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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DAKOTA MIKALLE COLLINS,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 16-1-02182-6
The Honorable Stephanie Arend, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. Dakota Collins was deprived of his due process rights when juvenile court jurisdiction was automatically declined and no hearing was held to determine whether the juvenile court should retain jurisdiction.
2. The trial court abused its discretion when it failed to meaningfully consider youthfulness as a mitigating factor as directed by the Washington and United States Supreme Courts.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where due process requires an individualized assessment before juvenile court jurisdiction may be declined and a charged youth may be prosecuted in adult superior court, but juvenile court jurisdiction is automatically declined when juveniles of a certain age are charged with particular offenses, was sixteen-year-old Dakota Collins denied his due process rights when he was prosecuted in adult court without a court first making an individualized assessment of whether juvenile court jurisdiction should be declined?
(Assignment of Error 1)
2. Where youthfulness and surrounding circumstances of

upbringing can diminish a juvenile offender's culpability and can constitute a mitigating factor justifying the imposition of a reduced sentence, did the trial court abuse its discretion when it failed to consider whether sixteen-year-old Dakota Collins' behavior and decision making were a product of his youthful immaturity and traumatic childhood? (Assignment of Error 2)

3. Where the differences between young offenders and adult offenders can constitute a mitigating factor justifying the imposition of a reduced sentence, did the trial court meaningfully consider youth and its attributes when it failed to address the differences between sixteen-year-old Dakota Collins and adult offenders? (Assignment of Error 2)

III. STATEMENT OF THE CASE

The Pierce County Prosecutor charged sixteen-year-old Dakota Mikalle Collins with one count of first degree felony murder for allegedly causing the death of Lorenzo Parks during an incident that occurred on the 17th or 18th of May, 2016. (CP 1-2) The State further alleged that the charged incident was committed with a firearm. (CP 1-2)

Dakota took responsibility for his actions and entered a guilty plea to an amended information charging one count of

second degree murder while armed with a firearm, one count of attempted first degree robbery, and two counts of first degree unlawful possession of a firearm. (CP 272-74, 276-87; 09/15/17 RP 3-4)¹

When asked to state the factual basis to support the plea, Dakota wrote:

Between May 17th and 18th, I, Dakota Collins, did intentionally shoot Mr. Lorenzo Parks while my codefendants and I were attempting to take his property by force and while Mr. Parks was resisting the taking of his property. The gun I used to shoot Mr. Parks was a real gun, and Mr. Parks died from the gunshot wound. I also should not have been in possession of the firearm because I had previously been convicted of a felony offense and a juvenile which prohibited me from having in my possession a firearm. I also had in my possession a firearm on June 16, 2016 when I was arrested for the offense related to Mr. Parks when my rights to possess a firearm had not been restored to me. All acts occurred in the State of Washington. My shooting of Mr. Parks was my intent to commit Assault 1.

(CP 285) After a lengthy colloquy, the trial court found that the plea was knowing, voluntary and intelligent, and it accepted Dakota's guilty plea. (09/15/17 RP 6-17)

The prosecutor recommended that Dakota be sentenced to a standard range adult sentence totaling 260 months (21.6

¹ The transcripts will be referred to by the date of the proceeding contained therein.

years) of confinement. (10/05/17 RP 60-61) Dakota asked the Court to exercise its discretion and impose an exceptional sentence below the standard range based on Dakota's youth and other related mitigating factors. (10/05/17 RP 62-71)

In its sentencing memorandum, the defense summarized Dakota's difficult childhood and his struggle with behavioral disorders, and his amenability to treatment and rehabilitation:

According to CPS records, Dakota's biological mother, Venessa White, was serving her time at Echo Glen when she gave birth to Dakota Collins on October 23, 1999. [CP 307] Venessa was 16-years-old....

