

No. _____

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

In re Personal Restraint Petition of

JOHN PHET,
Petitioner.

PERSONAL RESTRAINT PETITION

Jeffrey E. Ellis
Attorney for Mr. Phet
Law Office of Alsept & Ellis
621 SW Morrison St. Ste 1025
Portland, OR 97205
JeffreyErwinEllis@gmail.com

A. STATUS OF PETITIONER¹

John Phet, Petitioner, challenges his Pierce County Superior Court judgment and sentence. Mr. Phet (DOC # 843064) is currently incarcerated in the Stafford Creek Correctional Center, in Aberdeen, Washington.

B. FACTS

Mr. Phet was convicted of five aggravated murder counts and five first degree assault counts, all with firearm enhancements for crimes committed when he was 16 years old. Phet was resentenced on March 25, 2016. However, the resentencing was strictly limited to the aggravated murder counts. The resentencing judgment indicates that all other terms of his previous sentence remain in effect. Both judgments are attached to this petition.

Because Phet was a juvenile at the time of the crimes, he is subject to the Indeterminate Sentence Review Board, which calculates parole eligibility dates based on the amended and original portions of Phet's sentence.

Prior to his sentencing, the ISRB informed Phet's counsel that Phet would be eligible for parole on the assaults after 20 years:

The ISRB will accept petitions for a hearing after the offender serves 20 years flat time (no good time) regardless of whether they have a consecutive cause(s). A decision will be made at that hearing to release or ask the offender to petition at a later date.

But, after Phet was resentenced, the ISRB announced a different decision:

¹ Mr. Phet has also filed a direct appeal (No. 488779) from his limited resentencing and new judgment. This Court should consolidate the two proceedings. In addition, because the State may argue that Phet does not have a right to appeal—a point that Phet will contest, if raised—Phet hereby raises the claims of error from his direct appeal and incorporates his opening brief by reference.

Thanks very much for your patience while we figured out Mr. Phet's sentencing. As you are no doubt aware, when Mr. Phet was re-sentenced on March 25, 2016, the Court re-sentenced him to 25 years confinement on Counts I – V, Aggravated Murder in the First Degree. However, in paragraph 3.2, rather than noting whether the counts were to be served concurrently or consecutively, the Court stated, "All other terms and conditions that are not modified by this addendum and which are set forth in the June 28, 2002, Judgment and Sentence remain full force and effect."

According to the original J&S, 60 month enhancements were ordered on Counts I – X, all to be served consecutively and as "flat time". In addition, according to section 4.5(b) of the original J&S, all counts were ordered to run consecutively to each other.

Therefore, it has been determined that Mr. Phet will first be required to serve the 60 month "flat time" enhancements on Counts I – X before he will begin serving his first 25-year confinement term on Count I. As he approaches the end of his first 25-year confinement block, Mr. Phet will have the opportunity to meet with the Board to consider possible release to his next 25-year confinement term under Count II (at approximately 75 years), and so on. Also, please note, the base confinement terms on Counts VI – X, 100 months each, to be served consecutively, will be left to serve after Mr. Phet has been found releasable by the Board on Counts I – V, Aggravated Murder in the First Degree.

The complete correspondence with the ISRB is attached to this petition.

C. ARGUMENT

1. Introduction

John Phet was convicted of five counts of aggravated murder, each with a firearm enhancement and five counts of Assault in the First Degree, each with a firearm enhancement. At the time he was originally sentenced, the court ordered ten 60 month terms, all consecutive to each other and consecutive to all other terms. In short, the firearm enhancements alone constitute an additional total sentence of 600 months.

When Phet returned for resentencing, the judge ordered that Phet would only be resentenced on the aggravated murder counts and he would not revisit the consecutive 60-month firearm terms.

As a result, Phet's current sentence includes 300 additional months of flat time for the aggravated murder counts, as well as 300 months on the assault counts. The ISRB has since decided that Phet must serve this time prior to commencing any indeterminate terms.

This PRP raises three issues in addition to the claims he reasserts from his direct appeal. First, the 60-month determinate firearm terms do not apply to aggravated murder convictions. Second, Phet should be parole eligible for all of the assault with firearm convictions after serving 20 years—in other words, now. Third, the total sentence for either all crimes of conviction or just for the assaults and the ten firearm enhancements will far exceed Phet's lifetime. Because the sentencing court did not find that Phet was irreparably corrupt, those sentences violate the cruel punishment clauses of the state and federal constitutions. Phet proceeds in this order.

