

NO. 49922-3-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

COLE RIFE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

APPELLANT'S OPENING BRIEF

TRAVIS STEARNS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

A. INTRODUCTION 1

B. ASSIGNMENTS OF ERROR..... 2

C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR . 2

D. STATEMENT OF THE CASE 3

E. ARGUMENT..... 6

1. Defense counsel failed to request the sentencing judge be recused at Mr. Rife’s new sentencing hearing. 6

 a. Mr. Rife had the right to be re-sentenced before a judge who did not violate the appearance of fairness doctrine when hearing Mr. Rife’s case..... 6

 b. Effective assistance of counsel is required at sentencing. 7

 c. The sentencing court had previously disclosed its difficulties with impartiality..... 9

 d. Mr. Rife’s attorney failed to provide effective assistance of counsel when he failed to request a new judge for resentencing. 10

2. The trial court failed to properly consider the mitigating circumstance of youthfulness at Mr. Rife’s second sentencing hearing. 13

 a. Youthfulness is a substantial and compelling basis for a mitigated sentence..... 13

 b. Youthfulness was a mitigating factor that should have been considered at Mr. Rife’s sentencing..... 15

 c. The sentencing court abused its discretion when it failed to properly consider Mr. Rife’s youthfulness at sentencing. 17

3. On remand, this Court should order Mr. Rife be sentenced before a new judge. 19

a. Appellate courts can order reassignment to a new judge on remand where facts show the original judge’s impartiality may be questioned.	19
b. A new judge should be reassigned in order to comport with the appearance of fairness doctrine.....	20
c. A new judge should be reassigned because of the trial court’s failure to consider youthfulness as a valid mitigating factor.	21
F. CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>Graham v. Florida</i> , 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).....	15
<i>In re Murchison</i> , 349 U.S. 133 (1955)	6, 20
<i>Miller v. Alabama</i> , 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).....	14
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).....	15
<i>Sherman v. State</i> , 128 Wn.2d 164, 905 P.2d 355 (1995).....	7, 19
<i>State v. A.N.J.</i> , 168 Wn.2d 91, 225 P.3d 956 (2010).....	8
<i>State v. Gamble</i> , 168 Wn.2d 161, 225 P.3d 973 (2010)	7
<i>State v. Madry</i> , 8 Wn. App. 61, 504 P.2d 1156 (1972)	6, 20
<i>State v. McEnroe</i> , 181 Wn.2d 375, 333 P.3d 402 (2014).....	19
<i>State v. O’Dell</i> , 183 Wn.2d 680, 358 P.3d 359 (2015).....	passim
<i>State v. Phuong</i> , 174 Wn. App. 494, 299 P.3d 37 (2013)	9
<i>State v. Reichenbach</i> , 153 Wn.2d 126, 101 P.3d 80 (2004)	8
<i>State v. Saunders</i> , 120 Wn. App. 800, 86 P.3d 232 (2004)	9
<i>State v. Solis-Diaz</i> , 187 Wn.2d 535, 387 P.3d 703 (2017)	passim
<i>State v. Solis-Diaz</i> , 194 Wn. App. 129, 376 P.3d 458 (2016), <i>rev’d on other grounds</i> , 187 Wn.2d 535 (2017)	3, 17, 18
<i>State v. Thomas</i> , 109 Wn.2d 222, 743 P.2d 816 (1987)	8
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 205, 80 L.Ed.2d 674 (1984).....	8

Tatham v. Rogers, 170 Wn. App. 76, 283 P.3d 583 (2012) 7, 20

Other Authorities

Bassett, Debra Lyn Bassett & Rex R. Perschbacher, *The Elusive Goal of Impartiality*, 97 Iowa L. Rev. 181 (2011)..... 11

Robbennolt, Jennifer & Matthew Taksin, *Can Judges Determine Their Own Impartiality?*, 41 Monitor on Psychol. 24 (2010) 11

Rules

CJC Canon 2.11 7

GR 14.1 3

Constitutional Provisions

Const. art. I, § 22 6, 7

U.S. Const. amend. 14 6

U.S. Const. amend. 5 7

A. INTRODUCTION

Cole Rife was an eighteen-year-old boy who had just graduated from high school when he got into a fight at the Centralia College baseball team's house party. His impetuous and reckless act resulted in his conviction for attempted burglary and assault. Mr. Rife's conviction was life changing. He went back to school to learn how to be a lineman, receiving perfect grades. He completed anger management and alcohol treatment. He stayed out of trouble and kept working.

