s life without parole sentence is disproportionate because it is predicated on a less culpable juvenile strike offense.

3. Whether Smith’s life without parole sentence is disproportionate when the POAA withholds individualized consideration from a 25-year-old offender and instead requires the same severe mandatory penalty as fully-formed adult recidivists.

4. Whether Smith’s life without parole sentence is disproportionate when the overwhelming majority of other states would not permit a life without parole sentence for Smith’s crime and the national trend is moving away from predicating the harshest punishments on youthful mistakes.

5. Whether Smith’s life without parole sentence is unconstitutional when POAA sentences are imposed in a racially biased manner.

6. Whether this Court should grant review when the Court of Appeals concluded any constitutional error in predicating a sentence on a juvenile strike was not manifest but invited this Court to directly address this important constitutional issue.

IV. STATEMENT OF THE CASE.....3

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.....5

A. Because the juvenile strike is categorically less blameworthy than adult criminal behavior, it is disproportionate to predicate the most severe sanction Washington allows on juvenile conduct7

B. The POAA falls short of article I, section 14 standards applicable to offenders who are over 18 but still developing, by denying them individualized consideration of mitigating circumstances11

C. As applied, Washington’s POAA scheme is among the most punitive in the nation and is out of alignment with the emerging nationwide trend against imposing lengthy sentences based on juvenile misconduct13

D. As applied, Washington’s POAA scheme is gravely disproportionate in its effect on racial minorities.....16

VI. CONCLUSION.....18

CERTIFICATE OF SERVICE20

APPENDICES

Appendix A – Opinion in *State v. Smith*, no. 36213-2-III (filed Feb. 16, 2021)

Appendix B – Caseload Forecast Council, Statistical Summary of Adult Felony Sentencing, Fiscal Years 2017-2020 – Table 14B

Appendix C – Caseload Forecast Council, Adult General Disproportionality Report (Dec. 2018)

Appendix D – Caseload Forecast Council, Adult General Disproportionality Report (Dec. 2019)

Appendix E - The Sentencing Project, Fact Sheet: Black Disparities in Youth Incarceration (2017)

Appendix F – Table 1: Recidivist laws by State

AUTHORITIES CITED

Cases

Federal:

<i>Graham v. Florida</i> , 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).....	8
<i>Miller v. Alabama</i> , 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).....	7, 8
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).....	8
<i>Rummel v. Estelle</i> , 445 U.S. 263, 100 S. Ct. 1133, 63 L.Ed.2d 382 (1980).....	9, 10

Washington State:

<i>In re Monschke</i> , __ Wn.2d __, 482 P.2d 276 (2021).....	11
<i>State v. Bassett</i> , 192 Wn.2d 67, 428 P.3d 343 (2018).....	6, 7, 8
<i>State v. Fain</i> , 94 Wn.2d 387, 617 P.2d 720 (1980).....	6, 7, 9, 13
<i>State v. Gilbert</i> , 193 Wn.2d 169, 438 P.3d 133 (2019).....	8
<i>State v. Gregory</i> , 195 Wn.2d 1, 427 P.3d 621 (2018).....	12, 16, 18
<i>State v. Houston-Sconiers</i> , 188 Wn.2d 1, 391 P.3d 409 (2017).....	8
<i>State v. Manussier</i> , 129 Wn.2d 652, 921 P.2d 473 (1996).....	9
<i>State v. Moretti</i> , 193 Wn.2d 809, 446 P.3d 609 (2019).....	13, 15, 17
<i>State v. O'Dell</i> , 183 Wn.2d 680, 358 P.3d 359 (2015).....	11
<i>State v. Witherspoon</i> , 180 Wn.2d 875, 329 P.3d 888 (2014).....	7, 9

Constitutional Provisions

U.S. Const. Amend. VIII.....	6, 10, 18
Wash. Const. art. I, § 14.....	6, 10, 12, 13, 18

Statutes

RCW 9.94A.570.....1

Court Rules

RAP 13.4(b)(3).....5, 10, 13, 18

RAP 13.4(b)(4).....5, 18

I. IDENTITY OF PETITIONER

Jeremiah Smith requests that this Court accept review of the decision designated in Part II.

II. DECISION OF THE COURT OF APPEALS

Smith seeks review of the Court of Appeals' decision filed on February 16, 2021, concluding that the unconstitutionality of sentencing a youthful offender to life without the possibility of parole under the Persistent Offender Accountability Act ("POAA"), RCW 9.94A.570, predicated upon a strike conviction in adult court for conduct committed as a juvenile is not manifest. A copy of the Court of Appeals' unpublished opinion is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

1. Whether Smith's life without parole sentence is categorically or individually disproportionate under article I, section 14.

2. Whether Smith's life without parole sentence is disproportionate because it is predicated on a less culpable juvenile strike offense.
3. Whether Smith's life without parole sentence is disproportionate when the POAA withholds individualized consideration from a 25-year-old offender and instead requires the same severe mandatory penalty as fully-formed adult recidivists.
4. Whether Smith's life without parole sentence is disproportionate when the overwhelming majority of other states would not permit a life without parole sentence for Smith's crime and the national trend is moving away from predicating the harshest punishments on youthful mistakes.
5. Whether Smith's life without parole sentence is unconstitutional when POAA sentences are imposed in a racially biased manner.

6. Whether this Court should grant review when the Court of Appeals concluded any constitutional error in predicating a sentence on a juvenile strike was not manifest but invited this Court to directly address this important constitutional issue.

IV. STATEMENT OF THE CASE

Twenty-nine years old at the time of sentencing, Jeremiah Smith is the youngest person to be sentenced to life without the possibility of parole under the POAA in the last four years.¹ He is one of 18 African American men to receive a POAA life sentence in that same time frame, constituting 38% of all 47 POAA life sentences handed down.²

¹ See Caseload Forecast Council, *Statistical Summary of Adult Felony Sentencing*, Fiscal Years 2017-2020, available online at https://www.cfc.wa.gov/CriminalJustice_ADU_SEN.htm (last visited Feb. 22, 2021) and attached in pertinent part at Appendix B. Detailed offender information is not available in the statistical reports before 2017.

² *Id.* Black Americans make up about 4.4% of Washington's total population. See U.S. Census Bureau, QuickFacts: Washington, available online at <http://www.census.gov/quickfacts/fact/table/WA/RHI225219>, last visited March 3, 2021. By contrast, African Americans received 13 and 12.6% of all felony sentences, as well as 13% and 20% of all first degree murder sentences, in 2018 and 2019 respectively. Caseload Forecast Council, *Adult General Disproportionality Report* (Dec. 2018 and Dec. 2019) at pp. 9, 16 (attached in pertinent part as Appendices C and D).

Smith received his life sentence as the result of convictions for first degree murder, first degree assault, and first degree burglary. CP 503-07. His life sentence was predicated upon his prior conviction in adult court for first degree robbery, which he committed at age 17, as well as subsequent most serious offenses committed at age 18. CP 506. He was 25 years old at the time of the crimes for which he was convicted. CP 1.

At sentencing, Smith argued for mitigation based upon his age and the circumstances of his youth and reserved arguments on the constitutionality of his sentence for appeal. RP 1055-57. The trial court concluded that it had no discretion to deviate from a mandatory life without parole sentence. VI RP (Kerbs) 1052-53, 1060 (“[T]here’s only one thing the Court can do at sentencing.”), 1060-61 (“[Y]ou do have sufficient convictions in your history to make you a persistent offender. That means . . . the Court is required to impose a sentence of life imprisonment without the possibility of any type of parole.”).

On appeal, Smith contended that his sentence violated the Eighth Amendment and article I, section 14 of the Washington

Constitution, under both the categorical and individual tests, because it required a life without parole sentence as the result of conduct committed while a juvenile and because he was precluded under the POAA from receiving the individualized consideration provided for in *O'Dell*. The Court of Appeals concluded that any error was not manifest in the absence of guidance from this Court on the question whether it is unconstitutionally cruel to consider strike offenses committed as a juvenile and requested that the Court “directly address this important constitutional issue.” *Opinion*, at 21-22. It denied Smith’s motion for reconsideration on April 6, 2021.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Review should be granted under RAP 13.4(b)(3) and (4) because the case implicates significant constitutional questions concerning the constitutionality of life without parole sentences under the Persistent Offender Accountability Act (POAA). Smith contends that his POAA sentence is unconstitutionally and disproportionately cruel because (1) it is predicated upon an adult conviction for a crime committed as a minor, which is categorically less blameworthy than comparable offenses committed by fully

formed adults; (2) it precludes him from receiving individualized consideration at sentencing even though he was only 25 years old when he committed the current crime; and (3) the POAA is enforced in a racially disparate and disproportionately harsh manner, rendering Smith's sentence systemically unfair.

Under both the categorical analysis adopted by this Court in *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018) and the individual proportionality test described in *State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980), Smith's sentence falls short of the standards established by the Eighth Amendment and article 1, section 14 and therefore presents significant questions of constitutional magnitude. Furthermore, Smith's challenge reflects widespread public concerns about the effects of mass incarceration, particularly upon impoverished and minority communities. Consequently, this Court's examination of the constitutional limits of the POAA would be of significant public interest.

A. Because the juvenile strike is categorically less blameworthy than adult criminal behavior, it is disproportionate to predicate the most severe sanction Washington allows on juvenile conduct.

Recidivist sentencing schemes such as the POAA are limited by considerations of proportionality, considering the nature of the offense, the legislative purpose behind the statute, the punishments meted out in other jurisdictions for the same crime, and punishments meted out in Washington for other crimes. *State v. Witherspoon*, 180 Wn.2d 875, 887, 329 P.3d 888 (2014) (citing *Fain*, 94 Wn.2d at 397). Sentences must be proportionate to both the offense and the offender. *Miller v. Alabama*, 567 U.S. 460, 469, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). Accordingly, this Court has consistently recognized that what is proportionate for a fully-formed adult offender may not be proportionate for a child or a young adult due to the inherent characteristics of youth.

For example, in *Bassett*, this Court held that article I, section 14 categorically prohibited life without parole sentences for juveniles convicted of aggravated murder. 192 Wn.2d at 91. The

Bassett Court relied upon the now well-recognized scientific literature establishing that humans in development experience transient rashness, proclivity for risk, inability to assess consequences, undeveloped sense of responsibility, susceptibility to peer pressure and other outside pressure, and unfixed character. 192 Wn.2d at 87 (citing *Miller*, 567 U.S. at 472; *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); *Roper v. Simmons*, 543 U.S. 551, 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)). For these same reasons, in *State v. Houston-Sconiers*, 188 Wn.2d 1, 21, 391 P.3d 409 (2017), and *State v. Gilbert*, 193 Wn.2d 169, 175, 438 P.3d 133 (2019), this Court has concluded that sentencing court must always have discretion to consider the mitigating factors of youthfulness and, when appropriate, impose exceptional sentences upon juvenile offenders “regardless of any sentencing provision to the contrary.” These cases recognize as a constitutionally-grounded principle that juvenile misconduct carries less blameworthiness than the same behavior committed by fully-formed adults. *See, e.g., Roper*, 543 U.S. at 570 (describing reasons

that juveniles have greater potential for reform and redemption as they mature).

The categorically diminished culpability of youthfulness undermines the rationale for predicating a mandatory life without parole sentence upon juvenile criminality to the same extent as repeated adult criminality. Mandatory life sentences for recidivists are justified “not merely on that person’s most recent offense but also on the propensities he has demonstrated over a period of time during which he has been convicted of and sentenced for other crimes.” *Rummel v. Estelle*, 445 U.S. 263, 284-85, 100 S. Ct. 1133, 63 L.Ed.2d 382 (1980). Consequently, courts evaluating recidivist sentences consistently consider the proportionality of the sentence to not only the current crime, but to the past qualifying crimes as well. *See, e.g., Fain*, 94 Wn.2d at 402 (“[W]e believe Fain’s sentence to be entirely disproportionate to the seriousness of his crimes.”); *State v. Manussier*, 129 Wn.2d 652, 677, 921 P.2d 473 (1996) (“Each of the offenses underlying his conviction as a “persistent offender” is robbery.”); *Witherspoon*, 180 Wn.2d at 889, 890 (“Witherspoon’s earlier offenses were for first degree burglary and residential

burglary with a firearm . . . Witherspoon was an adult when he committed all three of his strike offenses.”); *Rummel*, 445 U.S. at 284 (punishment is “based not merely on that person’s most recent offense but also on the propensities he has demonstrated over a period of time.”). But under the developmental jurisprudence discussed in *Bassett*, juvenile crimes are a poor measure of propensities for any particular defendant. Consequently, the inference of incorrigibility demonstrated over time cannot be strongly drawn on the basis of juvenile mistakes.

This Court should grant review to apply its article I, section 14 jurisprudence of youthfulness to a mandatory life without parole sentence premised upon a crime committed as a juvenile. Whether the categorical or individualized proportionality tests preclude imposing a mandatory life without parole sentence due to predicate juvenile strikes is a significant question of constitutional law under the Eighth Amendment and article I, section 14. Accordingly, review should be granted under RAP 13.4(b)(3).

B. The POAA falls short of article I, section 14 standards applicable to offenders who are over 18 but still developing, by denying them individualized consideration of mitigating circumstances.