2. Firearm Enhancements Do Not Apply to Juveniles Convicted of Aggravated Murder.

Firearm enhancements constitute a *determinate* term of years added to a determinate standard range sentence. A juvenile convicted of aggravated murder is subject to an *indeterminate* life sentence with a mandatory minimum. As a result, the enhancement terms do not apply.

This is clear from reading all of the applicable statutes. RCW 9.94A.533

provides:

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime.

RCW 9.94A.020 provides:

(49) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

Mr. Phet is not subject to a standard sentence range on aggravated murder.

Instead, he must receive an indeterminate life sentence. Adding determinate terms to an indeterminate sentence makes no sense because there is no standard range.

The Washington Supreme Court has previously recognized the inapplicability of the SRA sentencing provisions to a term imposed under 10.95 RCW. In *State v. Yates*, 161 Wash.2d 714, 781-82, 168 P.3d 359 (2007), that court rejected the application of the consecutive/concurrent sentencing provisions to a 10.95 RCW sentence:

We reach this conclusion because the SRA provisions on concurrent and consecutive sentences (RCW 9.94A. 589) cannot be sensibly applied when a jury in a special sentencing proceeding under chapter 10.95 RCW returns a verdict for a death sentence.

Likewise, the SRA provisions on firearm enhancements cannot be sensibly applied to an indeterminate term under 10.95 RCW. In order to do so, this Court is required to ignore the plain language of the statute, which authorizes an increase only to a standard range sentence.

3. Mr. Phet Should Be Eligible for Parole on All of the Assault Convictions, Including the Firearm Enhancements, After 20 Years.

As part of the *Miller*-fix legislation, the SRA was amended for non-aggravated murder convictions. RCW 9.94A.730 applies to all non-aggravated murder convictions. That provision makes every juvenile parole eligible after 20 years. It provides:

(1) Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement...

The statute does not include an exception or a different minimum term for convictions where there are firearm enhancements. The ISRB is reading into the statute a term that does not apply. It cannot do so.

Nevertheless, the ISRB has failed to apply the plain language of the statute and is requiring Mr. Phet to serve 300 months (or 25 years) enhancement time on the assault, plus 300 months enhancement time on the aggravated murders, plus 20 years on his five assault convictions before he is parole eligible on the assault.

The ISRB misapplies the statute. This Court should reverse. If this Court concludes that the ISRB is correctly applying the statute, then the application of the statute along with the other limitations on resentencing in this case violates the cruel punishment clauses, as discussed below.

3. The Imposition of a Life-Equivalent Sentence Violates the Cruel Punishment Clauses.

This claim is virtually identical to the cruel punishment claim raised in Phet's direct appeal. It differs only because it encompasses Phet's entire sentence,

including the ISRB's calculation of Phet's parole eligibility date. What is clear is that Phet remains ineligible for parole during his lifetime. In fact, the combined terms (for the assault convictions and firearm enhancements) add up to more than life, even excluding the terms for the aggravated murder convictions. Mr. Phet's life-equivalent sentences constitute cruel punishment for crimes committed when he was 16, especially given that the resentencing court concluded that he was not irretrievably corrupt, but found just the opposite.

Like the cruel punishment argument Phet made in his direct appeal, both the calculation of Phet's sentences for his assault convictions and the firearm enhancements and Phet's total sentence (including the aggravated murder sentences) violate the cruel punishment clauses.

John Phet was a child when he committed these crimes. He cannot be required to serve a virtual life sentence unless he is irreparably corrupt. He is not. In fact, the judge who sentenced him on the aggravated murders found just the opposite.

Children are constitutionally different from adults for purposes of sentencing. *Miller v. Alabama*, 567 U.S. __ (2014); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *In re McNeil*, 181 Wash.2d 582, 588, 334 P.3d 548 (2014).