The trial judge had a long and enduring relationship with Mr. Rife's family. He had vacationed with his grandparents, married his parents, and still got his hair cut by Mr. Rife's aunt. Despite the trial court's disclosure that it should never have heard Mr. Rife's case, and would not have, had another judge been available, Mr. Rife's lawyer never moved to recuse the judge, at Mr. Rife's original sentencing hearing or on remand. This failure to disqualify the court was ineffective assistance of counsel.

On remand, the court failed to properly consider the mitigating factor of youth. The court found Mr. Rife's actions commendable, but sentenced Mr. Rife to the originally imposed sentence. This abuse of discretion requires a new sentencing hearing.

B. ASSIGNMENTS OF ERROR

1. Defense counsel failed to provide effective assistance of counsel by failing failed to move to disqualify the sentencing judge who had disclosed his discomfort with hearing Mr. Rife's case.

2. The trial court failed to properly consider culpability and the mitigating factor of youth at Mr. Rife's resentencing hearing.

C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. When a judge's impartiality might be questioned by a reasonable observer who knows and understands all the relevant facts, the judge should be disqualified. Ineffective assistance of counsel occurs where counsel's performance falls below an objective standard of reasonableness and results in prejudice. Did ineffective assistance occur when trial counsel failed to move to disqualify a judge acknowledged he could not be fair because of his familiar relationship with the defendant and his family?

2. When sentencing a young offender, a judge should consider as mitigation: immaturity, impetuosity, and failure to appreciate risks and consequences; lessened blameworthiness and resulting diminishment in justification for retribution: and the increased possibility of rehabilitation. The failure to meaningfully consider these

factors requires resentencing. Where the trial court failed to meaningfully consider Mr. Rife’s youthfulness, is resentencing required?

3. Appellate courts may order recusal of a lower court judge where the lower court judge will exercise discretion on remand regarding the very issue that triggered the appeal and has already been exposed to prohibited information, expressed an opinion as to the merits, or otherwise prejudged the issue. Is recusal on remand required because of the trial judge’s violation of the appearance of fairness doctrine and his expressed opinions regarding the use of mitigating evidence?

D. STATEMENT OF THE CASE

Prior to Cole Rife’s original trial, Judge Borseley, the trial judge, disclosed that he had a long relationship with Mr. Rife’s family. *State v. Rife*, 194 Wn. App. 1016 (2016), *review denied*, 186 Wn.2d 1027 (2016), Slip. Op. at 2.¹ Judge Borseley had vacationed with Mr. Rife’s grandparents to places like Hawaii and described Mr. Rife’s grandparents as “very good friends, very close friends.” Slip Op. at 2.

¹ The original opinion in this case is cited solely where it is necessary to cite to the original record and not as authority. GR 14.1. Because the unpublished opinion is not paginated, citations to the opinion will be to the Slip Opinion. *E.g.*, Slip Op. 1.

Judge Borseley had also performed the wedding ceremony of Mr. Rife's parents. Slip Op. at 2. Although Judge Borseley was not as close to Mr. Rife's family as he had been in the past, he still got his hair cut by Mr. Rife's aunt. Slip Op. at 2. The court did not, however, recuse itself.

Judge Borseley disclosed at Mr. Rife's original sentencing that the court should have recused itself from Mr. Rife's case. The court stated:

[H]ad I any alternative other than to be the judge presiding over this case, I would not have chosen to do it. I would have had one of the other judges do it. Unfortunately, by the time that I realized just exactly who this defendant was, none of the other judges were available to do the trial, so I'm the one who ended up presiding over it.

7/17/14 RP 18.

At the original sentencing hearing, Mr. Rife asked the court to impose a sentence below the standard range. Slip Op at 8. The trial court refused to exercise its discretion, making clear that the court believed that when a trial judge sentences someone below the standard range, "absent a stipulation from the prosecutor's office, by and large, almost without exception, the Court of Appeals and Supreme Court have reversed that [sentence]." Slip Op at 4.

