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NO. 52105-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL FURMAN,
Appellant.

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

Kitsap Cause No.89-1-00304-8

The Honorable Sally F. Olsen, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The sentencing court's re-imposition of a de facto life sentence is unconstitutional under both the state and federal constitutions.
2. Mr. Furman assigns error to findings of fact 8, 9, 16, 17, 24, 27.
3. Mr. Furman assigns error to conclusions of law 1, 3, 4.
4. The sentencing court did not correctly apply the *Miller*-fix at resentencing. Instead, the court, without correct analysis re-imposed an unconstitutional de facto life sentence.
5. A 48 year sentence is a de facto life sentence for a 17 year old.
6. The sentencing court erroneously relied on the *Fain* test, rather than the categorical analysis to re-impose an unconstitutional de facto life sentence.
7. The sentencing court erroneously relied on the an unconstitutional statute, RCW 10.95.030, to re-impose an unconstitutional de facto life sentence.
8. The sentencing court erroneously refused to consider Mr. Furman's transient immaturity when re-imposing a de facto

life sentence, mistakenly believing it was not required to do so because Mr. Furman was 17 years old.

B. ISSUES PRESENTED ON APPEAL

1. Did the trial court err in concluding that it need only give “minimal weight” to Mr. Furman's juvenile status because he was seventeen, almost eighteen, and not sixteen?

2. Did the trial court err in entering finding of fact XVII that Mr. Furman “never showed any real remorse”? (Contradicts FOF XXIX).

3. Did the trial court err in entering finding of fact XXIV that Dr. Young “could not affirmatively state there was a direct causal link establishing the defendant’s brain development (or lack thereof) and the murder of Ms. Presler”?

4. Did the trial court err in entering finding of fact XXVI indicating Dr. Young could not say how Mr. Furman’s exemplary prison conduct would translate outside prison?

5. Did the trial court err in entering finding of fact XXVII that “juvenile brain research does not show that juveniles are

necessarily incapable of exercising good judgment or that their failure to control antisocial impulses is necessarily excusable. Dr. Young did not say that the defendant couldn't exercise good judgment or control his impulses”?

6. Did the trial court err in entering conclusion of law 1 which contrary to juvenile brain science, improperly minimized Mr. Furman's youth based on his being 17 years old, rather than 14-16 years old?

7. Did he trial court erred in entering conclusion of law 3?

[T]hat Mr. Furman, despite being psychologically impacted by an abusive childhood, nonetheless, “the defendant exercised a great deal of responsibility and deliberate conduct in committing this horrific crime. This is not a reckless or impulsive act, but rather one of a clear, cold, calculating decision of a mind fully cognizant of future consequences.’ [sic] And according to Mr. Corn, who again described the defendant's actions as constituting, quote, almost controlled rage.

..... He made a series of strategic choices in killing her and raping her and then covering up the crime.

...Further he showed no remorse for this crime. The degree of responsibility he was capable of exercising in this instance was quite high, despite his general diminished capacity for self-control and judgment as a juvenile.

CP 329.

8. Did the trial court err in failing to fully consider in conclusion of law 4, Mr. Furman's "substantial evidence of subsequent rehabilitation while in prison"?

9. Did the trial court err in conclusion of law 4 by determining that the crime was committed with "deliberate, cruel and intentional conduct," thus a minimum term of 48 years was necessary, and concluding that while a juvenile being sentenced to prison until 68 is an unconstitutional de facto life sentence, Mr. Furman's sentence until age 65 years old is not a de facto life sentence and therefore not unconstitutional?

10. Is the trial court's conclusion of law 4 is based on the rejected *Fain*¹ analysis (weighing offense with punishment) rather than on the "consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question" and whether the sentence "serves legitimate penological goals"?

11. Is a prison term until Mr. Forman is 65 years old an unconstitutional, de facto life sentence?

¹ *State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980).

12. Did the trial court err in relying on now unconstitutional RCW 10.95.030, to impose a de facto life sentence?

C. STATEMENT OF THE CASE

a. Summary

Mr. Furman was convicted of committing aggravated murder at age 17. Mr. Furman was severely abused, had a horrific upbringing and was emotionally and neuro-biologically immature and undeveloped at age 17. Twenty nine years after Mr. Furman was sentenced to death and later life without the possibility of parole (“LWOP”), he obtained a resentencing under *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

Following this *Miller* fix hearing, the sentencing court inserted the boiler plate *Miller* language, reciting the *Miller*-fix criteria it was required to consider and then re-imposed a de facto life sentence with a minimum term of 48 years in prison without meaningfully considering the evidence within the proper context of the diminished culpability of youth as required by the *Miller*-fix statute. The sentencing court listed the facts surrounding Mr. Furman’s childhood, dismissed those facts and without support in

the record entered findings that Mr. Furman's crime was serious and deliberately cruel in nature.