The clearest expression of the applicable constitutional command is found in *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718 (2016), which held that the rule announced in *Miller v. Alabama*, 567 U.S. __ (2014), applies retroactively. *Miller*

was one of several decisions which held that, categorically speaking, juveniles are more capable of change and that this difference restricts the penalties that can be imposed. *Montgomery* explained:

The Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of “children's diminished culpability and heightened capacity for change,” *Miller* made clear that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.” *Id.*

133 S.Ct. 733-34. The Court continued:

Miller, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of “the distinctive attributes of youth.” *Id.*, at —, 132 S.Ct., at 2465. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects “‘unfortunate yet transient immaturity.’” *Id.*, at —, 132 S.Ct., at 2469 (quoting *Roper*, 543 U.S., at 573, 125 S.Ct. 1183). Because *Miller* determined that sentencing a child to life without parole is excessive for all but “‘the rare juvenile offender whose crime reflects irreparable corruption,’” 567 U.S., at —, 132 S.Ct., at 2469 (quoting *Roper*, *supra*, at 573, 125 S.Ct. 1183), it rendered life without parole an unconstitutional penalty for “a class of defendants because of their status”—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. *Penry*, 492 U.S., at 330, 109 S.Ct. 2934.

The simplest expression of the constitution rule is that juveniles cannot be sentenced to life without parole without a finding of irreparable corruption or incorrigibility. The focus of the rule is not on how many crimes were committed, but instead on the rehabilitative prospects of the child.

The legislative history to the so-called *Miller*-fix legislation recognized this distinction. The Final Bill Report for Second Senate Substitute Bill 5064 (2014) stated: “In June 2012 the United States Supreme Court held, in *Miller v. Alabama*,

(10-9646), that the eighth amendment ban on cruel and unusual punishment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile homicide offenders.” Nowhere in any of the legislative history was there any intent to apply the prohibition against a statutorily mandated life without parole sentence only to juveniles with a single aggravated murder conviction.

In *State v. Roquillo*, 190 Wash.App. 765, 361 P.3d 779 (2015), Division I held that the principles announced in *Miller* also applied to aggregate sentences imposed on a juvenile offender that were *de facto* life sentences. 190 Wn.App. at 775.

Ronquillo like the case at bar involved a single criminal episode.

Ronquillo held:

Ronquillo's sentence contemplates that he will remain in prison until the age of 68. This is a *de facto* life sentence. It assesses Ronquillo as virtually irredeemable. This is inconsistent with the teachings of *Miller* and its predecessors. Before imposing a term-of-years sentence that is the functional equivalent of a life sentence for crimes committed when the offender was a juvenile, the court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Miller*, 132 S.Ct. at 2469. The trial court erred in concluding that only a literally mandatory life sentence falls within the ambit of *Miller*.

190 Wn.App. at 775. *But see State v. Ramos*, 189 Wash.App. 431, 357 P.3d 680 (2015).

If this Court treats the assault and firearm enhancements separately, then the virtual life sentences are prohibited by *Graham v. Florida*, 560 U.S. 48 (2010), which held that juvenile offenders cannot be sentenced to life imprisonment without parole for non-homicide offenses.

D. CONCLUSION

The bottom line is clear. Phet cannot be subject to a sentence that will greatly exceed his lifetime before he is parole eligible.

This Court should first conclude that Phet is eligible for parole on the assault convictions with their firearm enhancements at 20 years. Next, this Court should conclude that the firearm enhancements do not increase Phet's indeterminate sentences for aggravated murder. Then, this Court should remand this case for resentencing on the aggravated murder convictions—a sentencing where the court has the discretion to run the aggravated murder sentences concurrently with the assault convictions and where the total sentence cannot be the equivalent of a life sentence.

Mr. Phet is entitled to have the opportunity for the parole board to release him.

DATED this 3rd day of October, 2016.

Respectfully Submitted:

/s/ Jeffrey E. Ellis

Jeffrey E. Ellis

Attorney for Mr. Phet

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JeffreyErwinEllis@gmail.com

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Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Question about juve agg murder terms

10 messages

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "isrb@doc1.wa.gov" <isrb@doc1.wa.gov>

Tue, Dec 1, 2015 at 9:49 AM

Is there an ISRB policy regarding parole eligibility for Miller-fix minimum terms that are ordered to run consecutive to each other? In other words, will the ISRB hold a parole hrg on the date that the offender has served the first min term or only after serving all min terms combined?