The trial court stated sentencing was a "one way street" that was unfair because it "takes the discretion away from me [Judge Borseley]

and it gives it basically to the prosecutor, because the outcome of a case is determined by what they [the prosecutors] charge.” Slip Op. at 4. The court felt it was “stuck” in being unable to deviate from the standard ranges of the Sentencing Reform Act, but hoped that the legislature would someday come to its senses and repeal the current sentencing structure and return discretion to the courts. Slip Op. at 4. Judge Borseley then sentenced Mr. Rife to a standard range sentence of 19.5 months and 36 months of community custody. Slip Op. at 4.

This Court found the trial court abused its discretion refusing to consider an exceptional sentence. Slip Op. at 25. The matter was remanded to trial court for a new sentencing hearing. Slip Op. at 25.

At resentencing, the prosecutor argued there were no statutory factors justifying a reduced sentence. 1/4/17 RP 5. Mr. Rife’s attorney argued for an exceptional downward sentence, arguing the Court of Appeals had made clear the trial court’s hands were not tied. 1/4/17 RP 7. Mr. Rife introduced evidence of his rehabilitation, including his completion of anger management training, and drug and alcohol treatment. 1/4/17 RP 18, CP 91. He had graduated from Northwest

Lineman College and had found work.² 1/4/17 RP 16, CP 91, 94. He had not committed any new offenses. For Mr. Rife, his conviction had been “life changing.” 1/4/17 RP 12.

While the court found Mr. Rife’s work since graduation “commendable,” he declined to find “any additional mitigating factors that count.” 1/4/17 RP 15, 16. The court sentenced Mr. Rife to his original sentence of 19.5 months and 36 months of community custody. 1/4/17 RP 18.

E. ARGUMENT

1. Defense counsel failed to request the sentencing judge be recused at Mr. Rife’s new sentencing hearing.

a. Mr. Rife had the right to be re-sentenced before a judge who did not violate the appearance of fairness doctrine when hearing Mr. Rife’s case.

The right to a fair tribunal is a basic tenant of due process. *In re Murchison*, 349 U.S. 133, 136 (1955); U.S. Const. amend. 14; Const. art. I, § 22. “Next in importance to rendering a righteous judgment is that it be accomplished in such a manner that it will cause no reasonable questioning of the fairness and impartiality of the judge.” *State v. Madry*, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972); *see also* CJC

² Northwest Lineman College is a technical college offering training programs with a concentration on careers in the power delivery industry. See <https://lineman.edu/>.

Canon 2.11. Where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating. *Sherman v. State*, 128 Wn.2d 164, 205, 905 P.2d 355 (1995).

Under the state and federal constitutions, a criminal defendant has the right to be tried and sentenced by an impartial court. *State v. Solis-Diaz*, 187 Wn.2d 535, 539, 387 P.3d 703 (2017) (citing U.S. Const. amends. 5, 14, Const. art. I, § 22). Unless a reasonably prudent person would conclude all parties received a fair, impartial, and neutral hearing, recusal is required. *State v. Gamble*, 168 Wn.2d 161, 187, 225 P.3d 973 (2010); *see also Tatham v. Rogers*, 170 Wn. App. 76, 96, 283 P.3d 583 (2012). The law requires more than an impartial judge; it requires that the judge also appear to be impartial. *Gamble*, 168 Wn.2d at 187. The test for determining whether a judge's impartiality might reasonably be questioned is an objective test that assumes a reasonable observer knows and understands all the relevant facts. *Sherman*, 128 Wn.2d at 206.

b. Effective assistance of counsel is required at sentencing.

The right of effective counsel and the right of review are fundamental to, and implicit in, any meaningful modern concept of

ordered liberty. *State v. A.N.J.*, 168 Wn.2d 91, 96, 225 P.3d 956 (2010); *see also Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 205, 80 L.Ed.2d 674 (1984). To determine whether an attorney failed to provide effective assistance of counsel, courts examine whether (1) counsel's performance fell below an objective standard of reasonableness and, if so, (2) whether the poor work of counsel resulted in prejudice. *A.N.J.*, 168 Wn.2d at 109.