This Court’s jurisprudence of youthfulness further acknowledges that the constitutionally-significant developmental characteristics recognized in *Graham, Roper, Miller*, and their progeny do not automatically terminate on a person’s 18th birthday. In *State v. O’Dell*, 183 Wn.2d 680, 691-92, 358 P.3d 359 (2015), and more recently in *In re Monschke*, ___ Wn.2d ___, 482 P.2d 276, 285 (2021),³ this Court relied upon the neuroscientific literature to recognize that full maturity often does not solidify until well into a person’s 20s. Consequently, youthfulness implicates sentencing practices applicable not only to individuals who are legally juveniles at the time of their offenses, but also those who are still youthful and developing. See *O’Dell*, 183 Wn.2d at 695 (“[W]e know know that age may well mitigate a defendant’s culpability, even if that defendant is over the age of 18.”); *Monschke*, 482 P.3d at 286

³ *Monschke* was decided after Mr. Smith’s case was briefed and argued.

("[W]e deem these objective scientific differences between 18- to 20-year-olds [covering the ages of the two petitioners in this case] on the one hand, and persons with fully developed brains on the other hand, to be constitutionally significant under article I, section 14.").

Contrary to *O'Dell* and *Monschke*, the POAA as written and as applied by the trial court in this case eliminates any discretion on the part of the sentencing judge to consider the youthfulness of the defendant, at the time of either the current or the prior strike offenses, in evaluating the defendant's moral culpability and imposing a proportionate sentence. Life without parole is now the harshest penalty available under Washington law. *See generally State v. Gregory*, 195 Wn.2d 1, 427 P.3d 621 (2018) (abolishing the death penalty). Yet, while this Court's article I, section 14 jurisprudence plainly acknowledges the significance of developmental immaturity, the POAA mandates the harshest and most permanent penalty without individualized regard for the characteristics of youth that may ameliorate a 25-year-old's culpability.

Whether a mandatory life without parole sentence can be imposed on a 25-year-old offender presents a significant question of constitutional law in light of the principles articulated in *O'Dell* and *Monschke*. Review is appropriate and should be granted under RAP 13.4(b)(3).

C. As applied, Washington's POAA scheme is among the most punitive in the nation and is out of alignment with the emerging nationwide trend against imposing lengthy sentences based on juvenile misconduct.

Review is also appropriate to consider the proportionality of mandatory life without parole sentences under Washington's POAA relative to the practices of other states. In considering whether article I, section 14 principles categorically bar a class of punishments, the court both considers whether there is an emerging national consensus and also exercises its independent judgment on the question. Similarly, the punishments meted out in other jurisdictions is one of the four factors considered in an "as-applied" proportionality challenge. *Fain*, 94 Wn.2d at 397.

Table 1, appended hereto as Appendix F, demonstrates the harshness of Washington's POAA, as well as Smith's mandatory life without parole sentence generally, in comparison to other states. A life without parole sentence would only be imposed in 17 states besides Washington; in 32 others, Smith would receive a fixed sentence or an opportunity for release considering his crime and his history. *Appendix F*. However, in only seven of those states – Georgia, Massachusetts, Mississippi, North Carolina, South Carolina, Wisconsin, and Wyoming – would a life without parole sentence result from the state's recidivist sentencing scheme; in the remaining 10 states, mandatory life without parole is the penalty for a felony murder conviction. *Id.* Consequently, Washington's POAA is one of the eight harshest recidivist sentencing schemes in the country and results in a vastly disproportionate outcome relative to other states.

Furthermore, an increasing number of states preclude the use of crimes committed before adulthood as strikes. Kentucky, New Mexico, North Dakota, New Jersey, and Wyoming all expressly require crimes to be committed on or before the offender's 18th

birthday to trigger recidivist sentences. *Id.* at p. 10. Recently, Illinois amended its recidivist law to provide that to count as a strike offense, the crimes must have been committed at age 21 or older; the revision will become effective on July 1 of this year. *Id.* This year, California has also introduced a bill that would remove juvenile adjudications from consideration as strikes. *See* Cal. A.B. No. 1127 (introduced Feb. 18, 2021).⁴

For purposes of comparative proportionality, the absolute number of states adopting a particular practice is less important than the direction of the trend. *Moretti*, 193 Wn.2d at 821. The national consensus cuts against mandatory life without parole sentencing for recidivist punishments generally, and the trend is moving away from predicating recidivist punishments – and the harshest punishments generally – on juvenile conduct. Review should be granted to consider whether Washington’s POAA is unconstitutionally

⁴ *Available online at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1127 (last visited May 5, 2021).

disproportionate in light of the sentencing practices that would apply to Mr. Smith's case in other jurisdictions.

D. As applied, Washington's POAA scheme is gravely disproportionate in its effect on racial minorities.

In *Gregory*, this Court took judicial notice of “implicit and overt racial bias against black defendants in this state.” 192 Wn.2d at 22. Historically, only a small percentage of the disproportionality can be accounted for by differences in rates of arrest; by contrast, a large number of facially neutral policies have racially disparate effects throughout the criminal justice process, from stop and search to pretrial detention to sentencing.⁵

In at least the past two years, life without parole sentences under the POAA have fallen especially hard on black men.⁶ Because these sentences can be predicated on youthful convictions,

⁵ Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington's Criminal Justice System* (2011) at pp. 1-2, available online at https://law.seattleu.edu/Documents/korematsu/race%20and%20criminal%20justice/preliminary%20report_report_march_1_2011_public_cover.pdf (last visited March 3, 2021)

⁶ See *supra*, n. 2.

they build upon and perpetuate disparities in detaining and incarcerating black youths; in Washington, black youths are more than five times more likely to be placed in an institution compared to white youths.⁷ In recent years, black men have received 38% of all POAA sentences despite comprising only 4-5% of Washington's population.⁸

As noted in the concurring opinion in *Moretti*, “[t]hose sentenced to life without a possibility of parole are treated as irredeemable and incapable of rehabilitation.” 193 Wn.2d at 837 (Yu, J., concurring). That Washington's courts are condemning as irredeemable and withholding mercy from its black men to a greater degree than other criminal defendants is deeply troubling, particularly to the extent that these practices “reflect our values and beliefs about punishment and our criminal justice system.” *Id.* at 840.

⁷ The Sentencing Project, *Fact Sheet: Black Disparities in Youth Incarceration* (2017) at p. 1, available online at <https://www.sentencingproject.org/wp-content/uploads/2017/09/Black-Disparities-in-Youth-Incarceration.pdf> (last visited March 3, 2021) (attached as Appendix E).

⁸ *See supra*, n. 2.

Penalties imposed in an arbitrary and racially biased manner are unconstitutional under article I, section 14. *See Gregory*, 192 Wn.2d at 5. Here, that the burden of life without parole sentences falls disproportionately on black communities belies a lack of fundamental fairness and offends basic standards of decency. *See id.* at 24.

A statutory scheme that disproportionately and systematically robs black men of their hope is the height of cruelty and cannot be sanctioned by article I, section 14 or the Eighth Amendment. This Court should accept review under RAP 13.4(b)(3) and (4) to consider whether the POAA, as applied, serves legitimate penological goals in light of the heavy burdens it imposes on black communities in Washington.

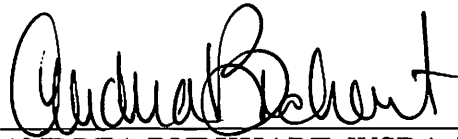
VI. CONCLUSION

For the foregoing reasons, the petition for review should be granted under RAP 13.4(b)(3) and (4) and this Court should enter a ruling that Smith's life without parole sentence is unconstitutional

under the Eighth Amendment and article I, section 14 of the
Washington constitution.

RESPECTFULLY SUBMITTED this 6 day of May,
2021.

TWO ARROWS, PLLC

A handwritten signature in black ink, appearing to read "Andrea Burkhart", written over a horizontal line.

ANDREA BURKHART, WSBA #38519
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Petition for Review upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:


Jeremiah Smith, DOC #317655
Washington State Penitentiary
1313 N. 13th Ave.
Walla Walla, WA 99362

And by e-mail through the Court of Appeals' electronic filing portal to the following:

Larry D. Steinmetz
Gretchen Eileen Verhoef
Spokane County Prosecutor's Office
SCPAAppeals@spokanecounty.org

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 6 day of May, 2021 in Kennewick, Washington.


Andrea Burkhart

APPENDIX A

FILED
FEBRUARY 16, 2021
In the Office of the Clerk of Court
WA State Court of Appeals Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	
)	No. 36213-2-III
Respondent,)	
)	
v.)	
)	UNPUBLISHED OPINION
JEREMIAH A. SMITH also known as)	
GLENN A. AKERS,)	
)	
Appellant.)	

FEARING, J. — Jeremiah A. Smith, also known as Glenn Akers, challenges two of his convictions and his sentence as a persistent offender. Because sufficient evidence and sufficient findings of fact after a bench trial support his convictions, we affirm his convictions for first degree burglary and first degree murder. Because he did not challenge the constitutionality of the persistent offender statute before the sentencing court and because he does not show manifest constitutional error, we also affirm his sentence.

FACTS

The trial court convicted Glenn Akers of first degree murder as a result of his shooting Cesar Medina at Northwest Accessories, a Spokane business, shortly after midnight on May 26, 2015. The State did not rest the murder in the first degree charge on an allegation of premeditated killing, but on an allegation that Akers entered the business premises without permission and with the intent to commit a crime. In other words, the State alleged the predicate crime of first degree burglary. On appeal, Akers challenges the trial court's conclusion that he entered the business premises without permission or remained on the premises without permission, not on whether he shot Medina. We focus then on his relationship and his intermittent girlfriend Vatsana Muongkoth's connection to the premises of Northwest Accessories, not on the shooting.

During the early morning of May 26, 2015, Glenn Akers entered Northwest Accessories with Vatsana Muongkoth. Akers met Muongkoth in 2008. They dated until 2013, although they did not physically see one another after 2009 due to their respective imprisonments for conspiracy to commit first degree robbery. In 2013, Muongkoth began intimately socializing with Ruben Marmolejo, a married man. Marmolejo was the uncle of victim Cesar Medina. Medina was 17 years old at the time of his death.

Ruben Flores, a colleague of Ruben Marmolejo since 2012, operated Northwest Accessories along North Monroe Street, in Spokane. Northwest Accessories marketed

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

pipes, glassware, apparel, and synthetic marijuana. Within Northwest Accessories' building, Anthony Baumgarden operated a separate tattoo business. Baumgarden's tattoo studio was located in the northeast side of the building. Surveillance cameras captured activities in portions of Northwest Accessories' premises, and the trial court viewed videotape of Glenn Akers' and Vatsana Muongkoth's entrance and movements inside the shop on May 26, 2015.

Ruben Flores poorly managed Northwest Accessories. He never formally hired employees. Flores instead permitted friends to congregate at the shop and assist him with running the business. Flores, however, only identified Ruben Marmolejo as one who assisted him at the business. Marmolejo helped Flores to select pipes and bongs for marketing and to display the paraphernalia.

The trial court heard conflicting testimony concerning Vatsana Muongkoth's association with Northwest Accessories. During direct examination, Muongkoth claimed she was both an employee and business partner at Northwest Accessories. Muongkoth testified that she sometimes collected money after the business closed and performed bookkeeping. She delivered the money to Ruben Flores to deposit. She also ordered inventory. She averred that she had a key to the business. According to Muongkoth, she could enter and leave the business premises whenever she wished.

When asked on cross-examination as to whether she was employed at Northwest Accessories, Vatsana Muongkoth answered: "I don't—I was involved." Report of

No. 36213-2-III
State v. Jeremiah A. Smith aka Glenn Akers

Proceedings (RP) (May 29, 2018) at 755. She testified that she received no paycheck. When asked if she was “paid under the table,” she answered: “‘Yes, *I guess.*’” RP (May 29, 2018) at 756 (emphasis added). Muongkhoth had no agreement with Ruben Flores to share the business income.

During the same time that Vatsana Muongkhoth allegedly worked at Northwest Accessories, she worked, at least during the spring and summer, at a golf course. She conceded that she did not need employment at Northwest Accessories. Muongkhoth did not testify to any specific income she received from Northwest Accessories.

Anthony Baumgarden, the tattoo parlor operator, paid thirty percent of his income to Ruben Marmolejo as rent. Baumgarden testified he would leave the payment in an envelope in his room or in a back office. According to Baumgarden, Vatsana Muongkhoth sometimes retrieved the envelope.

Ruben Marmolejo, Vatsana Muongkhoth’s primary boyfriend, and Ruben Flores, owner of Northwest Accessories, testified that Muongkhoth performed no services for Northwest Accessories. According to Marmolejo, Muongkhoth did not handle books or records of the business. Marmolejo denied that Muongkhoth had permission to be present at Northwest Accessories without his presence.

Ruben Flores insisted that Vatsana Muongkhoth never assisted him in the operation of Northwest Accessories. Muongkhoth did not keep the business’s books. Flores denied that Muongkhoth’s boyfriend, Ruben Marmolejo, was his silent partner.