While pregnant with Dakota and since age 13, Venessa had been taking controlled substances. "Alcohol, amphetamine, cocaine, marijuana, tobacco, tobacco dipped in formaldehyde." Whatever she could get her hands on. [CP 313].... Venessa's inadequate parenting skills could not cope with a drug-exposed infant. Youth, poor education, low economic status, being single mother, drug addiction were all a recipe for disaster. On July 3, 2001, the State filed dependency on Dakota and his younger brother.

Of course the effects of those formative years with a drug addicted child-mother, already began taking its toll on Dakota. At age 3, the social workers noted:

Dakota has problems with focusing and staying on task, as well as complying with adult requests. This behavior may be age-related or may be due to maternal drug or alcohol use. He is too young for an ADHD assessment and diagnosis, but if this behavior continues, his foster parents will follow through with a medical evaluation to determine what services, if

any, are needed.

[CP 341]

With his mother detained for not following through with probation and unable to provide for Dakota and not knowing what the future held, on October 13, 2003, after two years of being in dependency and almost two years in foster care, Venessa finally relinquished her parental rights. Dakota's biological father's parental rights were terminated on October 8, 2003.

[T]he effects of pre-natal drug abuse became evident even before Dakota turned 5 and even before he began attending school. He showed all the symptoms of a drug addicted baby – irritability, agitation, hyperactivity, poor task organization and processing. [CP 352-58] As the studies have predicted, during second grade, Dakota was diagnosed with ADHD. [CP 360-62] It was evident to everyone, especially his adoptive parents and his teachers that Dakota was more emotionally reactive, anxious and depressed, even at that young age. Dakota needed medication and had to be closely monitored.

Ritalin, Adderall and Concerta, however, did not work for Dakota. All through grade school and into junior high and high school, Dakota continued to struggle. He was impulsive, reactive, hyperactive, showed undue aggression, was sensation seeking, he could not behave in school or at home, had clear emotional problems and poor social skills. [CP 363-68] His parents didn't know what to do with him. Multiple times he was suspended from school for misbehavior. [CP 363-68] Multiple times Dakota sought help from professionals and multiple times he failed. It was clear: not only did he suffer from attention deficit disorder, he also suffered from oppositional defiant disorder (ODD). [CP 361]

... [A]t age 12, Dakota was sent to the Southern Military Academy in Port St. Lucie, Florida. But what should have been a positive, life-changing learning experience for Dakota turned into a nightmare.

Unbeknownst to his adoptive parents, the Military Academy had been investigated by the Department of Children and Families (DCF) for at least 30 allegations of abuse and neglect at the academy since 2000. [CP 371-92] The types of abuses included asphyxiation, beatings, bizarre punishment, bruises/welts, burns, cuts/punctures/bites, excessive corporal punishment, sexual abuse, sexual exploitation, sexual molestation, and inappropriate/excessive restraints. [CP 371-92] Unfortunately for Dakota, his parents did not listen to his cries to bring him home, ignored his repeated complaints of severe physical abuse, did not take seriously his reports of the types of punishment Dakota and others suffered at the hands of Colonel Weierman. It wasn't until [his adoptive mother] had a confrontation with Colonel Weierman she realized how wrong she had been to not believe Dakota, how wrong she had been to ignore his cries for help. She agreed to bring Dakota home, but the damage was done. Dakota returned home even angrier than before.

What he suffered at the hands of Colonel Weierman and the other juveniles at the military school is more fully described in Dr. Gerlock's report. [CP 393-409] Suffice it to say, Dakota returned suffering from post-traumatic stress disorder (PTSD), desperately needing treatment and medication—neither of which he received or attempted to receive. Instead, he took to the streets. He self-medicated on drugs and marijuana. He committed this crime—taking the life of Mr. Parks—high on drugs, with no control over his emotions, his thought processes and his reasoning abilities severely compromised. He saw Mr. Parks fighting with his friends/codefendants as he resisted their attempts to rob him. He heard his codefendants yell, "Shoot him! Shoot him!" As the incident unfolded, Dakota's PTSD became triggered, and he snapped. He fired the gun not thinking or considering the consequences of his act. At age 16, he killed Mr. Parks, and Dakota knows he will have to atone for this tragic mistake for the rest of his life.