The presumption of effective assistance is overcome where there is no conceivable legitimate tactic to explain counsel's performance. *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). The prejudice prong is met where the court finds there was a reasonable probability that the result of the proceeding would have been different but for counsel's deficient representation. *Strickland*, 466 U.S. at 694; *A.N.J.*, 168 Wn.2d at 109. Reasonable probability is defined as a probability sufficient to undermine confidence in the outcome of the proceedings. *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

Ineffective assistance can occur at sentencing. For example, the failure to argue prior convictions constitute same criminal conduct at sentencing can amount to ineffective assistance of counsel. *State v.*

Phuong, 174 Wn. App. 494, 547, 299 P.3d 37 (2013) (citing *State v. Saunders*, 120 Wn. App. 800, 824-25, 86 P.3d 232 (2004)).

c. The sentencing court had previously disclosed its difficulties with impartiality.

At Mr. Rife's original sentencing, the court declared "[H]ad I any alternative other than to be the judge presiding over this case, I would not have chosen to do it." 7/17/14 RP 18. The court disclosed that "by the time that I realized just exactly who this defendant [Mr. Rife] was, none of the other judges were available to do the trial." 7/17/14 RP 18.

There were good reasons for the court to question whether Mr. Rife's case should have been reassigned to another judge. Over the course of many years, Judge Brosey had developed close relationships with Mr. Rife's family, including Mr. Rife's mother, aunt, and grandparents. Slip Op at 4. And although Judge Brosey had disclosed these relationships early on, neither Mr. Rife nor the government asked the judge to recuse himself. Slip Op. at 4.

On appeal, this Court recognized the Canons of Judicial Conduct do not allow a judge to accept a party's waiver of the appearance of fairness doctrine where the judge has a personal bias or prejudice. Slip Op. at 10 (citing CJC 2.11(c)). This Court determined,

however, that the question of whether the appearance of fairness doctrine had been violated was unpreserved. Slip Op. at 9.

d. Mr. Rife's attorney failed to provide effective assistance of counsel when he failed to request a new judge for resentencing.

On remand, Mr. Rife's attorney did not raise the issue of whether a new judge should be assigned for Mr. Rife's resentencing. Instead, Mr. Rife's attorney went ahead without raising the question of whether the appearance of fairness doctrine required Judge Borsej's disqualification.

The failure to move for Judge Borsej's disqualification constituted ineffective assistance of counsel. At Mr. Rife's original sentencing hearing, Judge Borsej had disclosed that he should not have heard Mr. Rife's case and if there had been any other judge available, Mr. Rife's trial would have been assigned to a new judge. 7/17/14 RP 18. There is no indication that Judge Borsej's personal relationships with Mr. Rife's family had changed or that he had changed his mind about his qualifications for hearing this case.

Mr. Rife's attorney did not make a tactical decision by not asking Judge Borsej to disqualify himself. Like all people, judges believe they can be objective, even when they cannot. The "bias blind

spot,” or the ability to see bias in others but not to identify it in themselves, makes it difficult for judges to identify their own biases. Jennifer Robbennolt & Matthew Taksin, *Can Judges Determine Their Own Impartiality?*, 41 *Monitor on Psychol.* 24, 24 (2010). The existence of unconscious motivations means honest and well-intentioned judges cannot necessarily trust in their own subjective belief they are and will remain impartial. Debra Lyn Bassett & Rex R. Perschbacher, *The Elusive Goal of Impartiality*, 97 *Iowa L. Rev.* 181, 207 (2011).

Judge Borseley had already made it clear he did not believe sentences below the standard range could be upheld on appeal. Slip Op. at 9. In addition, he had expressed his regret with hearing the case at all. 7/17/14 RP 18. In fact, Judge Borseley had already stated he should not have remained on the case and that another judge should have presided over Mr. Rife’s original proceedings. 7/17/14 RP 18. Given the court’s predisposition against departing from the standard range, there was no strategic reason from not asking Judge Borseley to disqualify himself. The failure to do so was ineffective.