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

Ruben Flores testified that only he could grant someone license to enter Northwest Accessories when the shop was closed. Even friends needed his permission to enter the building after hours.

Ruben Flores welcomed Vatsana Muongkoth to Northwest Accessories' premises on occasion, even after business hours. Sometimes she came without the presence of Ruben Marmolejo, although she typically came to visit Marmolejo. Flores never told Muongkoth she was not welcome at the shop. When stating the obvious, Flores declared that he would not allow Muongkoth inside the premises in order to rob Northwest Accessories.

In the weeks preceding May 26, 2015, the date of the slaying, Glenn Akers and Vatsana Muongkoth reignited their relationship. On the night of May 24, they bedded together in a hotel. During trial, Muongkoth first denied having any intimate reuniting with Akers and refuted having gone to a hotel room with Akers during the week leading to the death of Cesar Medina. When confronted during questioning with a text wherein she asked Akers to spend the night with her on May 24, Muongkoth first stated she could not remember having done so. After being challenged with a text that read: ““Will you get a room, baby,’” she conceded that Akers spent the night with her at her invitation and that she did not invite Akers to her home instead of a hotel because Ruben Marmolejo might learn of the assignation. RP (May 29, 2018) at 743-44.

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

On the morning of May 25, 2015, Glenn Akers discovered a duffel bag, containing firearms and cocaine, inside Vatsana Muongkoth's Suburban. Akers surmised that the contraband belonged to Ruben Marmolejo.

On the night of May 25, 2015, Cesar Medina, Ruben Flores, Ruben Marmolejo, Anthony Baumgarten, Shane Zornes, and Juan Cervantes congregated at Northwest Accessories. The gentlemen drank and smoked marijuana. During this time, Vatsana Muongkoth and Marmolejo argued via text messages regarding Marmolejo's failure to leave his wife and Muongkoth's sexual relationship with Glenn Akers. Marmolejo sent threatening messages to Muongkoth that included: "Watch bitch! You fucked up bad over nothing over an old pic! U gonna see the worst of me I hope mommy and daddy have insurance." "[T]he gallo is in full affect on my hood." Clerk's Papers (CP) at 403. The word "gallo" is Spanish for Rooster, Ruben Marmolejo's nickname. Muongkoth returned texts to Marmolejo declaring: "I fucking hate you." "I hate you so much, I'm going to kill you." "I hate you so fucking much." CP at 403. During one or more of the evening text messages, Ruben Marmolejo and Vatsana Muongkoth agreed to meet at a gas station for the purpose of Muongkoth returning the duffel bag to Marmolejo.

On May 25, at 9:30 p.m., Vatsana Muongkoth traveled to Northwest Accessories, where she smashed, with a hammer, the back window of Ruben Marmolejo's BMW and pounded dents into the car's panel. Occupants of Northwest Accessories, including

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

Marmolejo, heard the clobbering of the car. These occupants opened an exit door and saw Muongkhoth run to her Suburban and flee in the car. After the BMW assault, Ruben Flores and Shane Zornes left Northwest Accessories in Marmolejo's BMW to purchase tattoo supplies for Anthony Baumgarden. Flores closed the head shop that night between 9 and 10 p.m. He believed he locked the outside doors.

At 10 p.m. on May 25, Vatsana Muongkhoth called Glenn Akers in a panic. She requested that Akers retrieve her from the residence of Brittany Verzal, a friend. She fretted that Ruben Marmolejo would kill Akers, her dogs, and her daughter and burn down her family's restaurant. She informed Akers that, in an effort to sever her relationship with Marmolejo, she wanted to return his duffle bag of contraband found in her car that morning. Akers traveled to Muongkhoth's friend's abode, and the two left the residence in the friend's vehicle.

During her trial testimony, Vatsana Muongkhoth denied remembering mingling with Glenn Akers on the evening of May 25. When shown a photograph of Akers with her taken on May 25, she conceded she had been with Akers.

Glenn Akers and Vatsana Muongkhoth drove to the prearranged rendezvous site of the gasoline station. Ruben Marmolejo, however, did not appear at the station. Marmolejo later texted Muongkhoth to meet him at a second locale, but he did not appear at the alternative location either. During their travels, Akers and Muongkhoth texted one another, despite sitting in the same car, because of the playing of loud music. At 11:23

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

p.m., Akers texted to Muongkoth: “‘lets [sic] go to the [Northwest Accessories] shop then.’” CP at 406. At 11:23, Muongkoth replied: “‘ok.’” CP at 406. Neither sent a message from 11:23 p.m. until 12:22 a.m. on May 26.

Glenn Akers and Vatsana Muongkoth continued their odyssey in Brittany Verzal’s conveyance to Northwest Accessories. En route, Akers and Muongkoth passed Ruben Flores and Shane Zornes, in Ruben Marmolejo’s BMW, as the BMW approached Northwest Accessories. Akers and Muongkoth circled the block, as Flores and Zornes parked the BMW in the business’ parking lot. Akers and Muongkoth then parked near Northwest Accessories away from the view of those inside the shop. At that moment, Anthony Baumgarden administered a tattoo to Marmolejo inside the tattoo parlor.

During trial, Glenn Akers testified that, after the parking of the car, Vatsana Muongkoth suddenly exited the vehicle with a firearm, and, from necessity, he snatched a firearm from Ruben Marmolejo’s duffel bag and followed with the goal of retrieving Muongkoth. Video surveillance shows that Akers and Muongkoth entered the west entrance of Northwest Accessories. Video footage also shows darting movements, inside the building, thereafter of Akers, Muongkoth, Ruben Flores, Cesar Medina, and Anthony Baumgarden. In short, Akers drew a gun, accosted Medina who was casually using a computer, and compelled him to lay prone on the sales floor while Akers pointed a gun at the boy’s head. Baumgarden left his studio when he heard a commotion. From a hallway, Baumgarden threw a metal propane bottle at Akers in an attempt to free Medina

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

from the danger of Akers. In response, Akers fired one shot down the hallway. The round struck the south wall of the hallway, exited the building, and shattered an exterior light fixture. Baumgarden retreated to the basement.

Glenn Akers left Cesar Medina lying on the floor, jumped over a display case in the sales area, and retreated towards a bathroom, where Vatsana Muongkoth was present. Medina stood and walked east down a small hallway. Akers suddenly pivoted and walked toward the hallway with his gun raised. The video does not capture Akers' movement for several seconds. The State contends that, during this brief span, Akers shot Medina. The security camera thereafter shows Akers and Muongkoth exiting the building through the bathroom door, which provided access to the outdoors.

Glenn Akers testified that, while Cesar Medina walked the hallway, Medina reached for his waistband, but laid on the floor when Akers drew his gun. According to Akers, someone fired multiple shots at him and he fled in response. Akers denied that he intentionally fired his gun, but acknowledged that his gun discharged as he ran from the gunfire. The gunshot killed Medina.

During her trial appearance, Vatsana Muongkoth testified that she did not go with Glenn Akers to Northwest Accessories early on the morning of May 26, nor was she present at Northwest Accessories at the time of the shooting. She denied entering Northwest Accessories that night despite video showing her presence in the shop and despite a return message to Akers reading: “‘I want to get his [Ruben Marmolejo’s] ass

No. 36213-2-III
State v. Jeremiah A. Smith aka Glenn Akers

at the shop cause his shit there.’” RP (May 29, 2018) at 769.

PROCEDURE

The State of Washington charged Glenn Akers with murder in the first degree, burglary in the first degree, assault of Anthony Baumgarden in the first degree, conspiracy to commit robbery in the first degree, unlawful possession of a firearm in the first degree, and tampering with a witness. Akers waived his right to a jury trial and proceeded to a bench trial. He stipulated to knowingly possessing a firearm

The trial court found Akers guilty of burglary in the first degree and felony murder in the first degree predicated on the burglary conviction. The trial court also found Akers guilty of assault in the first degree and unlawfully possessing a firearm in the first degree. The court acquitted Akers of conspiracy to commit robbery in the first degree and tampering with a witness.

The trial court entered extensive findings of fact and conclusions of law. Those findings relevant to this appeal include:

20. Ms. Muongkhoth claimed she kept the books, ordered inventory, and deposited revenue for the business. She asserts that she had full access to the shop, including possessing keys which allowed her access at any given time. Mr. Flores minimized her involvement with the business as well as her access to the shop.

....

39. Upon parking, Ms. Muongkhoth and Mr. Akers immediately exited the car leaving the headlights illuminated and Mr. Marmolejo’s [sic] contraband inside. While armed, they both dashed towards the west entrance of Northwest Accessories.

....

41. Video Surveillance showed Mr. Akers and Ms. Muongkoth enter Northwest Accessories through the west door. . . .

. . . .

89. This [Glenn Akers'] testimony is inconsistent with most of the facts in this case. The defense claims that Ms. Muongkoth was fearful of Mr. Marmolejo, that she was crying and upset earlier in the evening, that Mr. Marmolejo was an extremely violent person with access to firearms, that the others located inside Northwest Accessories were heavily armed, that Mr. Marmolejo was taking threats on Ms. Muongkoth's life and against her parents' restaurant, and that Ms. Muongkoth had earlier vandalized Mr. Marmolejo's BMW and that those at Northwest Accessories were laying in wait and ready to ambush them. If that were the case, it defies prudence to believe Mr. Akers and Ms. Muongkoth would travel to Northwest Accessories to drop off Mr. Marmolejo's drugs and guns.

90. Even if that truly was their intent, it seems they could have simply dropped the duffle bag off on the back steps and sent Mr. Marmolejo a text message. Rather, upon arriving at Northwest Accessories, and in defiance of their stated plan, Ms. Muongkoth immediately grabbed a gun, hopped out of the car and ran towards Northwest Accessories. According to Mr. Akers, his only choice was to acquire a gun out of Mr. Marmolejo's [sic] duffle bag and attempt to catch Ms. Muongkoth.

. . . .

107. In addition to giving little weight to Ms. Stuhmiller's [Glenn Akers' principal girlfriend with whom he lived] testimony, the Court is also skeptical of Ms. Muongkoth's testimony. It seems she was continually impeaching herself before ever being cross-examined. She indicated she hadn't seen Mr. Akers for at least a week prior to May 25, 2015. She then conceded she was with him from the evening of May 24 through the early hours of May 26, 2015, with only a short period of being apart. She also testified that she and Mr. Akers were together while sending text messages to one another; this was due to them being together in her car but unable to speak to one another due to the radio being turned up too loudly.

CP at 402-11.

The trial court entered the following conclusions of law that relate to Glenn Akers' unlawful entry and remaining within Northwest Accessories' shop:

5. The Court concludes Ms. Muongkoth lacked the authority to either enter and/or remain in Northwest Accessories or to grant Mr. Akers permission to enter and/or remaining within Northwest Accessories. Even if the Court were to conclude that Mr. Flores granted Ms. Muongkoth license to enter Northwest Accessories at will and invite in others, his authorization may be expressly or implicitly limited in scope. An invitee may exceed the scope of an invitation and, at that point, have entered or remained within a building unlawfully. *State v. Collins*, 110 Wn.2d 253 [751 P.3d 837 (1988)].

6. Certainly, any alleged license granted by Mr. Flores to Ms. Muongkoth to enter or remain within Northwest Accessories or permit her to invite in others was not so broad as to allow she and Mr. Akers to race up to the building during the hours of darkness while armed with firearms, enter the building, assault occupants within the building, and discharge a firearm.

7. Assuming Ms. Muongkoth had license to enter or remain within Northwest Accessories and invite in Mr. Akers, based upon the evidence presented, the scope of her perceived license and Mr. Akers' entry and remaining was exceeded; therefore, the Court finds beyond a reasonable doubt that, on or about May 26, 2015, Mr. Akers unlawfully entered or remained within Northwest Accessories.

....

13. Here, after waiting for Mr. Marmolejo's BMW to return, Mr. Akers entered Northwest Accessories. Under the cover of darkness, and while armed with a firearm, Mr. Akers entered Northwest Accessories and promptly held Mr. Medina at gunpoint, which constitutes an assault. . . .

....

15. The State has proven beyond a reasonable doubt that, on or about May 26, 2015, Mr. Akers entered or remained unlawfully in a building, that being Northwest Accessories; that the entering or remaining was with the intent to commit a crime against a person or property therein; that in so entering or while in the building or immediate flight from the building Mr. Akers, or an accomplice in the crime charged, was armed with a deadly weapon; and that these acts occurred at 3400 North Monroe, which is located in the city of Spokane and state of Washington; therefore, the Court finds Mr. Akers guilty of the crime of first-degree burglary as charged in Count II.

CP at 412-13.

At sentencing, the trial court found Glenn Akers to be a persistent offender and sentenced him to life without the possibility of parole. To make this determination, the court considered Glenn Akers' past criminal convictions, including: (1) assault in the second degree, committed in 2008; (2) burglary in the first degree, committed in 2009; (3) conspiracy to commit robbery in the first degree, committed in 2009; and (4) robbery in the first degree, committed in 2007.

Glenn Akers, born December 22, 1989, committed the 2007 robbery on July 26, 2007, at age 17. Akers was age 25 at the time of the murder of Cesar Medina. During sentencing, Akers did not challenge the constitutionality of the trial court's use of his juvenile conviction in calculating his number of convictions.

