COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondant,	)	No. 49534-1-II
V.	)	STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW (AMENDED BY INFORMATION)
ALEXANDER JABBAAR KITT Appellant,	)	

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DIVISION II
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I, Alexander J. Kitt, have received and reviewed the opening brief prepared by my attorney. Summarized below is an additional ground I respectfully and humbly request to be amended with the Statement of Additional Grounds that was previously filed. I understand the court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

ADDITIONAL GROUND(S)

The trial court did not meaningfully consider whether Kitt's youthfulness justified an exceptional sentence below the standard range.

ARGUMENTS & AUTHORITIES

RCW 9.94A.535(1) grants a trial court discretion to impose an exceptional sentence below the standard range if it finds, by a preponderance of the evidence, mitigating circumstances to do so. The factors it may consider include, at RCW 9.94A.535(1)(e), "the defendants capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law." Current Washington law complies with Miller v. Alabama, 567 U.S. 460, 471, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), which requires a sentencing court to conduct a special hearing before imposing life without parole on a defendant convicted of an offense or offenses committed as a juvenile. Properly applied, Washington law thus allows consideration of factors that might be considered "personal" in a colloquial sense but directly bear on a juvenile

offender's culpability, and does not conflict with Miller. Critically, the Eighth Amendment requires trial courts to exercise this discretion at the time of sentencing itself, regardless of what opportunities for discretionary release may occur down the line. Miller, 132 S. Ct. at 2468-72. A juvenile cannot forfeit his or her right to a full Miller hearing by failing to request it. State v. Ramos, 187 Wn. 2d 420, 434, 437, 387 P. 3d 650 (2017). This failure to exercise discretion is itself an abuse of discretion subject to reversal. State v. Grayson, 154 Wn. 2d 333, 342, 111 P. 3d 1183 (2005).

When the legislature enacted RCW 9.94A.030(34), it did not have the benefit of psychological and neurological studies showing that "the parts of the brain involved in behavior control continue to develop well into a person's 20s." State v. O'Dell, 183 Wn. 2d 680, 695-96, 358 P. 3d 359 (2015). We know now that age may well mitigate a defendant's culpability, even if that defendant is over the age of 18. But in light of what we know today about adolescents' cognitive and emotional development, we conclude that youth may, in fact, relate to [a defendant's] crime. O'Dell, 183 Wn. 2d at 692. Under the Eighth Amendment, the diminished culpability of juveniles dampened its penological justifications and rendered the punishment unconstitutionally disproportionate for youth. This diminished culpability results from three key differences between youth and adults identified by the Roper Court:

a "lack of maturity and an underdeveloped sense of responsibility" that frequently leads to "impetuos and ill-considered actions and decisions"; an increased susceptibility to "negative influences and outside pressures", including a reduced ability to control or escape their environments; and a "more transitory, less fixed" character that is "not as well formed as that of an adult." Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). The qualities that distinguish juveniles from adults do not disappear when an individual turns 18 [just as] some under 18 have already attained a level of maturity some adults will never reach." Roper, 543 U.S. at 574. [U]ntil full neurological maturity, young people in general have less ability to control their emotions, clearly identify consequences, and make reasoned decisions than they will

when they enter their late twenties and beyond. Miller v. Alabama, ____ U.S. ____, 132 S. Ct. 2455, 183 L.Ed. 2d 407 (2012).

When describing how the defendant might be able "to establish that youth diminished his capacities for purposes of sentencing", the court explained that the defendant would not need to present expert testimony. O'Dell, 183 Wn. 2d at 697. The Court cited examples from the record of the type of lay testimony that a trial court should consider, including family members depictions of the defendant as an "immature kid", descriptions of the defendant's hobbies, including hiking and playing video games, and the way he interacted with his family. O'Dell, 183 Wn. 2d at 697-98. All of the examples related to the defendant's immaturity, rather than the specific circumstances of his crime or criminal record. O'Dell, 183 Wn. 2d at 697-98.

MILLER FIX STATUTE

The Supreme Court's Eighth Amendment jurisprudence discussed above applies equally in Washington when a juvenile offender receives a de facto life sentence under the Sentencing Reform Act. Ramos, 187 Wn. 2d at 434-35. A standard-range sentence is a de facto life sentence if it results in a total prison term exceeding the average human life-span. Ramos 187 Wn. 2d at 434. Thus, every juvenile offender facing a literal or de facto life sentence is automatically entitled to a full Miller hearing. Ramos, 187 Wn. 2d at 434-35, 443. A sentence of life without parole for a juvenile homicide offender should be uncommon. Ramos, 187 Wn. 2d at 443. On remand, the Court has discretion to impose any sentence below the standard range. State v. Houston-Sconiers, 188 Wn. 2d 1, 20, 391 P.3d 409 (2017). In most cases, the juvenile will necessarily be able to prove that there are substantial and compelling reasons for an exceptional sentence downward. Ramos, 187 Wn. 2d at 436, 442-43. Also, the Firearm Enhancements are not "mandatory" in the context of juvenile sentencing. Houston-Sconiers, 188 Wn. 2d at 21, 25-26. The Courts failure to conduct a Miller hearing

renders Kitt's sentence Unconstitutional. Ramos, 187 Wn. 2d at 434-35, 437, 443.

In this case, Kitt was 23 years old at the time of this offense. After trial, Kitt was found guilty on all charges and sentenced to a total of 1,010 months of confinement

CONCLUSION

For the reasons stated above, Kitt requests this Court to consider whether the trial court failed by not conducting a Miller hearing to consider whether his youthfulness justified an exceptional sentence below the Standard range, and to be remanded for resentencing under the Sentencing Reform Act - Miller Fix Statute.

DATED _____, 2018.