The failure of Mr. Rife’s attorney to ask for Judge Borseley’s disqualification also resulted in prejudice to Mr. Rife. The trial court

recognized the “high school kids,” including Mr. Rife, had no business being at the Centralia College baseball team party. 6/4/17 RP 14. The boys had been drinking alcohol underage. 6/4/17 RP 14. For the court, the fight involving Mr. Rife was pointless, unnecessary and without redeeming social value. 6/4/17 RP 14.

The trial court declined to find “any additional mitigating factors that count.” 6/4/17 RP 15. Additionally, the court found:

A number of people that have come before me over the years have flatly told me that they prefer the typical year and a day in Department of Corrections over any time in excess of perhaps 60 days in our county jail, because our county jail is not known as a nice place to have to be.

6/4/17/ RP 15.

Finally, the trial court found that it had not believed there were mitigating factors to justify a sentence below the standard range at Mr. Rife’s original sentencing and that there were no factors to justify departing from the guidelines at Mr. Rife’s resentencing hearing. 6/4/17 RP 16.

There is a reasonable probability that another judge, who did not have preconceptions about Mr. Rife would have sentenced Mr. Rife differently. Mr. Rife’s actions were those of a reckless and impetuous youth. He had already shown he had rehabilitated himself, as he had

demonstrated through his continued employment, education, and compliance with the court's orders. With direction from *State v. O'Dell*, to factor youthfulness in determining culpability, which will be discussed more fully below, it is reasonably probable a judge who was not predisposed in Mr. Rife's matter may have sentenced him differently. *See State v. O'Dell*, 183 Wn.2d 680, 699, 358 P.3d 359 (2015).

2. The trial court failed to properly consider the mitigating circumstance of youthfulness at Mr. Rife's second sentencing hearing.

a. Youthfulness is a substantial and compelling basis for a mitigated sentence.

When Mr. Rife was originally sentenced, Washington's Supreme Court had not considered whether youthfulness can serve as a mitigating factor at sentencing. Prior to Mr. Rife's remand, the court issued *State v. O'Dell*, holding youthfulness may mitigate culpability and a young defendant's sentence. 183 Wn.2d at 699. At Mr. Rife's original sentence hearing, he Rife argued youthfulness justified a mitigated sentence. Slip Op. at 8. This Court held the trial court abused its discretion by refusing to consider mitigating factors. Slip Op. at 25. On remand, Mr. Rife again argued youthfulness justified a reduced

sentence. 6/4/17 RP 9. The trial court again declined to find mitigation.
6/4/17 RP 18.

There are fundamental differences between youths and mature adults. *O'Dell*, 183 Wn.2d at 692. These differences impact the areas of risk and consequence assessment, impulse control, tendency towards antisocial behaviors, and susceptibility to peer pressure. *Id.* Until full neurological maturity, young people have less ability to control their emotions, clearly identify consequences, and make reasoned decisions than they will in the late twenties and beyond. *Id.*

Young persons can have reduced culpability, which is not defined by the defendant's participation in an offense. 183 Wn.2d at 692-93. Instead, the relevant factors a judge should consider as mitigation include: immaturity, impetuosity, and failure to appreciate risks and consequences; lessened blameworthiness and resulting diminishment in justification for retribution; and the increased possibility of rehabilitation. *Id.* Each of these differences between adults and young offenders can justify a mitigated sentence. *Id.* at 693.

Youths are generally less culpable when they commit crimes. *Miller v. Alabama*, 567 U.S. 460, 472, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); *Graham v. Florida*, 560 U.S. 48, 71, 130 S. Ct. 2011, 176

L. Ed. 2d 825 (2010); *Roper v. Simmons*, 543 U.S. 551, 571, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). Youthfulness can justify a downward departure from the sentencing guidelines. *O'Dell*, 183 Wn.2d at 693. Where this factor is present and a sentencing court fails to meaningfully consider youthfulness, the court abuses its discretion. *Id.* at 696.

b. Youthfulness was a mitigating factor that should have been considered at Mr. Rife's sentencing.

Mr. Rife was an eighteen year old boy who had just graduated from W.F. West High School when this crime occurred. 6/4/17 RP 9. His crimes contained the hallmarks of youthfulness. Mr. Rife and his friends had been drinking when they decided to go to a party Centralia College's baseball team was hosting. Slip Op. at 2. The boys went to the party and left quickly afterwards. Slip Op. at 2.