LAW AND ANALYSIS

Glenn Akers challenges his convictions for first degree murder and first degree burglary, but not his other two convictions. He also challenges his sentence as a persistent offender. We address the assignments of error in such order.

Convictions

Glenn Akers contends that the State of Washington presented insufficient evidence to convict him of first degree burglary because the State failed to prove he entered the premises of Northwest Accessories without permission or to remain on the premises

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

without permission. In turn, he contends that, since first degree burglary served as a predicate crime for his first degree felony murder conviction, the State also presented insufficient evidence to convict him of this higher crime. He makes no further argument to reverse his murder conviction. Thus, we focus on the burglary conviction.

A person commits first degree murder when, among other conduct, he or she commits the crime of burglary in the first degree and, in the course of such crime, he or she causes the death of a person other than one of the participants. RCW 9A.32.030(c).

A defendant is guilty of first degree burglary:

if, with intent to commit a crime against a person or property therein, *he or she enters or remains unlawfully in a building* and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

RCW 9A.52.020(1) (emphasis added). “A person ‘enters or remains unlawfully’ in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.” RCW 9A.52.010(2).

Glenn Akers argues that he did not unlawfully enter or remain inside Northwest Accessories’ shop because he accompanied Vatsana Muongkoth, who had an unrestricted license to enter the business and who granted him access to the building. She could enter whenever she pleased and with whomever she pleased. According to Akers, insufficient evidence supported the trial court’s conclusion that Muongkoth held limited authority to enter the shop. He further argues that the court’s ruling that Akers and

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

Muongkhoth exceeded the limited invitation to enter by sneaking into the building and by Akers' immediately drawing of a gun would turn every crime committed by a non-owner inside an entered building into a burglary.

The State denies that Ruben Flores granted Vatsana Muongkhoth permission to enter or remain within Northwest Accessories after business hours. The State adds that, even if the trial court concluded that Flores granted Muongkhoth license to enter Northwest Accessories and invite others in the middle of the night, Flores implicitly or expressly limited the scope of the authorization. She lacked a license to enter the premises and to allow someone to accompany her into the premises for the purpose of threatening the safety or life of others.

We question whether Vatsana Muongkhoth, assuming she possessed a license to enter the premises of Northwest Accessories beyond the license of any customer who shopped at the business, had authority to allow a third party, such as Glenn Akers, to enter the building with her. But we do not address this question. We also do not address whether Akers exceeded the limits of any license granted Muongkhoth by reason of his intent to wield a gun. We rest our decision on the trial court's finding and conclusion that both Vatsana Muongkhoth and Glenn Akers lacked permission to enter Northwest Accessories' shop after midnight.

Glenn Akers cites the principle that, even when one enters a building with a nefarious intent, the person does not commit burglary if he entered with permission.

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

State v. Irby, 187 Wn. App. 183, 199, 347 P.3d 1103 (2015). Another principle applies more directly to Akers' circumstances, however. A defendant's invitation to enter a building can be expressly or impliedly limited as to place or time. *State v. Thomson*, 71 Wn. App. 634, 638, 861 P.2d 492 (1993).

Glenn Akers accurately observes that the trial court entered no findings of fact concerning Vatsana Muongkoth's authority to enter Northwest Accessories. Instead, in finding of fact 20, the trial court merely reiterated the testimony of Muongkoth concerning her license to enter the building. Nevertheless, we conclude that conclusions of law 5 and 6 function in part as findings of fact that Muongkoth lacked authority to enter the business premises whenever she pleased and in particular had no license to enter in the middle of the night. In conclusions of law 5 and 6, the trial court concluded that Muongkoth either entered or remained in Northwest Accessories without permission and also lacked any authority to grant Glenn Akers to enter or remain inside the building.

We consider conclusions of law 5 and 6 to be both findings of fact and conclusions of law or mixed questions of law and fact, a phenomenon frequently recognized by Washington courts. *In re Marriage of Pennington*, 142 Wn.2d 592, 602-03, 14 P.3d 764 (2000); *Bill & Melinda Gates Foundation v. Pierce*, ___ Wn. App. 2d ___, ___, 475 P.3d 1011, 1016 (2020). The line between a finding of fact and a conclusion of law can be challenging to identify. *Leschi Improvement Council v. Washington State Highway Commission*, 84 Wn.2d 271, 282-84, 525 P.2d 774, 804 P.2d

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

1 (1974) (plurality opinion). A finding of fact is the assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect. *State v. Williams*, 96 Wn.2d 215, 220-21, 634 P.2d 868 (1981). If a statement carries legal implications, the validity of the statement is a conclusion of law. *Para-Medical Leasing, Inc. v. Hangen*, 48 Wn. App 389, 397, 739 P.2d 717 (1987). This court treats findings or conclusions for what they are, not how they are labeled. *Stastny v. Board of Trustees of Central Washington University*, 32 Wn. App. 239, 246, 647 P.2d 496 (1982). We review a finding of fact erroneously labeled as a conclusion of law as a finding of fact. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986); *Scott's Excavating Vancouver, LLC v. Winlock Properties, LLC*, 176 Wn. App. 335, 342, 308 P.3d 791 (2013).

Based on Washington precedent, we deem a method of analyzing the difference between a finding of fact and a conclusion of law is to ask how a layperson, uncorrupted by any legal training, would speak on the subject matter. On the occasion when the law and common parlance overlaps, a ruling by the trial court could be both a finding of fact and conclusion of law. In the circumstances of Glenn Akers' prosecution, a layperson would remark that Ruben Flores never permitted Vatsana Muongkoth to enter Northwest Accessories at any hour of the day or night with or without a friend. The law would comment that Glenn Akers lacked permission or a license, within the meaning of RCW 9A.52.020(1) and RCW 9A.52.010(2), such that he entered and remained in the

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

building unlawfully within the meaning of RCW 9A.52.020(1) when he entered on May 26, 2015.

When writing in conclusion of law 5 that Vatsana Muongkoth entered or remained in Northwest Accessories without permission and lacked any authority to grant Glenn Akers to enter, the trial court declared in essence, as a finding of fact, that Ruben Flores, the sole owner of Northwest Accessories, never permitted Muongkoth to enter the building whenever she wished. The trial court also found that Flores never informed Muongkoth that she possessed authority to invite others onto the property. Finally, by reason of conclusion of law 5, the trial court in essence found that, even if Flores granted such permission to Muongkoth, she and Akers exceeded the permission by surreptitiously entering after midnight.

Glenn Akers' challenge to the sufficiency of the evidence is more in the nature of a contention that the findings of fact do not support the conclusions of law that Glenn Akers lacked authority to enter Northwest Accessories. When we read conclusions of law 5 and 6 as, in part, findings of fact, this contention fails. In addition, ample evidence supports the findings found in the two conclusions of law.

When analyzing whether sufficient evidence supports a defendant's conviction, this court views the evidence in the light most favorable to the prosecution and determines whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt. *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014).

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

Following a bench trial, the appellate court limits its review to determining whether substantial evidence supports the findings of fact. *State v. Homan*, 181 Wn.2d at 105-06. Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. *State v. Homan*, 181 Wn.2d at 106.

We conclude that the overwhelming evidence supports the trial court's finding and conclusion of law that Glenn Akers lacked permission to enter and to remain inside Northwest Accessories' shop during the early morning of May 26, 2015. Ruben Flores testified that Vatsana Muongkoth never assisted in the business. Although he welcomed Muongkoth onto the premises, even sometimes after hours, Flores stated he reserved the right to deny even his friends entry, and no one testified that Flores authorized Muongkoth to enter the premises after midnight with or without a friend. Ruben Marmolejo testified that Muongkoth could not enter the premises as she saw fit.

Glenn Akers argues that the trial court did not resolve the factual dispute of whether Vatsana Muongkoth had a business interest in Northwest Accessories. Akers also contends that the court failed to resolve whether Vatsana Muongkoth possessed a key to the shop. In fact, Akers bases his argument that Muongkoth enjoyed an unlimited license to enter Northwest Accessories on the assumption that she possessed a key and maintained a business interest in the shop.

We conclude that the failure of the court to expressly find that Muongkoth possessed a business interest in the shop or to possess a key constitutes a negative finding

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

on the factual questions. The absence of a finding on a material issue is presumptively a negative finding entered against the party with the burden of proof. *State v. Budd*, 186 Wn. App. 184, 199, 347 P.3d 49 (2015), *aff'd*, 185 Wn.2d 566, 374 P.3d 137 (2016).

We note that the trial court, in finding of fact 20, set forth the allegations of Vatsana Muongkhoth concerning her permission to enter the building. But the court never adopted those allegations as findings. To the contrary, in finding of fact 107, the trial court found Muongkhoth to lack credibility and her own testimony thwarted her assertion of a business share and of possession of a key. We bestow deference to the trier of fact to evaluate the credibility of witnesses, to resolve conflicting testimony, and weigh the persuasiveness of evidence. *State v. Carver*, 113 Wn.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989).

Life without Parole Sentence

When sentencing Glenn Akers, the trial court sentenced Akers to life without the possibility of parole because of classifying him as a persistent offender under RCW 9.94A.030(37). The State of Washington and Akers agree that, to find Akers to be a persistent offender, the trial court counted a 2007 robbery in the first degree conviction. When Akers committed this 2007 offense, he was 17 years old, although the State tried him as an adult.

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

On appeal, Glenn Akers astutely contends that the trial court based his life sentence on a predicate of a juvenile offense in violation of the Eighth Amendment of the U.S. Constitution and article I, section 14 of the Washington State Constitution. Nevertheless, Akers did not, before the sentencing court, claim his sentence to be unconstitutional. Because he did not preserve any error before the trial court and because we find no manifest constitutional error, we decline to entertain the challenge to Akers' sentence.

RAP 2.5(a) declares:

The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: . . . (3) manifest error affecting a constitutional right.

To raise a manifest error on appeal, an appellant must demonstrate that the error is manifest and the error is truly of constitutional dimension. *State v. O'Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009). Manifest error is an “‘error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.’” *State v. O'Hara*, 167 Wn.2d at 100 n.1 (quoting BLACKS LAW DICTIONARY 622 (9th ed. 2009)).

The Washington State Supreme Court has not expressed an opinion on whether the State may apply the Persistent Offender Accountability Act (POOA), chapter 9.94A RCW, to an offender who committed a strike offense as a juvenile and was convicted in

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

adult court. In *State v. Moretti*, 193 Wn.2d 809, 821 n.5, 446 P.3d 609 (2019), the court recognized that many state courts have held that, when sentencing an adult recidivist, it is not cruel and unusual to consider strike offenses when the offender was a juvenile. The court cited *United States v. Hoffman*, 710 F.3d 1228, 1233 (11th Cir. 2013); *United States v. Mays*, 466 F.3d 335, 340 (5th Cir. 2006); *State v. Green*, 412 S.C. 65, 85-87, 770 S.E.2d 424 (Ct. App. 2015); *Counts v. State*, 2014 Wy 151, 338 P.3d 902 (Wyo. 2014). A different panel of this court rejected the argument that article I, section 14 categorically bars imposition of a sentence to life without possibility of parole on adult offenders who committed a predicate offense under the POAA as a youth. *State v. Teas*, 10 Wn. App. 2d. 111, 131, 447 P.3d 606 (2019), *review denied*, 195 Wn.2d 1008, 460 P.3d 182 (2020).

We encourage the Washington Supreme Court to directly address this important constitutional issue. Because the law does not clearly support Glenn Akers' position, we decline to do so for the first time on appeal.

CONCLUSION

We affirm Glenn Akers' convictions for first degree burglary and first degree murder and his sentence as a persistent offender.

No. 36213-2-III

State v. Jeremiah A. Smith aka Glenn Akers

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Fearing, J.
Fearing, J.

WE CONCUR:

Lawrence-Berrey, J.
Lawrence-Berrey, J.

Pennell, C.J.
Pennell, C.J.