...After his arrest on June 7, 2016, Dakota was sent to Remann Hall, a juvenile detention facility in Tacoma Washington. There, he received much needed mental health counseling from Catholic Community Services. For the first time since returning from Southern Military Academy, he was able to talk about what happened to him at the Academy. He began attending classes five days a week, Monday through Friday for 1 to 1 ½ hours a day, and as he began understanding his own history, he began to grasp the pain he has caused to his adoptive parents, to the mother who bore him, and especially to the family of Mr. Lorenzo Parks. Through counseling, he began to understand his biological mother, forgive her, and find comfort in her love for him. What began as forced counseling became a source of reflection and reprieve.

(CP 297-301) Psychologist April Ann Gerlock also testified that Dakota suffered from PTSD, and coupled with the normal underdeveloped functioning of his adolescent brain, Dakota's judgment and ability to consider consequences would have been impaired. (10/05/17 RP 46-47) These conditions would negatively impact how Dakota would respond and react during a stressful event. (10/05/17 RP 47)

The trial judge was unmoved, and adopted the prosecutor's recommendation. (10/05/17 RP 78; CP 416)

The court stated:

[L]ife is about choices and that you have the choice to walk away. And the facts that were described of what happened that night ... you had a choice to walk away.

...This [proceeding] isn't about giving programming or providing opportunities for youth. This is about accountability under the law for actions that you took.

... [O]ne of the victim's family members talked about ... setting standards for our children. ... We have to be telling them: This is wrong. And it's not okay to just slap them on the wrist.

And there's, I think, a very real concern by the family members here of Mr. Parks that that's what this is all about. That ... if you commit a violent, horrific act where someone is shot and killed, that we are supposed to, because of your youth, give you a slap on the hand and put you through some rehabilitative programming and expect you to become a contributing member of society.

And while I do agree that rehabilitation should be part of this, punishment is also a part of this. Deterrence is part of this. Protection of the public is part of this. And ... this was not your first felony conviction, is my understanding. You were previously convicted of a felony offense as a juvenile, which prevents you from having a firearm in any event. So despite the things that were being done for you or with you, you made very bad choices, and continued to make very bad choices.

... But the facts as they sound to me don't sound like a person who was in fear for their life, and I suspect you wouldn't have pled guilty to the murder in the second degree if in fact what you were doing was protecting yourself or protecting your friends.

... [N]othing miraculous happens on your 18th birthday. You don't suddenly have your brain fully developed so that you're now going to make good choices and now going to be able to assess risks and consequences of your behavior differently than you did the day before you turned 18. And I suspect that you actually did have a good appreciation when you had a gun in your hand, a loaded gun in your hand, and took the magazine out and put it back in, that you had an appreciation for the risk associated with that gun and

what would happen if you pulled the trigger.

... I do think that Houston-Sconiers requires the Court to consider all of the factors, not just the act itself. But it can't -- it's like, okay, how do you consider immaturity or failure to appreciate risks and consequences. You don't consider those in a vacuum. You consider them in the context of what brings us all here today, and that is that you chose to pull the trigger, and a person died as a result.

... And to Mr. Collins, considering all of these factors, including all of the goals of sentencing that I've already touched on, of what is a just punishment, what will be a deterrent, what would it take to rehabilitate you -- which I honestly didn't hear a lot about -- and how do we protect the public, I do think a sentence within the standard sentencing range is appropriate, plus the firearm sentencing enhancement and a period of community custody.