Instead of leaving the area, however, Mr. Rife and his friends only returned to their cars. Mr. Rife got angry and began arguing with his girlfriend, although no reason was ever given for why. Slip Op. at 2. Mr. Rife then returned to the house, where he got into a fight on the front porch with a person he did not know. Slip Op. at 2. Mr. Rife ended up causing significant injuries to that person. Slip Op. at 2.

Mr. Rife quickly took responsibility for his actions, expressing his apologies to the person he had hurt. Slip Op. at 2. Mr. Rife could

not provide a justification for his actions, instead admitting he “just sees red” when he gets angry. Slip Op. at 2. He offered to pay restitution for the damage he caused. Slip Op. at 2.

After trial, Mr. Rife took seriously his promise to rehabilitate himself. For Mr. Rife, his conviction had been “life changing.” 6/4/17 RP 12. He enrolled and completed treatment for substance abuse with Inner Peace Counseling. 6/4/17 RP 18, CP 91. He graduated from anger management training with the Institute for Personal Development. 6/4/17 RP 18, CP 91. He went to Northwest Lineman College to complete training as a lineman with a 4.0 grade point average. 6/4/17 RP 16, CP 91, 94. He received certifications in CPR and First Aid. CP 91. He had found work with BK Metal Buildings, where he was still employed at his second sentencing hearing. CP 91. He had not been rearrested for any new offenses.

At Mr. Rife’s resentencing, the prosecutor argued there were no mitigating factors in the statute present. 1/4/17 RP 5. While the court found Mr. Rife’s work since graduation “commendable,” he declined to find “any additional mitigating factors that count.” 1/4/17 RP 15, 16. The court found there were not any mitigating factors present when Mr.

Rife was originally sentenced and none present when Mr. Rife was resentenced. 1/4/17 RP 16.

c. The sentencing court abused its discretion when it failed to properly consider Mr. Rife's youthfulness at sentencing.

At Mr. Rife's resentencing hearing, the court failed to meaningfully consider youthfulness. Reversal was required in *Solis-Diaz* where the trial court failed to meaningfully consider youthfulness at sentencing. *State v. Solis-Diaz*, 194 Wn. App. 129, 141, 376 P.3d 458 (2016), *rev'd on other grounds*, 187 Wn.2d 535 (2017). Like Mr. Rife, the individual circumstances in *Solis-Diaz* indicated that Mr. Solis-Diaz thought and acted like a youth when he committed his crimes. *Id.* Additionally, the Court of Appeals held that the failure to examine growing maturity and the opportunity for rehabilitation could also justify a reduced sentence. *Id.*

At sentencing, Judge Borseley expressed his views that many people who appeared before him preferred going to prison than remaining in jail. 1/4/17 RP 15. He found Mr. Rife's attempts to rehabilitate himself commendable and that Mr. Rife had outgrown the conduct that led to his conviction. 1/4/17 RP 16. Nevertheless, the court failed to find "any additional mitigating factors that count." 1/4/17 RP

15. The court did not otherwise analyze whether the mitigating factor of youthfulness would apply to the crime Mr. Rife committed when he had just turned eighteen.

The failure to acknowledge Mr. Rife's youthfulness was an abuse of discretion. *See Solis-Diaz*, 194 Wn. App. at 141 (citing *O'Dell*, 183 Wn.2d at 696). Mr. Rife acted impetuously when he committed his crime, striking out at a person he did not know and who had interest in fighting him. He had been out with a group of friends when they decided to go to a party they had not been invited to. He was with a group of peers who had been drinking together. When given the opportunity to demonstrate his maturation, Mr. Rife showed how he could rehabilitate himself. He completed all of his court's obligations, finished his education, found work, and stayed out of trouble.

Mr. Rife exemplifies youthful recklessness and impetuous behavior. He also demonstrates why youth must be treated differently. Despite the court's belief that most people prefer prison to jail, nothing about sending Mr. Rife to prison justifies Washington's penological goals. *See Solis-Diaz*, 194 Wn. App. at 143. The failure to give weight to Mr. Rife's youthfulness requires a new sentencing hearing.