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
621 SW Morrison Street, Ste 1025
Portland, OR 97205
503/222-9830 (o)
206/218-7076 (c)

ISRB <isrb@doc1.wa.gov>
To: Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Tue, Dec 1, 2015 at 10:42 AM

The ISRB will accept petitions for a hearing after the offender serves 20 years flat time (no good time) regardless of whether they have a consecutive cause (s). A decision will be made at that hearing to release or ask the offender to petition at a later date. I hope this answers your question.

Robin Riley

Administrative Assistant 5

DOC/Indeterminate Sentence Review Board

P.O. Box 40907

Olympia, WA 98504-0907

360-407-2415

rriley@doc1.wa.gov

From: Jeffrey Ellis [mailto:jeffreyerwinellis@gmail.com]
Sent: Tuesday, December 01, 2015 9:49 AM
To: ISRB <isrb@DOC1.WA.GOV>
Subject: Question about juve agg murder terms

[Quoted text hidden]

The Washington Department of Corrections is increasing the security level for email messages containing confidential or restricted data. A new Secure Email Portal is being implemented. Outbound email messages from DOC staff that contain confidential or restricted data will be routed to the portal. A notification of the secured message will be delivered to the recipient.

Click on the following web link for more information.
<http://www.doc.wa.gov/business/secureemail.asp>

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: ISRB <isrb@doc1.wa.gov>

Tue, Dec 1, 2015 at 10:59 AM

I want to be clear. I am not asking about non-aggravated murder cases where the statute created parole elig after 20 yrs.

I am asking about cases where ct resentences on mult agg murder counts; sets a minimum term of 25 yrs (or more); and then runs those min terms consecutively. So, let's assume two 25 yr min terms both for agg murder ordered to run consecutively to each other. Is that offender elig for a parole hrg at 25 yrs or at 50 yrs?

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
621 SW Morrison Street, Ste 1025
Portland, OR 97205
503/222-9830 (o)
206/218-7076 (c)

[Quoted text hidden]

ISRB <isrb@doc1.wa.gov>
To: Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Tue, Dec 1, 2015 at 1:28 PM

If a juvenile is convicted of aggravated murder, there are resentenced by the court. If they commit the crime prior to their 16 birthday, the judge must set a new minimum term of 25 years. If they commit their crime on or after their 16 birthday but before their 18 birthday, the judge can set their MT from 25 years to life without parole. If the term was set at 30 years, they would have to serve 25 years flat time and then would get good time on the remain 5 years. That is how we are operating at this point.

From: Jeffrey Ellis [<mailto:jeffreyerwinellis@gmail.com>]
Sent: Tuesday, December 01, 2015 11:00 AM
To: ISRB <isrb@DOC1.WA.GOV>
Subject: Re: Question about juve agg murder terms

[Quoted text hidden]

[Quoted text hidden]

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: ISRB <isrb@doc1.wa.gov>

Tue, Dec 1, 2015 at 1:35 PM

I must not be making myself clear. I understand your last answer. My question is a different one.

If a juvenile (over 16 at time of crime) commits two aggravated murders and judge imposes two 25 yr min terms and orders those to run consecutively, is that person parole elig after 25 yrs or 50 yrs?

Jeff Ellis
Attorney at Law

Oregon Capital Resource Counsel
621 SW Morrison Street, Ste 1025
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206/218-7076 (c)

[Quoted text hidden]

Riley, Robin L. (DOC) <rriley@doc1.wa.gov>
To: Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Tue, Dec 1, 2015 at 3:12 PM

Sorry for the confusion. After discussion with our JUVBRD workgroup we have decided to request clarification from our AAG and then discuss this with Board Members. I will get back with you as soon as possible to let you know how we will process these cases.

Robin Riley

360-407-2415

From: Jeffrey Ellis [mailto:jeffreyerwinellis@gmail.com]

Sent: Tuesday, December 01, 2015 1:36 PM

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "Riley, Robin L. (DOC)" <rriley@doc1.wa.gov>

Tue, Dec 1, 2015 at 3:33 PM

Thank you.

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
621 SW Morrison Street, Ste 1025
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[Quoted text hidden]

Riley, Robin L. (DOC) <rriley@doc1.wa.gov>
To: Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Fri, Jan 22, 2016 at 5:41 PM

Good afternoon. I don't want you to think we have forgotten your question. We are still working on an answer. I hope to be able to provide you with a response soon.