APPENDIX B

**Table 14B. Details in Persistent Offenders' Sentences
Under the Persistent Offender Statue RCW 9.94A.030 (37)(a)(b)
Fiscal Year 2017**

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Fiscal Year 2017							
Clark							
** 16-1-01142-0 2017040486	Plea or Stipulated Findings & Conclusions	4/14/2017	RAPE OF A CHILD 1 >17 (POST 8/31/01) (.712) [Life]	Male	White	1/11/1979	38
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01)				
** 16-1-00035-5 2017040903	Jury Trial	4/25/2017	CHILD MOLEST 1 >17 (POST 8/31/01) (.712) [Life]	Male	White	9/25/1971	45
		Prior offense	INDECENT LIBERTIES WITH FORCE (7/90 - 7/26/97)				
		Prior offense	INDECENT LIBERTIES WITH FORCE (7/90 - 7/26/97)				
Cowlitz							
** 16-1-01267-9 2017020594	Jury Trial	2/14/2017	CHILD MOLEST 1 >17 (POST 8/31/01) (.712) [Life]	Male	White	3/25/1962	54
		Prior offense	RAPE OF A CHILD 1 >17 (POST 8/31/01) (.712)				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(37)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Fiscal Year 2017							
Grant							
15-1-00031-7	Jury Trial	9/28/2016	OVER 18- DELIVER CONTROLLED SUBSTANCE TO MINOR [Life] w/ Sexual Motivation	Male	Hispanic	7/16/1977	39
2016091148							
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ROBBERY 1				
King							
15-1-05809-2	Bench or Stipulated Trial	12/9/2016	VEHICULAR HOMICIDE - DRUNK (LEV 11. POST 06/07/2012) [Life]	Male	African American	2/17/1977	39
2016121382							
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2 [Attempt]				
		Prior offense	ASSAULT 2 (POST 7/1/88)				
** 14-1-01826-2	Jury Trial	1/13/2017	CHILD MOLEST 1 >17 (POST 8/31/01) (.712) [Life]	Male	White	11/8/1976	40
2017011736							
		Prior offense	RAPE OF A CHILD 1 (7/90 - 7/26/97)				
15-1-04203-0	Jury Trial	1/27/2017	MURDER 2 (POST 7/24/99) [Life]	Male	African American	12/19/1979	37
2017011763							
		Prior offense	ROBBERY 1 [Attempt]				
		Prior offense	ASSAULT 2 (POST 7/1/88) Non-Firearm DW				
		Prior offense	ROBBERY 2				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(37)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Fiscal Year 2017							
King							
15-1-03379-1	Jury Trial	4/28/2017	ASSAULT 2 (POST 7/1/88) [Life]	Male	African American	10/15/1960	56
2017041537							
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ASSAULT 2 (POST 7/1/88)				
15-1-06293-6	Jury Trial	5/19/2017	ASSAULT 2 (POST 7/1/88) [Life]	Male	African American	11/20/1987	29
2017051389							
		Prior offense	ROBBERY 1				
		Prior offense	BURGLARY 1				
Pierce							
13-1-02554-1	Jury Trial	9/15/2016	MURDER 1 (POST 7/24/99) [Life] Firearm	Male	African American	12/1/1971	44
2016091582							
		Prior offense	ROBBERY 2				
		Prior offense	MANSLAUGHTER 1 (PRE 7/27/97)				
Skamania							
** 14-1-00021-7	Jury Trial	11/3/2016	RAPE 2 (POST 8/31/01) (.712) [Life]	Male	African American	4/3/1981	35
2016110229							
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	RAPE 1 (POST 8/31/01) (.712) [Attempt]				

** "Two-Strike" Sentences under the Persistent Offender Statute RCW 9.94A.030(37)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Fiscal Year 2017							
Spokane							
16-1-01366-1 2016090375	Jury Trial	9/1/2016	BURGLARY 1 [Life] Non-Firearm DW	Male	White	4/8/1974	42
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 1				
14-1-03384-3 2016100855	Jury Trial	10/17/2016	BURGLARY 1 [Life]	Male	African American	1/9/1979	37
		Prior offense	ASSAULT 2 (POST 7/1/88) [Attempt]				
		Prior offense	ROBBERY 2				
14-1-04486-1 2017060704	Jury Trial	6/22/2017	ROBBERY 1 [Life]	Male	White	3/25/1986	31
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 2				

** "Two-Strike" Sentences under the Persistent Offender Statute RCW 9.94A.030(37)(b)

**Table 14B. Details in Persistent Offenders' Sentences
Under the Persistent Offender Statue RCW 9.94A.030 (37)(a)(b)
Fiscal Year 2018**

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Clark							
** 16-1-02097-6	Jury Trial	10/27/2017	RAPE 1 (POST 8/31/01) (.712) [Life] Non-Firearm DW	Male	White	2/6/1977	40
2017101147	FY 2018 Clark						
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	CHILD MOLEST 1 >17 (POST 8/31/01) (.712)				
Grays Harbor							
17-1-00032-1	Plea or Stipulated Findings & Conclusions	9/15/2017	CHILD MOLEST 1 >17 (POST 8/31/01) (.712) [Life]	Male	White	10/21/1970	46
2017090561	FY 2018 Grays Harbor						
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01)				
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01)				
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01)				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(37)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
King							
16-1-04833-8	Jury Trial	8/18/2017	ASSAULT 2 (POST 7/1/88) [Life]	Male	African American	2/25/1953	64
2017081694	FY 2018	King					
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ROBBERY 2				
		Prior offense	ASSAULT 2 (POST 7/1/88)				
15-1-02193-8	Plea or Stipulated Findings & Conclusions	10/13/2017	ROBBERY 1 [Life] Firearm	Male	African American	8/26/1960	57
2017101650	FY 2018	King					
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				
		Prior offense	ASSAULT 2 (POST 7/1/88) w/ Sexual Motivation				
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				
		Prior offense	ROBBERY 1				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(37)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
16-1-04911-3	Plea or Stipulated Findings & Conclusions	12/1/2017	MURDER 2 (POST 7/24/99) [Life] Firearm	Male	White	2/10/1981	36
2017121390	FY 2018 King						
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ASSAULT 1 (POST 7/1/90)				
Pierce							
16-1-03560-6	Jury Trial	1/5/2018	MURDER 2 (POST 7/24/99) [Life] Firearm	Male	African American	2/22/1966	51
2018011781	FY 2018 Pierce						
		Prior offense	MANSLAUGHTER 1 (PRE 7/27/97)				
		Prior offense	ROBBERY 2				
Snohomish							
17-1-00830-8	Jury Trial	12/28/2017	RESIDENTIAL BURGLARY (POST 7/90) [Life] Non-Firearm DW	Male	White	9/7/1952	65
2017121156	FY 2018 Snohomish						
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ASSAULT 2 (POST 7/1/88)				
** 17-1-01095-7	Plea or Stipulated Findings & Conclusions	1/31/2018	CHILD MOLEST 1 >17 (POST 8/31/01) (.712) [Life]	Male	Hispanic	5/2/1958	59
2018011546	FY 2018 Snohomish						
		Prior offense	RAPE OF A CHILD 1 (7/90 - 7/26/97)				
		Prior offense	RAPE OF A CHILD 1 (7/90 - 7/26/97)				
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01)				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(37)(b)

**Table 14B. Details in Persistent Offenders' Sentences
Under the Persistent Offender Statue RCW 9.94A.030 (37)(a)(b)
Fiscal Year 2019**

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Ferry							
18-1-00017-3	Jury Trial	12/17/2018	ASSAULT 2 (POST 7/1/88) [Life]	Male	African American	10/14/1976	42
2018120523	FY 2019						
		Prior offense	ROBBERY 1 [Attempt]				
		Prior offense	BURGLARY 1				
		Prior offense	ROBBERY 2				
Franklin							
** 18-1-50494-4	Plea or Stipulated Findings & Conclusions	6/25/2019	CHILD MOLEST 1 >17 (POST 8/31/01) (.712) [Life]	Male	White	6/19/1966	53
2019061370	FY 2019						
		Prior offense	RAPE 2 (7/27/97 - 8/31/01)				
		Prior offense	RAPE 2 (7/27/97 - 8/31/01)				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(37)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
King							
17-1-02754-1	Jury Trial	7/13/2018	ROBBERY 2 [Life]	Male	African American	4/11/1974	44
2018071543	FY 2019	King					
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2				
15-1-03905-5	Plea or Stipulated Findings & Conclusions	8/30/2018	MURDER 1 (POST 7/24/99) [Life] Firearm	Male	White	11/23/1975	42
2018081279	FY 2019	King					
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ASSAULT 2 (POST 7/1/88)				
Kitsap							
16-1-01563-6	Bench or Stipulated Trial	11/2/2018	ROBBERY 1 [Life]	Male	African American	6/25/1982	36
2018110184	FY 2019	Kitsap					
		Prior offense	ROBBERY 2				
		Prior offense	ASSAULT 2 (POST 7/1/88)				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(37)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE	
Spokane								
15-1-02459-1	Bench or Stipulated Trial	7/12/2018	MURDER 1 (POST 7/24/99) [Life] Firearm	Male	African American	12/22/1989	28	*
2018070916	FY 2019	Spokane						
		Prior offense	ROBBERY 1 [Conspiracy]					
		Prior offense	ROBBERY 1					
		Prior offense	BURGLARY 1					
		Prior offense	ASSAULT 2 (POST 7/1/88)					
14-1-00873-3	Jury Trial	7/12/2018	MURDER 1 (POST 7/24/99) [Life] [Attempt] Firearm	Male	Native American	11/21/1984	33	
2018070925	FY 2019	Spokane						
		Prior offense	ROBBERY 1					
		Prior offense	ASSAULT 2 (POST 7/1/88) [Attempt]					
17-1-00553-4	Jury Trial	5/2/2019	BURGLARY 1 [Life]	Male	White	11/17/1975	43	
2019050444	FY 2019	Spokane						
		Prior offense	BURGLARY 1					
		Prior offense	ASSAULT 2 (POST 7/1/88)					
Thurston								
** 16-1-01580-1	Jury Trial	8/1/2018	RAPE OF A CHILD 1 >17 (POST 8/31/01) (.712) [Life] [Attempt]	Male	White	1/14/1982	36	
2018080001	FY 2019	Thurston						
		Prior offense	RAPE OF A CHILD 2 >17 (POST 8/31/01) (.712)					

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(37)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Yakima							
14-1-01397-9	Jury Trial	8/3/2018	ASSAULT 1 (POST 7/1/90) [Life]	Male	Hispanic	9/11/1966	51
2018080083	FY 2019						
		Prior offense	ROBBERY 1				
		Prior offense	ASSAULT 2 (POST 7/1/88)				

** "Two-Strike" Sentences under the Persistent Offender Statute RCW 9.94A.030(37)(b)

**Table 14B. Details in Persistent Offenders' Sentences
Under the Persistent Offender Statue RCW 9.94A.030 (38)(a)(b)
Fiscal Year 2020**

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Benton							
** 18-1-00731-7	Plea or Stipulated Findings & Conclusions	11/26/2019	RAPE OF A CHILD 1 >17 (POST 8/31/01) (.712) [Life]	Male	Unknown	4/22/1980	39
2019110584	FY 2020 Benton						
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01) [Attempt]				
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01)				
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01)				
		Prior offense	CHILD MOLEST 1 (7/90 - 8/31/01)				
Grays Harbor							
** 19-1-00490-1	Bench or Stipulated Trial	2/7/2020	RAPE OF A CHILD 1 >17 (POST 8/31/01) (.712) [Life]	Male	White	12/20/1967	52
2020020348	FY 2020 Grays Harbor						
		Prior offense	RAPE OF A CHILD 2 (7/90 - 7/26/97)				
19-1-00741-1	Jury Trial	4/3/2020	RAPE OF A CHILD 1 >17 (POST 8/31/01) (.712) [Life]	Male	Native American	9/13/1985	34
2020040085	FY 2020 Grays Harbor						
		Prior offense	ROBBERY 1 [Attempt]				
		Prior offense	ASSAULT 2 (POST 7/1/88)				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(38)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
King							
17-1-07239-3	Jury Trial	10/7/2019	MURDER 1 (POST 7/24/99) [Life] Firearm	Male	African American	10/4/1982	37
2019102061	FY 2020	King					
		Prior offense	ROBBERY 1 Non-Firearm DW				
		Prior offense	ROBBERY 1				
18-1-01747-1	Jury Trial	1/17/2020	RAPE 2 (POST 8/31/01) (.712) [Life] [Attempt] Non-Firearm DW	Male	White	10/30/1984	35
2020011882	FY 2020	King					
		Prior offense	ROBBERY 1 [Attempt]				
		Prior offense	BURGLARY 1				
		Prior offense	ROBBERY 1				
18-1-00859-6	Jury Trial	3/6/2020	ASSAULT 2 (POST 7/1/88) [Life]	Male	African American	10/5/1964	55
2020031363	FY 2020	King					
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 2 [Attempt]				
		Prior offense	ASSAULT 2 (POST 7/1/88)				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(3B)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Pierce							
17-1-02461-1	Jury Trial	8/9/2019	MFG DEL POS W/ HER (POST 6/30/02) (L7) [Life] Firearm	Male	African American	3/30/1979	40
2019081500	FY 2020	Pierce					
		Prior offense	CHILD MOLEST 2 (POST 7/90)				
		Prior offense	CHILD MOLEST 2 (POST 7/90)				
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	CHILD MOLEST 2 (POST 7/90)				
** 18-1-04611-6	Jury Trial	2/28/2020	RAPE OF A CHILD 2 >17 (POST 8/31/01) (.712) [Life]	Male	White	9/16/1973	46
2020021929	FY 2020	Pierce					
		Prior offense	RAPE OF A CHILD 2 >17 (POST 8/31/01) (.712) [Attempt]				
		Prior offense	CHILD MOLEST 2 (POST 7/90)				
Skagit							
16-1-01284-1	Jury Trial	10/16/2019	MURDER 1 (POST 7/24/99) [Life] [Attempt] Firearm	Male	Hispanic	7/10/1972	47
2019100965	FY 2020	Skagit					
		Prior offense	ASSAULT 2 (POST 7/1/88) [Attempt]				
		Prior offense	ASSAULT 2 (POST 7/1/88)				