3. On remand, this Court should order Mr. Rife be sentenced before a new judge.

a. Appellate courts can order reassignment to a new judge on remand where facts show the original judge's impartiality may be questioned.

On remand, a party seeking a new judge generally files a motion for recusal in the trial court, which allows the challenged judge to evaluate the grounds for recusal and permits the parties to develop a record adequate to determine whether the judge's impartiality might reasonably be questioned. *Solis-Diaz*, 187 Wn.2d at 540 (citing *State v. McEnroe*, 181 Wn.2d 375, 386, 333 P.3d 402 (2014)).

A party may seek reassignment for the first time on appeal, which is usually done where the trial judge "will exercise discretion on remand regarding the very issue that triggered the appeal and has already been exposed to prohibited information, expressed an opinion as to the merits, or otherwise prejudged the issue." *McEnroe* 181 Wn.2d at 387. This remedy is available only in limited circumstances; even where a trial judge has expressed a strong opinion as to the matter appealed. *Id.*

Where review of facts in the record shows the judge's impartiality might reasonably be questioned, however, the appellate

court should remand the matter to another judge. *Solis-Diaz*, 187 Wn.2d at 540 (citing *Sherman*, 128 Wn.2d at 206).

b. A new judge should be reassigned in order to comport with the appearance of fairness doctrine.

At Mr. Rife's original sentencing, the Judge Borseley stated "[H]ad I any alternative other than to be the judge presiding over this case, I would not have chosen to do it." 7/17/14 RP 18. He regretted his decision to hear the case and confessed that had any other judge been available, the case would have been reassigned.

A reasonably prudent and disinterested person could not conclude all parties obtained a fair, impartial, and neutral hearing after Judge Borseley stated he should not have presided over Mr. Rife's original trial and sentencing hearing. *Tatham*, 170 Wn. App. at 96.

Judge Borseley's relationship with Mr. Rife's family is long term and unchangeable. Judge Borseley clearly attempted to be fair and Mr. Rife does not impugn him by arguing an objective observer could not conclude Judge Borseley was without bias. "But our system of law has always endeavored to prevent even the probability of unfairness." *Madry*, 8 Wn. App. at 68 (citing *Murchison*, 349 U.S. at 136). Because this standard is not met, the Court should order a new judge be reassigned to resentence Mr. Rife.

c. *A new judge should be reassigned because of the trial court's failure to consider youthfulness as a valid mitigating factor.*

The evidence from both sentencing hearings strongly suggests Judge Borseley has strong opinions regarding sentencing generally and whether a mitigating sentence can ever be imposed. *See Solis-Diaz*, 187 Wn.2d at 541. In addition, it is apparent Judge Borseley has reached a firm conclusion about the propriety of a mitigating sentence and may not be amendable to considering a mitigating sentence with an open mind. *Id.*

The crime Mr. Rife committed had all the trademarks of youthfulness. It was a reckless act, done impetuously without regard for consequences. Mr. Rife immediately regretted it and took actions to apologize to his victim and to rehabilitate himself. He demonstrated his capacity for change.

Additionally, *O'Dell* makes clear that youthfulness applies to young offenders like Mr. Rife. *O'Dell*, 183 Wn.2d at 699. While it was arguable youthfulness could not be considered at Mr. Rife's original hearing, it was clear by the time Mr. Rife's case was remanded that youthfulness can support an exceptional sentence below the standard range for an adult felony defendant. *Id.*

The failure to properly consider to consider Mr. Rife's youthfulness at his resentencing hearing requires a new hearing. *Solis-Diaz*, 187 Wn.2d at 541. This Court should also remand to a new judge because of Judge Borse's strongly held beliefs on sentencing and youthfulness. "These are precisely the circumstances that justify remand of the matter to another judge." *Id.*

F. CONCLUSION

Mr. Rife asked this Court to remand this matter for a new sentencing hearing. On remand, Mr. Rife requests this Court order resentencing before a new judge.

DATED this 26 day of June 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Stearns", with a long horizontal flourish extending to the right.

TRAVIS STEARNS (WSBA 29935)
Washington Appellate Project (91052)
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 49922-3-II
v.)	
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COLE RIFE,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

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Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

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