(10/05/17 RP 72-77) Dakota filed a timely Notice of Appeal. (CP 423)

IV. ARGUMENT & AUTHORITIES

- A. DAKOTA WAS DENIED HIS DUE PROCESS RIGHTS WHEN HE WAS PROSECUTED IN ADULT COURT WITHOUT A COURT FIRST MAKING AN INDIVIDUALIZED ASSESSMENT OF WHETHER JUVENILE COURT JURISDICTION SHOULD BE DECLINED.²

“[T]he Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived

² Dakota objected to the automatic transfer of his case to adult court without a decline hearing, but the motion was never ruled upon. (CP 5-21) Nevertheless, “constitutional error may be raised for the first time on appeal, particularly where the error affects ‘fundamental aspects of due process.’” *State v. Lively*, 130 Wn.2d 1, 19, 921 P.2d 1035 (1996) (quoting *State v. Johnson*, 100 Wn.2d 607, 614, 674 P.2d 145 (1983)); RAP 2.5

except pursuant to constitutionally adequate procedures.” Cleveland Board of Education v. Loudermill, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985); U.S. Const. amend. V, amend. XIV. An automatic decline of juvenile court jurisdiction, without a hearing or individualized determination of whether decline is appropriate, is inconsistent with these due process protections.

The juvenile court has original jurisdiction over most criminal offenses committed by juveniles. See RCW 13.04.030(1)(e). An adult court obtains jurisdiction over juvenile defendants in two ways. The first is after a decline hearing in which the juvenile court transfers jurisdiction over the juvenile to the adult court. Decline of jurisdiction may only be ordered “upon a finding that the declination would be in the best interest of the juvenile or the public.” RCW 13.40.110(3). The second way, referred to as automatic decline, is if the juvenile is charged with committing certain serious felonies. RCW 13.04.030(1)(e)(v). In such cases, the statute allows the transfer of the juvenile to adult court without the benefit of a decline hearing. But due process requires a hearing before juvenile court jurisdiction is declined for a youth charged

with a crime.³

That is because “children are different.” Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 2470, 183 L. Ed. 2d 407 (2012). And that difference has constitutional ramifications: “An offender’s age is relevant to the Eighth Amendment, and [so] criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” Graham v. Florida, 560 U.S. 48, 76, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); U.S. Const. amend. VIII.

In Kent v. United States, the Supreme Court held that the transfer of a youth from juvenile court to adult criminal court imposes a significant deprivation of liberty and warrants substantial due process protection. 383 U.S. 541, 554, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). Juvenile court offers “special rights and immunities” to youth that are lost upon transfer to the adult system. 383 U.S. at 556. For many youth, decline can mean the difference between confinement until the age of twenty-one and the harshest sentences imposed upon adults. 383 U.S. at 557.

³ Whether RCW 13.04.030(1)(e)(v) violates due process principles in automatically conferring jurisdiction in adult court over 16-and 17-year old juveniles charged with certain crimes without the necessity of an individualized hearing on whether to decline juvenile court jurisdiction, and whether In re Boot, 130 Wn.2d 553, 925 P.2d 964 (1996), which upheld the constitutionality of the statute’s predecessor, remains good law, is currently pending before the Washington State Supreme Court in State v. Watkins (No. 94973-5). Oral argument in that case was held on March 13, 2018.

In light of those circumstances, the Court found it “clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile,” and thus it must “satisfy the basic requirements of due process and fairness.” 383 U.S. at 553, 556.

It is only by conducting an individualized assessment of whether a child should be transferred to adult court that due process can be satisfied. See Kent, 383 U.S. at 546; Miller, 567 U.S. at 489. Courts must conduct an inquiry into the youth’s needs, amenability to treatment, and the underlying facts to determine whether decline is appropriate. Kent, 383 U.S. at 546; Miller, 567 U.S. at 489; see also In Re Gault, 387 U.S. 1, 31, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

Despite the substantial due process required by Kent and recognized by the courts, the Washington Supreme Court held automatic decline constitutional in In re Boot, 130 Wn.2d 553, 557-58, 925 P.2d 964 (1996). The Court relied upon Stanford v. Kentucky to justify automatic decline, reasoning that if the Eighth Amendment did not preclude the death penalty for sixteen and seventeen-year-old defendants, it must not require hearings for youth of the same age who were automatically declined to adult

court. Boot, 130 Wn.2d at 571 (citing Stanford v. Kentucky, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989)). Stanford has since been abrogated by Roper v. Simmons, 543 U.S. 551, 572-74, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).⁴