** "Two-Strike" Sentences under the Persistent Offender Statue RCW 9.94A.030(38)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Snohomish							
18-1-01415-2	Plea or Stipulated Findings & Conclusions	8/14/2019	MURDER 2 (POST 7/24/99) [Life]	Male	White	2/27/1989	30
2019080572	FY 2020 Snohomish						
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	ARSON 1				
19-1-00961-1	Plea or Stipulated Findings & Conclusions	12/6/2019	ASSAULT 2 (POST 7/1/88) [Life]	Male	White	2/24/1979	40
2019120296	FY 2020 Snohomish						
		Prior offense	ROBBERY 2				
		Prior offense	ROBBERY 1				
Spokane							
17-1-04571-4	Jury Trial	10/1/2019	ASSAULT 1 (POST 7/1/90) [Life]	Male	White	10/16/1984	34
2019100201	FY 2020 Spokane						
		Prior offense	ROBBERY 2				
		Prior offense	MANSLAUGHTER 1 (POST 7/26/97)				
17-1-04081-0	Jury Trial	3/16/2020	BURGLARY 1 [Life] Firearm	Male	White	6/27/1981	38
2020030931	FY 2020 Spokane						
		Prior offense	ASSAULT 2 (POST 7/1/88)				
		Prior offense	VEHICULAR ASSAULT DISREGARD SAFETY (POST 7/21/01)				
		Prior offense	INDECENT LIBERTIES - DD VICTIM (POST 7/90)				
		Prior offense	ASSAULT 2 (POST 7/1/88)				

** "Two-Strike" Sentences under the Persistent Offender Statute RCW 9.94A.030(38)(b)

CAUSE	VERDICT	SENTENCING DATE	OFFENSE	SEX	RACE	DOB	AGE at SENTENCE
Thurston							
** 18-1-00146-7 2019100726	Jury Trial FY 2020 Thurston	10/16/2019	RAPE 2 (POST 8/31/01) (.712) [Life]	Male	White	6/1/1982	37
		Prior offense	RAPE 1 (POST 8/31/01) (.712)				
** 19-1-00338-7 2020020502	Jury Trial FY 2020 Thurston	2/12/2020	RAPE OF A CHILD 2 >17 (POST 8/31/01) (.712) [Life] [Attempt]	Male	African American	2/8/1960	60
		Prior offense	RAPE 2 (PRE 7/90)				
		Prior offense	RAPE 1 (PRE 7/90)				

** "Two-Strike" Sentences under the Persistent Offender Statute RCW 9.94A.030(3)(b)

APPENDIX C

Table 1 Adult Felony FY 2018 Sentences Racial Distribution (All ages)

Forecasting Categories	Caucasian	African American	Asian and NHOPI (**)	Native American	Hispanic	Unknown	Grand Total (excl. Unknown)
FY2018 Sentences							
Assault	3,059	921	183	135	499	22	4,797
Drug	5,511	730	211	233	543	13	7,228
Failure To Register As Sex Offender	162	34	4	6	11	0	217
Manslaughter	66	12	4	4	9	1	95
Murder 1	24	5	1	1	7	0	38
Murder 2	36	16	4	5	11	1	72
Other Felonies	1,844	351	53	100	202	8	2,550
Property	6,460	973	301	316	533	32	8,583
Robbery	290	137	26	28	34	3	515
Sex	735	97	27	30	102	5	991
Total Sentences	18,187	3,276	814	858	1,951	85	25,086
% of Sentences In Race	72%	13%	3%	3%	8%		100%

(**) including Native Hawaiian and Other Pacific Islander

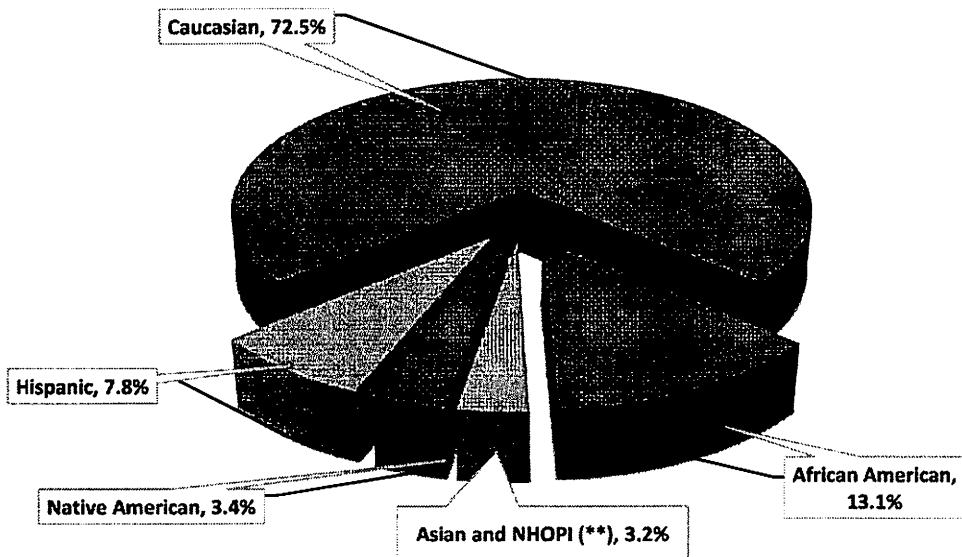


CHART 10. FY2018 MURDER 1 SENTENCES

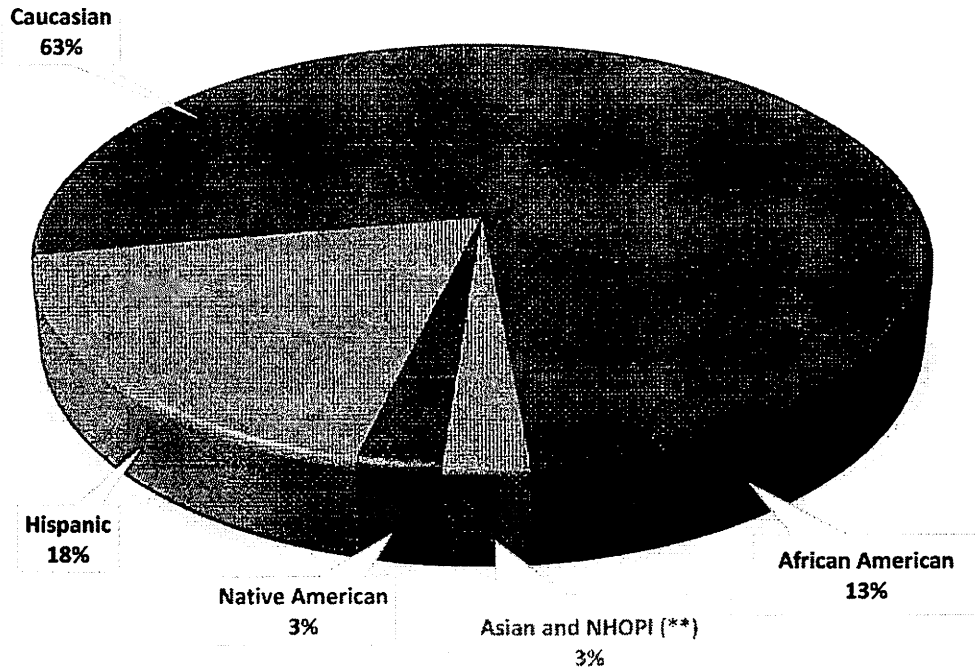
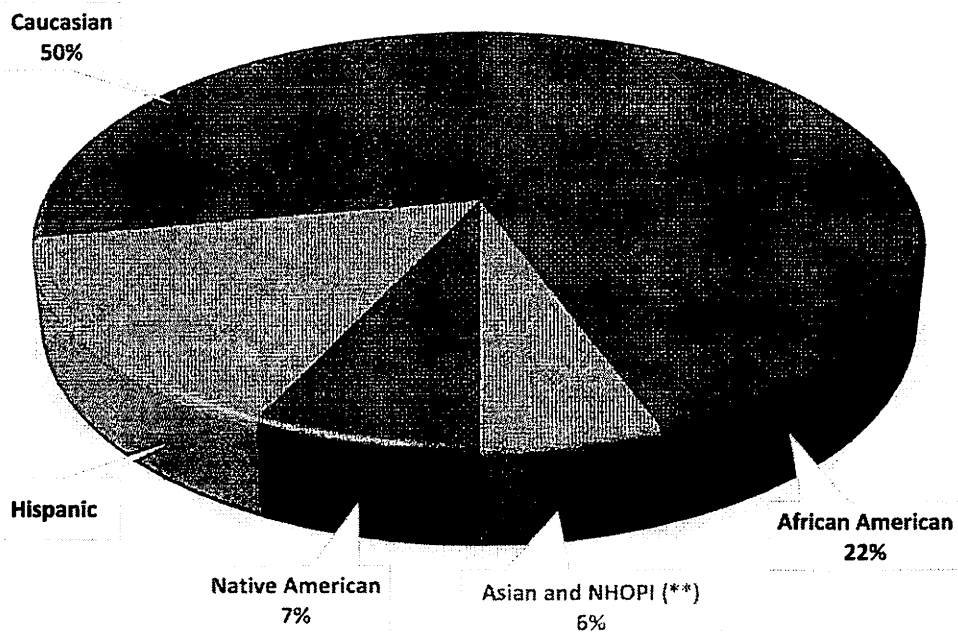


CHART 11. FY2018 MURDER 2 SENTENCES



APPENDIX D

Table 1 Adult Felony FY 2019 Sentences Racial Distribution (All ages)

Forecasting Categories	Caucasian	African American	Asian and NHOPI (**)	Native American	Hispanic	Unknown	Grand Total (excl. Unknown)
FY2019 Sentences							
Assault	3,131	936	151	153	508	35	4,879
Drug	5,286	584	165	198	517	15	6,750
Failure To Register As Sex Offender	189	48	5	8	16	1	266
Manslaughter	60	17	10	4	6	0	97
Murder 1	39	13	-	4	9	0	65
Murder 2	41	8	2	-	9	0	60
Other Felonies	1,876	357	76	100	226	3	2,635
Property	6,037	856	273	240	481	28	7,887
Robbery	253	129	27	24	35	2	468
Sex	777	104	40	31	102	12	1,054
Total Sentences	17,689	3,052	749	762	1,909	96	24,161
% of Sentences in Race	73.2%	12.6%	3.1%	3.2%	7.9%		100%