Robin

From: Riley, Robin L. (DOC)
Sent: Tuesday, December 01, 2015 3:13 PM
To: 'Jeffrey Ellis' <jeffreyerwinellis@gmail.com>
Subject: FW: Question about juve agg murder terms

[Quoted text hidden]

[Quoted text hidden]

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "Riley, Robin L. (DOC)" <rriley@doc1.wa.gov>

Sat, Jan 23, 2016 at 1:41 PM

Thank you.

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
621 SW Morrison Street, Ste 1025
Portland, OR 97205
503/222-9830 (o)
206/218-7076 (c)

[Quoted text hidden]

Riley, Robin L. (DOC) <rriley@doc1.wa.gov>
To: "jeffreyerwinellis@gmail.com" <jeffreyerwinellis@gmail.com>

Thu, Feb 4, 2016 at 11:25 AM

Good morning Mr. Ellis. I have an answer to your questions. If an offender is sentenced to two 25 year terms to be served consecutively, the ISRB will see them when they complete the first 25 years to determine if they will find them releasable to the consecutive cause or not releasable and add time to that first 25 years.

Please let me know if you have any further questions.

Robin Riley

Administrative Assistant 5

DOC/Indeterminate Sentence Review Board

P.O. Box 40907

Olympia, WA 98504-0907

360-407-2415

rriley@doc1.wa.gov

From: Riley, Robin L. (DOC)

Sent: Friday, January 22, 2016 5:42 PM

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[Quoted text hidden]

[Quoted text hidden]



Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Question about parole elg date for inmate Phet, J--#843064

10 messages

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "isrb@doc1.wa.gov" <isrb@doc1.wa.gov>

Mon, Apr 11, 2016 at 10:56 AM

Can you tell me when the ISRB has determined Mr. Phet is eligible for a parole hearing?

More specifically, will he have a hrg on the non-agg murder convictions at year 20 and another hearing at year 25?
Something else?

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
621 SW Morrison Street, Ste 1025
Portland, OR 97205
503/222-9830 (o)
206/218-7076 (c)

Getty, Jill K. (DOC) <jkgetty@doc1.wa.gov>
To: Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Thu, Apr 14, 2016 at 11:28 AM

Mr. Ellis,

Thanks very much for contacting us regarding Mr. Phet. I asked ISRB records staff to help me look at his case as the new sentencing structure is pretty complex. We have decided to gather some additional information before responding. It may take a few weeks, but I will update you once information comes available.

Jill Getty

Hearing Investigator

WA State Indeterminate Sentence Review Board

PO Box 40907

Olympia, WA 98504

(360) 407-2409

From: Jeffrey Ellis [mailto:jeffreyerwinellis@gmail.com]
Sent: Monday, April 11, 2016 10:57 AM
To: ISRB <isrb@DOC1.WA.GOV>
Subject: Question about parole elg date for inmate Phet, J--#843064

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The Washington Department of Corrections is increasing the security level for email messages containing confidential or restricted data. A new Secure Email Portal is being implemented. Outbound email messages from DOC staff that contain confidential or restricted data will be routed to the portal. A notification of the secured message will be delivered to the recipient.

Click on the following web link for more information.
<http://www.doc.wa.gov/business/secureemail.asp>

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "Getty, Jill K. (DOC)" <jkgetty@doc1.wa.gov>

Mon, Apr 18, 2016 at 11:26 AM

Thank you.

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
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Portland, OR 97205
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[Quoted text hidden]

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "Getty, Jill K. (DOC)" <jkgetty@doc1.wa.gov>

Tue, Apr 26, 2016 at 9:27 AM

Wondering if you have calculated parole elig date(s)?

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
621 SW Morrison Street, Ste 1025
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503/222-9830 (o)
206/218-7076 (c)

[Quoted text hidden]

Getty, Jill K. (DOC) <jkgetty@doc1.wa.gov>
To: Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Thu, Apr 28, 2016 at 10:34 AM

Hello,

We're still working on it. But I hope to have an answer for you very soon.

Jill Getty

Hearing Investigator

WA State Indeterminate Sentence Review Board

PO Box 40907

Olympia, WA 98504

(360) 407-2409

From: Jeffrey Ellis [mailto:jeffreyerwinellis@gmail.com]
Sent: Tuesday, April 26, 2016 9:28 AM
To: Getty, Jill K. (DOC) <jkgetty@DOC1.WA.GOV>
Subject: Re: FW: Question about parole elg date for inmate Phet, J--#843064

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[Quoted text hidden]

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "Getty, Jill K. (DOC)" <jkgetty@doc1.wa.gov>

Thu, May 19, 2016 at 3:22 PM

Wondering if you have an answer?