Since Roper, the United States Supreme Court has consistently made clear that youth who are charged with crimes must be treated differently than adults. Graham, 560 U.S. 48; Miller, 567 U.S. at 471; Montgomery v. Louisiana, 136 S. Ct. 718, ___ U.S. ___, 193 L. Ed. 2d 599 (2016), as revised (Jan. 27, 2016). These cases have overruled almost all of the cases relied upon to justify automatic decline, demonstrating that both the law and newer scientific information no longer support transferring youth to adult court without a hearing.

Likewise, Washington's Supreme Court has recognized the special status juveniles have in the criminal justice system. Most recently, the Court acknowledged in State v. Houston-Sconiers, that "[c]hildren are different." 188 Wn.2d 1, 8, 391 P.3d 409 (2017) (quoting Miller, 132 S. Ct. at 2470). This recognition

⁴ "The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability.... Stanford v. Kentucky should be deemed no longer controlling on this issue." Roper, 543 U.S. at 574.

led the Court to hold that sentencing courts must have absolute discretion in sentencing juveniles who have been declined to adult court. 188 Wn.2d at 21.

While the Supreme Court did not reach the issue of whether automatic decline was constitutional in Houston-Sconiers, the Court recognized that the cases on which the constitutionality of automatic decline was premised were no longer good law. 188 Wn.2d at 422-23. The Court acknowledged that the holding in Boot now “stands in tension” with United States Supreme Court holdings in Roper, Graham, and Miller. Houston-Sconiers, 188 Wn.2d at 422-23. As Stanford has been abrogated, Boot is no longer controlling and there is no longer a basis to find that automatic decline is constitutional.

For all juveniles, including Dakota, due process requires a hearing before juvenile court jurisdiction is declined. The liberty interests at stake for Dakota are “critically important” and call for heightened procedural protections before juvenile court declines to take jurisdiction over his case. Kent, 383 U.S. at 553-54.

Boot is no longer good law. Its underpinnings have been overturned and it stands not only in “tension” with United States

Supreme Court precedent, but in direct contradiction of the acknowledgement that children are different and must be accorded individualized assessment of their amenability to juvenile court before they are declined to adult court. Houston-Sconiers, 188 Wn.2d at 21; Miller, 567 U.S. at 471.

B. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO PROPERLY CONSIDER DAKOTA'S YOUTH AND TRAUMATIC UPBRINGING AS A MITIGATING FACTOR.

Under the SRA, a sentencing court must generally sentence a defendant within the standard range. State v. Graham, 181 Wn.2d 878, 882, 337 P.3d 319 (2014); RCW 9.94A.505(2)(a)(i). However, “[t]he court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence.” RCW 9.94A.535(1). The diminished culpability of youth may serve as a mitigating factor. See RCW 9.94A.535(1)(e); State v. Ronquillo, 190 Wn. App. 765, 769, 361 P.3d 779 (2015); Miller v. Alabama, *supra*, State v. O’Dell, 183 Wn.2d 680, 358 P.3d 359 (2015).

That is because children are “constitutionally different from adults for purposes of sentencing.” Miller, 132 S. Ct. at 2464. Children are less blameworthy because they are less capable of making reasoned decisions. Miller, 132 S. Ct. at 2464. Scientists

have documented their lack of brain development in areas of judgment. Miller, 132 S. Ct. at 2464.

These scientific studies “reveal fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure.” O’Dell, 183 Wn.2d at 692 (footnote citations omitted); see *a/so* Miller, 132 S. Ct. at 2468 (the hallmark features of youth that diminish a juvenile’s blameworthiness under the Eighth Amendment include immaturity, impulsivity, and failure to appreciate risks and consequences).