(**) including Native Hawaiian and Other Pacific Islander

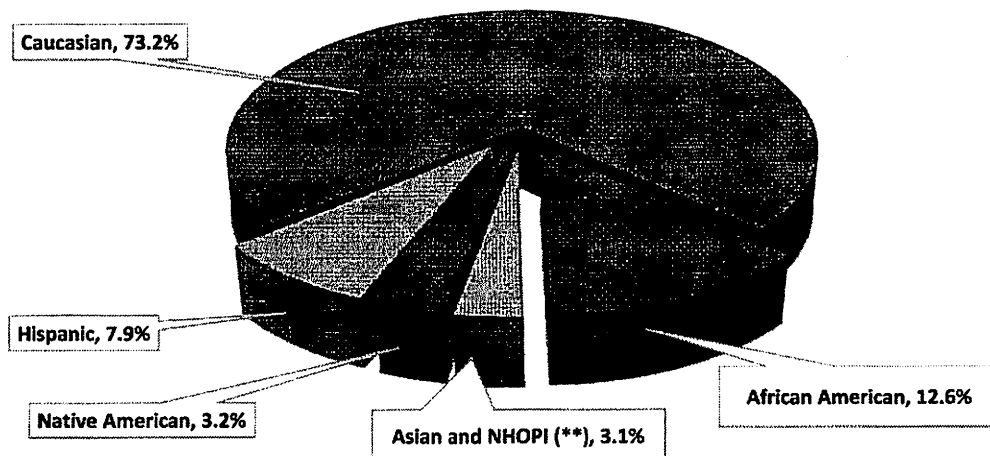


CHART 10. FY2019 MURDER 1 SENTENCES

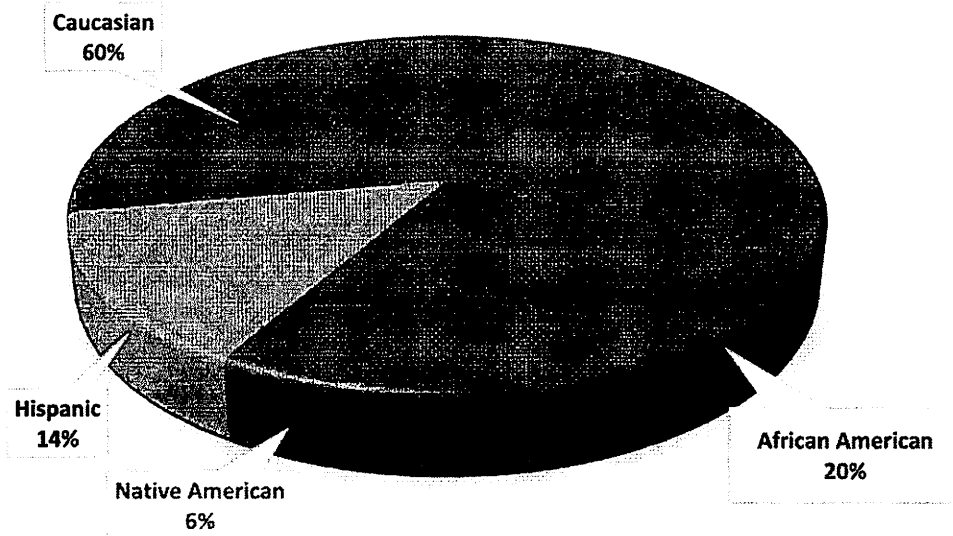
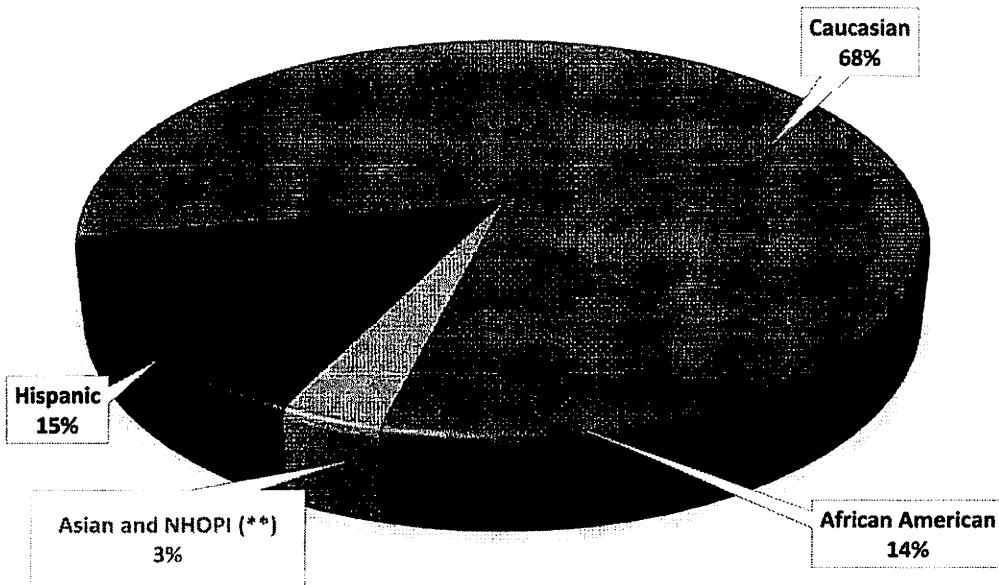


CHART 11. FY2019 MURDER 2 SENTENCES



APPENDIX E

Black Disparities in Youth Incarceration

African Americans 5X More Likely than Whites to be Held

Black youth were more than five times as likely to be detained or committed compared to white youth, according to data from the Department of Justice collected in October 2015 and recently released.¹ Racial and ethnic disparities have long-plagued juvenile justice systems nationwide, and the new data show the problem is increasing. In 2001, black youth were four times as likely as whites to be incarcerated.

Juvenile facilities, including 1,800 residential treatment centers, detention centers, training schools, and juvenile jails and prisons² held 48,043 youth as of October 2015.³ Forty-four percent of these youth were African American, despite the fact that African Americans comprise only 16 percent of all youth in the United States.⁴ African American youth are more likely to be in custody than white youth in every state but one, Hawaii.

Between 2001 and 2015, overall juvenile placements fell by 54 percent. However, white youth placements have declined faster than black youth placements, resulting in a worsening of already significant racial disparity.

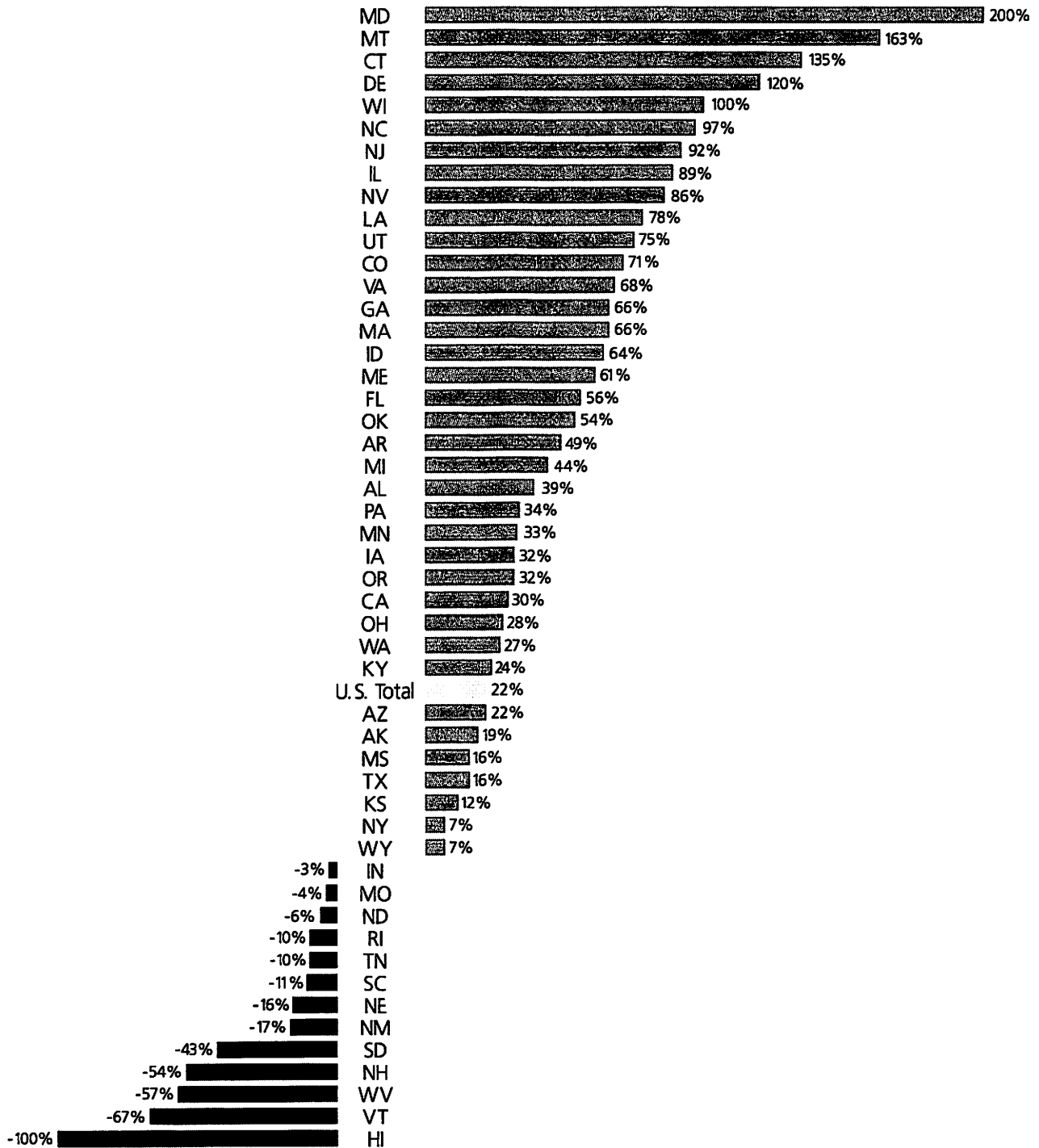
Nationally, the youth rate of incarceration was 152 per 100,000. Black youth placement rate was 433 per 100,000, compared to a white youth placement rate of 86 per 100,000. Overall, the racial disparity between black and white youth in custody increased 22 percent since 2001. Racial disparities grew in 37 states and decreased in 13.

- In six states, African American youth are at least 10 times as likely to be held in placement as are white youth: New Jersey, Wisconsin, Montana, Delaware, Connecticut, and Massachusetts.
- Five states saw their racial disparity at least double: Maryland, Montana, Connecticut, Delaware, and Wisconsin.
- Three states decreased their racial disparity by at least half: Vermont, West Virginia, and New Hampshire.

Black/White Youth Placement Rate per 100,000, 2015

State	White Rate	Black Rate	B/W Racial Disparity
Alabama	97	331	3.41
Alaska	176	710	4.03
Arizona	75	277	3.69
Arkansas	93	522	5.61
California	76	711	9.36
Colorado	108	701	6.49
Connecticut	14	145	10.36
Delaware	42	505	12.02
District of Columbia	0	363	-
Florida	97	445	4.59
Georgia	42	235	5.60
Hawaii	36	0	0.00
Idaho	179	306	1.71
Illinois	44	426	9.68
Indiana	154	621	4.03
Iowa	141	1,030	7.30
Kansas	114	721	6.32
Kentucky	76	361	4.75
Louisiana	61	403	6.61
Maine	56	333	5.95
Maryland	30	238	7.93
Massachusetts	22	222	10.09
Michigan	96	479	4.99
Minnesota	75	648	8.64
Mississippi	32	131	4.09
Missouri	112	516	4.61
Montana	113	1,485	13.14
Nebraska	123	811	6.59
Nevada	131	736	5.62
New Hampshire	47	206	4.38
New Jersey	11	337	30.64
New Mexico	86	472	5.49
New York	54	305	5.65
North Carolina	22	164	7.45
North Dakota	135	683	5.06
Ohio	98	560	5.71
Oklahoma	84	516	6.14
Oregon	235	1,103	4.69
Pennsylvania	93	862	9.27
Rhode Island	97	693	7.14
South Carolina	89	242	2.72
South Dakota	162	341	2.10
Tennessee	65	195	3.00
Texas	94	417	4.44
Utah	73	606	8.30
Vermont	46	189	4.11
Virginia	59	410	6.95
Washington	88	487	5.53
West Virginia	301	566	1.88
Wisconsin	56	846	15.11
Wyoming	243	1,166	4.80
U.S. Total	86	433	5.03

Change in Black/White Racial Disparity in Youth Incarceration, 2001 vs. 2015



1 This fact sheet addresses black-white placement disparities. Fact sheets on Latino and American Indian disparities are forthcoming.
 2 Hockenberry, S., Wachter, A., & Sladky, A. (Sept. 2016). Juvenile Residential Facility Census, 2014: Selected Findings (NCJ 250123). Available: <https://www.ojjdp.gov/pubs/250123.pdf>
 3 Placement statistics throughout this factsheet are calculated from Sickmund, M., Sladky, T.J., Kang, W., & Puzanchera, C. (2017). "Easy Access to the Census of Juveniles in Residential Placement." Available: <http://www.ojjdp.gov/ojstatbb/ezacjrp/>
 4 Puzanchera, C., Sladky, A. and Kang, W. (2016). "Easy Access to Juvenile Populations: 1990-2015." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezapop/>. Youth is defined as those between the ages of 10 and 17, inclusive.

Published September 2017

APPENDIX F

TABLE 1: RECIDIVIST LAWS BY STATE

State	Governing Law	Summary	Mandatory LWOP for Smith?
Alabama	Ala. Code § 13A-5-9	LWOP or 15-99 years for third class A felony	Yes ¹
Alaska	Alaska Stat. Ann. § 12.55.125(c)(4)	Third class A felony is 15-20 years	No
Arizona	Az. Stat. § 13-706	Third serious offense is life with parole possible after 25 years; third violent or aggravated felony is life with parole possible after 35 years	Yes ²
Arkansas	Ark. Stat. Ann. § 5-4-501(c)	Second or subsequent felony involving violence can be LWOP	No ³
California	Cal. Penal Code § 667(e)(2)(A)	Third felony with two prior serious or violent convictions is life with minimum term of 25 years or 3 times	No

¹ Smith’s convictions for conspiracy and second degree assault would not qualify as “strikes” in Alabama because they are not class A felonies. *See* Ala. Code § 13A-6-21(b) (assault second degree is class C felony); § 13A-4-3(g) (only conspiracy to commit murder is a class A felony). However, Alabama mandates death or life without parole for a first degree murder conviction. *See* Ala. Code § 13A-6-2.

² Arizona requires a sentence of death or natural life for a first degree murder conviction. *See* Az. Stat. § 13-752. Felony murder is first degree murder. *See* Az. Stat. § 13-1105.

³ Smith’s convictions for conspiracy, first degree burglary, and second degree assault are not serious felonies involving violence. *See* Ark. Stat. Ann. § 5-4-501(c)(2)(A). Smith’s conviction for first degree robbery may not be comparable to aggravated robbery in Arkansas as Washington’s statute is broader. *Compare* RCW 9A.56.200; Ark. Stat. Ann. § 5-12-103.

		the standard term for the current offense	
Colorado	Colo. Rev. Stat § 18-1.3-801	Third conviction of class 1 or 2 felony or class 3 felony crime of violence is life with possibility of parole after 40 years	Yes ⁴
Connecticut	Conn. Gen. Stat. Ann. § 53a-40(j)	Persistent dangerous felony offender with two enumerated priors receives enhanced minimum and maximum terms	No ⁵
Delaware	11 Del. Code § 4214; 11 Del. Code § 4346(c)	Third violent felony or attempt receives enhanced minimum sentence up to life; life sentence equates to 45-year fixed term.	Yes ⁶
Florida	Fla. Stat. Ann. § 775.084(4)	Violent career criminals and three-time violent felony offenders must receive life sentence for subsequent life felonies unless	No

⁴ Colorado law permits life without parole to be imposed as a penalty for first degree murder but not as a punishment for recidivism. *See* Colo. Rev. Stat. § 18-11.3-1201 (describing sentencing procedures for class 1 felonies); § 18-3-102(3) (first degree murder is a class 1 felony).