Jeff Ellis
Attorney at Law
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206/218-7076 (c)

[Quoted text hidden]

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "Getty, Jill K. (DOC)" <jkgetty@doc1.wa.gov>

Thu, Jun 9, 2016 at 2:50 PM

I am sorry to be a pest, but I am still seeking the information I requested in early April about Mr. Phet's minimum term(s).

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
621 SW Morrison Street, Ste 1025
Portland, OR 97205
503/222-9830 (o)
206/218-7076 (c)

[Quoted text hidden]

Getty, Jill K. (DOC) <jkgetty@doc1.wa.gov>
To: Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Thu, Jun 16, 2016 at 10:56 AM

Mr. Ellis:

I apologize that it's taking so long to be able to get you answer. At this point, there are several individuals involved in looking at Mr. Phet's case, and we've had to contend with people being on vacation. I sincerely hope that I'll be able to give you an answer soon. As soon as I have something definitive, I will update you right away.

Jill Getty

Hearing Investigator

WA State Indeterminate Sentence Review Board

PO Box 40907

Olympia, WA 98504

(360) 407-2409

From: Jeffrey Ellis [mailto:jeffreyerwinellis@gmail.com]

Sent: Thursday, June 09, 2016 2:51 PM

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Jeffrey Ellis <jeffreyerwinellis@gmail.com>
To: "Getty, Jill K. (DOC)" <jkgetty@doc1.wa.gov>

Tue, Jul 19, 2016 at 10:02 AM

Any decision, yet?

Jeff Ellis
Attorney at Law
Oregon Capital Resource Counsel
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206/218-7076 (c)

[Quoted text hidden]

Getty, Jill K. (DOC) <jkgetty@doc1.wa.gov>
To: Jeffrey Ellis <jeffreyerwinellis@gmail.com>

Fri, Jul 22, 2016 at 2:56 PM

Mr. Ellis,

Thanks very much for your patience while we figured out Mr. Phet's sentencing. As you are no doubt aware, when Mr. Phet was re-sentenced on March 25, 2016, the Court re-sentenced him to 25 years confinement on Counts I – V,

Aggravated Murder in the First Degree. However, in paragraph 3.2, rather than noting whether the counts were to be served concurrently or consecutively, the Court stated, "All other terms and conditions that are not modified by this addendum and which are set forth in the June 28, 2002, Judgment and Sentence remain full force and effect."

According to the original J&S, 60 month enhancements were ordered on Counts I – X, all to be served consecutively and as "flat time". In addition, according to section 4.5(b) of the original J&S, all counts were ordered to run consecutively to each other.

Therefore, it has been determined that Mr. Phet will first be required to serve the 60 month "flat time" enhancements on Counts I – X before he will begin serving his first 25 year confinement term on Count I. As he approaches the end of his first 25 year confinement block, Mr. Phet will have the opportunity to meet with the Board to consider possible release to his next 25 year confinement term under Count II (at approximately 75 years), and so on. Also, please note, the base confinement terms on Counts VI – X, 100 months each, to be served consecutively, will be left to serve after Mr. Phet has been found releasable by the Board on Counts I – V, Aggravated Murder in the First Degree.

I hope this answers your questions. Please let me know if I can be of further assistance.

Jill Getty

Hearing Investigator

WA State Indeterminate Sentence Review Board

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Olympia, WA 98504

(360) 407-2409

From: Jeffrey Ellis [mailto:jeffreyerwinellis@gmail.com]

Sent: Tuesday, July 19, 2016 10:02 AM

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VERIFICATION OF PETITION

I, John Phet, verify that the attached petition is true and correct and filed on my behalf.

8-11-16
Date and Place


John Phet

ALSEPT & ELLIS

October 03, 2016 - 1:31 PM

Transmittal Letter

Document Uploaded: 0-prp-Personal Restraint Petition-20161003.pdf

Case Name: In re PRP of John Phet

Court of Appeals Case Number:

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Jeffrey Ellis - Email: jeffreyerwinellis@gmail.com