Thus, a sentencing court must consider a juvenile offender’s “youth and attendant characteristics” before determining the penalty, and not simply examine his acts during the incident. Miller, 132 S. Ct. at 2471. The judge must “meaningfully consider youth as a possible mitigating circumstance.” O’Dell, 183 Wn.2d at 696.⁵

The Houston–Sconiers Court recently provided guidance to sentencing courts on how to exercise their discretion in juvenile

⁵ Generally, a standard range sentence may not be appealed. RCW 9.94A.585(1). That statute, however, does not place an absolute prohibition on the right of appeal. A defendant may challenge the procedure by which a sentence within the standard range is imposed. State v. Mail, 121 Wn.2d 707, 712-13, 854 P.2d 1042 (1993). And O’Dell concluded that a sentencing court’s failure to fully consider youthfulness as a mitigating factor is reviewable. 183 Wn.2d at 697.

sentencing:

[I]n exercising full discretion in juvenile sentencing, the court must consider mitigating circumstances related to the defendant's youth—including age and its “hallmark features,” such as the juvenile’s “immaturity, impetuosity, and failure to appreciate risks and consequences.” It must also consider factors like the nature of the juvenile’s surrounding environment and family circumstances, the extent of the juvenile’s participation in the crime, and “the way familial and peer pressures may have affected him [or her].” And it must consider how youth impacted any legal defense, along with any factors suggesting that the child might be successfully rehabilitated.

Houston-Sconiers, 188 Wn.2d at 23 (quoting Miller, 132 S. Ct. at 2468).

Furthermore, in assessing whether any fact is a valid mitigating factor, the sentencing court’s task is to determine whether that fact differentiates the current offense and offender from others in the same category. O’Dell, 183 Wn.2d at 690. What makes youthfulness a mitigating factor is the degree to which youth and its characteristics differentiates youthful offenders from older offenders. O’Dell, 183 Wn.2d. at 693. It is “misguided” to equate adolescent failings with those of older offenders. Roper v. Simmons, 543 U.S. at 570. Thus, another relevant question is to what degree did Dakota’s youth differentiate him and his offense from other adult offenders. The trial court did not attempt to consider any of these

factors.

First, at no point did the court consider how Dakota's maturity, culpability, and decision making abilities (or lack thereof) compared to adult offenders. By failing to do so, the trial court did not give effect to the mandate of the SRA, Miller or O'Dell.

The trial court also failed to give effect to the Supreme Court's caution, that the hallmark attributes of youth are transient. "The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." Roper, 543 U.S. at 570. The trial court never assessed Dakota's likelihood for rehabilitation that may occur simply from maturation as compared to older adult offenders. Instead, the trial court simply focused on Dakota's past behavior and the consequences of that behavior, and did not consider Dakota's ability to appreciate those consequences or to make mature decisions about his life when he was just 16 years old.

The trial court also repeatedly referred to Dakota's "choices," stating: "life is about choices and ... you had a choice to walk away" (10/05/17 RP 72); "you made very bad choices, and continued to make very bad choices" (10/05/17 RP 74); and "you chose to pull the

trigger, and a person died as a result” (10/05/17 RP 76). But the court failed to consider that immature judgment and impetuosity—classic traits of youth—may have contributed to Dakota’s choices. And the court did not consider how Dakota’s youth and traumatic upbringing may have impacted his ability to make good choices.

The trial court “did not meaningfully consider youth as a possible mitigating circumstance” and therefore failed to properly exercise its discretion at sentencing. O’Dell, 183 Wn.2d at 696-97. Dakota’s case should be remanded for a new sentencing hearing. O’Dell, 183 Wn.2d at 697.

V. CONCLUSION

Because of the vital importance of the liberty interests at stake when juvenile court jurisdiction is declined, due process requires a hearing prior to transfer to adult court. At this hearing, the court must conduct an individualized assessment of the youth’s amenability to juvenile court jurisdiction. Because no such hearing was conducted here, Dakota’s conviction should be reversed and his case remanded for a hearing. Alternatively, this Court should remand this matter for a new sentencing hearing to

permit the court to meaningfully consider Dakota's youthfulness, surrounding environment and family circumstances as a mitigating factor.

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