⁵ Connecticut permits a sentence of life without the possibility of parole only for capital murder with special circumstances. *See* Conn. Gen. Stat. Ann. § 53a-35a(1)(A); § 53a-54b (defining murder with special circumstances).

⁶ Delaware requires a sentence of death or life without the possibility of parole for a first degree murder conviction. *See* 11 Del. Code § 4209(a).

		court finds it unnecessary to protect public safety; no parole eligibility	
Georgia	Ga. Stat. Ann. § 17-10-7(b)	Second serious violent felony conviction is life without parole	Yes
Hawaii	Haw. Rev. Stat. § 706-606.5	Recidivism enhances mandatory minimum sentence	No ⁷
Idaho	Id. Stat. § 19-2514	Third felony conviction is term of no less than 5 years up to life	No ⁸
Illinois	730 Il.C.S. 5/5-4.5-95; 730 Il.C.S. 5/3-3-3	Third class X felony conviction is life sentence; but life sentences are eligible for parole after serving 20 years	No
Indiana	Ind. Code § 35-50-2-8(i)(I)	Conviction for murder with two prior unrelated felonies is additional fixed term between 6 and 20 years	No

⁷ Hawaii imposes a mandatory sentence of life without parole for a first degree murder conviction; however, the governor may commute the sentence to life with parole after serving 20 years or the mandatory minimum term applicable to recidivists. *See* Haw. Rev. Stat. § 706-656.

⁸ Although Idaho authorizes life without parole as a penalty for first degree murder, it is only available if the State seeks and fails to obtain the death penalty; otherwise, the sentence is life with a minimum term of 10 years. *See* Id. Stat. § 18-4004.

Iowa	Ia. Code § 902.8	Class C or D offender with 2 prior felonies is not eligible for parole for 3 years	Yes ⁹
Kansas	Kan. Stat. § 21-6626, § 6627	No recidivism law except for repeat sex offenses	No ¹⁰
Kentucky	Ky. Rev. Stat. Ann. § 532.080	Conviction of class A or B felony with two prior felonies is term of 20-50 years, or life	No
Louisiana	La. Rev Stat. § 15:529.1(3)(b); § 14:2B (defining “crime of violence”)	Third crime of violence is LWOP	Yes ¹¹
Maine	Me. Stat. T.17-A § 1602	No three-strikes law except for sex offenses	No
Maryland	Md. Crim Law § 14-101	Fourth conviction of crime of violence is LWOP	No ¹²
Massachusetts	Ma. Stat. 279 § 25	Conviction of third enumerated offense is statutory maximum without parole	Yes

⁹ In Iowa, conviction of a class A felony is a life sentence without parole except in the case of a commutation by the governor. Ia. Code § 902.1. First degree murder is a class A felony. Ia. Code § 707.2(2).

¹⁰ In Kansas, a person convicted of first degree murder receives a life sentence. Kan. Stat. § 21-6806; §21-5402 (defining first degree murder). However, the defendant is eligible for parole after serving 25 years. Kan. Stat. § 22-3717.

¹¹ While only Smith’s prior conviction for first degree robbery clearly qualifies as a “crime of violence” under Louisiana law, the conviction for first degree murder carries a mandatory sentence of life without parole if the death penalty is not sought. *See* La. Rev. Stat. § 14:30(C).

¹² Only Smith’s prior conviction for first degree robbery appears to qualify as a “crime of violence.” Maryland permits a jury to unanimously impose life without parole for a first degree murder conviction with special notice by the prosecuting attorney. *See* Md. Crim Law § 2-203, § 2-304.

Michigan	Mich. Stat. § 769.11	Conviction of felony punishable by life with two felony priors may be sentenced to life	No ¹³
Minnesota	Minn. Stat. § 609.1095	Third felony conviction for violent crime may receive up to statutory max without parole on finding of danger to public safety	No
Mississippi	Miss. Code § 99-19-83	Conviction of felony with two prior felonies, any one of which is a violent felony, is LWOP	Yes
Missouri	Mo. Stat. § 558.019	Number and nature of prior offenses determine minimum prison term	Yes ¹⁴
Montana	Mont. Code Ann. § 46-18-219(1)(b)	Offender convicted of specified convictions with specified prior	No ¹⁵

¹³ A first degree murder conviction requires a life without parole sentence in Michigan. *See* Mich. Stat. § 750.316. However, there is no non-intentional felony murder in Michigan; only killings committed with malice are murders. *See People v. Aaron*, 409 Mich. 672, 299 N.W.2d 304 (1980).

¹⁴ First degree murder conviction carries death or LWOP in Missouri, excepting only an act of the Governor. *See* Mo. Stat. § 565.020.

¹⁵ Smith's prior convictions for second degree assault, first degree burglary, and conspiracy do not appear to qualify as prior "strike" convictions, although it would likely depend on the facts of the assaults. *See* Mont. Code Ann. § 45-5-202(1). A conviction for deliberate homicide, which includes felony murder in Montana, may receive life imprisonment or a fixed term of 10 to 60 years. *See* Mont. Code Ann. § 45-5-102.

		convictions must receive LWOP	
Nebraska	Neb. Rev. Stat. § 29-2221	Third felony conviction requires mandatory minimum sentence and maximum term of 60 years.	Yes ¹⁶
Nevada	Nev. Rev. Stat. Ann. § 207.012	Conviction of enumerated felony with two enumerated priors can be LWOP, 10 years to life, or 10 years to 25 years	No
New Hampshire	N.H. Rev. Stat. § 651:6	Murder conviction with two prior felonies can receive life imprisonment	No ¹⁷
New Jersey	N.J. Rev. Stat. § 2C:43-7.1	Conviction of murder with two or more specified prior convictions is LWOP	No ¹⁸
New Mexico	N.M. Stat. Ann. § 31-18-23	Third violent felony conviction receives additional	No ¹⁹

¹⁶ First degree murder carries a sentence of life imprisonment in Nebraska if the State does not seek the death penalty. Neb. Rev. Stat. § 28-303; § 29-2520(1). However, a life sentence in Nebraska is not eligible for parole in the absence of commutation. *State v. Castaneda*, 287 Neb. 289, 311, 842 N.W.2d 740 (2014) (“[A]n offender sentenced to life imprisonment in Nebraska for first degree murder is not eligible for parole.”).

¹⁷ First degree murder carries a life without parole sentence in New Hampshire. However, New Hampshire does not have a strict “felony murder” statute as first degree murder requires proof that the killing was at least “knowing.” See N.H. Rev. Stat. § 630:1-a.

¹⁸ Only Smith’s prior first degree robbery conviction qualifies as a strike offense under this section. Murder is punishable by a term of 30 years to life unless the jury returns a verdict finding specific circumstances exist. See N.J. Rev. Stat. § 2C:11-3.

¹⁹ Although murder is a capital felony in New Mexico, a life sentence with or without parole may be imposed. See N.M. Stat. Ann. § 30-2-1; § 31-18-14. A life without parole sentence requires a jury finding of aggravating circumstances. N.M. Stat. Ann. § 31-20A-2.

		life sentence with parole eligibility	
New York	N.Y. Penal Law § 70.08	Third conviction of violent felony offense requires indeterminate sentence	No
North Carolina	N.C. Gen. Stat. Ann. § 14-7.7, § 14-7.12	Third violent felony must receive LWOP	Yes
North Dakota	N.D. Cent. Code § 12.1-32-09	Third felony conviction as an adult may carry up to life imprisonment	No ²⁰
Ohio	Ch. 2929 Oh. Rev. Stat.	No three strikes law	No
Oklahoma	Ok. Stat. T. 21 § 51.1	Third felony offense can receive increased minimum term up to life imprisonment	No
Oregon	O.R.S. § 137.690	No three strikes law except for sex offenders	No
Pennsylvania	42 Pa. C.S.A. § 9714(a)(2)	Third or subsequent conviction for crime of violence may carry LWOP if court finds minimum 25-year sentence will not	Yes ²¹

²⁰ North Dakota requires a life sentence for a conviction of murder but allows the court to determine whether to allow parole. *See* N.D. Cent. Code § 12.1-16-01, § 12.1-32.01.

²¹ Felony murder is second degree murder in Pennsylvania, carrying a mandatory life sentence. *See* 18 Pa. C.S.A. § 1102(b); § 2502(b). Life sentences in Pennsylvania are not eligible for parole. *See Hudson v. Pennsylvania Board of Probation and Parole*, 651 Pa. 308, 204 A.3d 392 (2019).

		protect public safety	
Rhode Island	R.I. Gen. Laws § 12-19-21	Third conviction of felony requires additional penalty of up to 25 years	No
South Carolina	S.C. Stat. § 17-25-45	Second conviction for most serious offense requires life without parole	Yes
South Dakota	S.D.C.L. § 22-7-8; § 22-6-1	Fourth felony with one or more crimes of violence enhanced to up to life sentence	Yes ²²
Tennessee	Tenn. Code Ann. § 40-35-120	Third violent offense requires LWOP	No ²³
Texas	Tex. Penal Code § 12.42(d)	Third felony conviction is punishable by life or 25 to 99 years	No
Utah	Utah Code Ann. § 76-3-203.5	First degree felony with two prior violent felonies is punishable as first degree felony but Board of Pardons considers habitual offender status as	No

²² Both first and second degree murder carry mandatory life sentences in South Dakota. *See* S.D.C.L. § 22-16-12 (classifying murder); § 22-6-1. Life sentences are not eligible for parole. *See* S.D.C.L. § 24-15-4.

²³ Only Smith's prior robbery conviction appears to qualify as a violent offense in Tennessee, but a life sentence would only be required if the offense was an "especially aggravated robbery." *See* Tenn. Code Ann. § 40-35-120(c). Likewise, only if his prior burglary conviction constituted an "especially aggravated burglary" would it constitute a strike. *See* Tenn. Code Ann. § 40-35-120(d). Upon conviction for first-degree murder, a jury decides whether to impose a sentence of death, life without parole, or life with parole eligibility after 25 years. *See* Tenn. Code Ann. § 39-13-204.

		aggravating factor in setting minimum term	
Vermont	13 Vt. Stat. Ann. § 11	Fourth conviction for felony besides murder may receive up to life imprisonment	No
Virginia	Va. Code Ann. § 19.2-297.1	Third crime of violence carries life sentence without parole, except after serving a portion of the sentence, inmates of a specified age may petition for conditional release	No
West Virginia	W. Va. Code § 61-11-18	Third qualifying felony carries life sentence; however, life sentences can be with or without mercy as a matter of discretion. ²⁴	No
Wisconsin	Wis. Stat. Ann § 939.62	Third conviction of serious felony requires LWOP	Yes
Wyoming	Wyo. Stat. Ann. § 6-10-201(b)(3)	Fourth felony committed after age 18 by habitual criminal carries life sentence ²⁵	Yes

²⁴ See, e.g., W. Va. Code § 62-3-15; see also W. Va. Admin. Code § 92-1-4 (standards for parole eligibility distinguishing between life with and without mercy); *State v. Lane*, 241 W. Va. 532, 826 S.E.2d 657 (2019) (evaluating life sentence with mercy imposed under recidivist statute).

²⁵ Life sentences in Wyoming are not eligible for parole. See Wyo. Stat. Ann. § 7-13-402(a).

States that exclude crimes committed before age 18 as strikes:

Illinois: 730 Il.C.S. § 5/5-4.5-95(a)(4)(E) (effective July 1, 2021) (first strike at 21 years old or older)

Kentucky: Ky. Rev. Stat. Ann. § 532.080(2)(b), (3)(b) (prior offense committed at age 18 or older)

New Mexico: N.M. Stat. Ann. § 31-18-23(D) (convictions incurred before age 18 do not count)

North Dakota: N.D. Cent. Code § 12.1-32-09(1)(c) (predicate felonies must be convicted at different times when offender was an adult)

New Jersey: N.J. Rev. Stat. § 2C:44-3(a) (persistent offender must be age 21 who committed two prior crimes on two different occasions when at least 18 years old)

Wyoming: Wyo. Stat. Ann. § 6-10-201(b)(3) (life sentence can only be imposed on habitual criminal if three or more prior convictions were for offenses committed after reaching 18 years of age)

BURKHART & BURKHART, PLLC

May 06, 2021 - 2:47 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36213-2
Appellate Court Case Title: State of Washington v. Jeremiah Smith, aka Glenn A. Akers
Superior Court Case Number: 15-1-02459-1

The following documents have been uploaded:

- 362132_Petition_for_Review_20210506144518D3017219_0744.pdf
This File Contains:
Petition for Review
The Original File Name was Petition for Review.pdf

A copy of the uploaded files will be sent to:

- gverhoef@spokanecounty.org
- lsteinmetz@spokanecounty.org
- scpaappeals@spokanecounty.org

Comments:

Sender Name: Andrea Burkhart - Email: Andrea@2arrows.net
Address:
8220 W GAGE BLVD #789
KENNEWICK, WA, 99336-8113
Phone: 509-572-2409

Note: The Filing Id is 20210506144518D3017219