The court relied on RCW 10.95.030 to determine that the low end, 25 years, was not appropriate. 1RP 23. The court considered that a 48 year minimum sentence with possible parole at age 65, provided Mr. Furman a "meaningful opportunity of parole". RP 23.

b. Findings and Conclusions

Findings of fact.

Number one, on April 27th, 1989, Michael M. Furman went through the neighborhood where the victim, Anne Presler, lived looking for odd jobs.

Two, the defendant contacted Ms. Presler sometime between 9:30 and 10:00 a.m. at her home at 5032 Brasch Road SE, Port Orchard, Washington asking for work. Ms. Presler lived alone, was 85-years-old, wore hearing aids and glasses. She offered him \$10 to wash her windows.

Three, the defendant washed a few windows, but then ran out of glass cleaner and went into the kitchen to ask for more. She suggested he use dish soap.

Four, in his confession he initially stated that after telling her didn't want to use the soap, Ms. Presler slapped him for, quote, mouthing off to her. He got angry and punched her in the head three times and she fell to the floor.

Five, the defendant confessed that he then covered his hand with a rag and hit her with a metal coffee pot. The blow was so hard it left a dent in it. He next went

into a bedroom, got a vase, returned, and hit her with it until it broke. He then went back to the bedroom, got another vase, returned, and hit her with it until it too broke.

Six, the defendant stated he raped her, having sexual intercourse with her for approximately two minutes until he climaxed inside her, while she was still barely alive and mumbling and murmuring incoherently.

Seven, he then searched the house looking for money, found her purse with \$30 in it, and after covering his hand so he wouldn't leave fingerprints, took the money out of the purse.

Eight, after realizing that she was still alive, he went back into her bedroom, grabbed the heavy crystal vase, and took it back to where she was laying and hit her with it at least three or four times, until he was certain she was dead. He told Detective Harris that he had to kill her so she couldn't be a witness against him.

Nine, the defendant stated that afterwards, he opened the door of the house with the rag around his hand and ran through the backyard. To avoid looking suspicious, he alternately ran, jogged, and walked back to his own house. He washed his bloody pants and hid his shirt in the attic. The defendant then stated he went to a store and bought some marijuana from two guys, because he said he wanted to forget about what he had just done. He asked one these people -- one of these guys if he had ever killed anyone. The defendant told Detective Harris that he had smoked marijuana the morning of the murder. In a later interview, he told the detective that despite his drug use, he knew exactly what he was doing when he killed and raped Ms. Presler. He also indicated that he formulated the plan to rob her after washing the first window.

Ten, Anne Presler was found dead in her home by a neighbor the next day, April 28th, 1989. She was nude from the waist down, had numerous head injuries, including a two-inch gash over her right eyebrow. Shattered glass and a dented coffee pot were also found at the scene.

Eleven, after taking the defendant's first confession, the police obtained a search warrant for his home. There the police found the clothing he said he had worn the day of the murder as well as a marijuana pipe. Also at the house, investigators found a cloth partially sticking out of the back door, a towel containing pieces of green glass, and a dented thermos bottle near her head, and an unbroken glass decanter with water inside wrapped in a cloth near her right hand. Her purse was found open on kitchen counter and the money was gone.

Twelve, the defendant was arrested on April 30th, 1989, two months shy of his 18th birthday. Following a decline hearing in juvenile court, the case was transferred to Superior Court to try him as an adult. And the State then filed a notice of intent to seek the death penalty.

Thirteen, at the decline hearing, David Corn, the defendant's probation officer, testified. His opinion was that the defendant's actions in murdering Anne Presler were, quote, far beyond normal actions he encountered in juvenile behavior, and were beyond violence and anger and constituted almost, quote, controlled rage

Fourteen, Detective Harris testified this is a unique case for him and one of the worst murders he has ever investigated.

Fifteen, the defendant gave inconsistent and

untruthful versions of events to Detective Harris. He initially denied ever being at Ms. Presler's house when the detective drove him around showing him houses in her neighborhood. He later admitted to going there and washing windows after the detective told him that his photograph had been shown to her neighbors. He also admitted making up the story she slapped him in the face and said he was being disrespectful. At first, he said threw away his shirt and later said he hid it in his attic.

Sixteen, the defendant told Detective Harris that after Ms. Presler showed him the money in her wallet and put it back in her purse, he made up his mind to steal it from her.

Seventeen, the defendant only told the detective he used marijuana the day of the murder. He never mentioned using any other drugs. At trial, however, the defendant claimed that he had smoked one or two bowls of marijuana and two bowls of methamphetamine and marijuana at is house about 45 minutes before going to Ms. Presler's house. Also according to Detective Harris, although he said he was sorry, according to the detective, he felt that the defendant never showed any real remorse.

Eighteen, the defendant made several requests or, quote, kites, while in the jail to speak to Detective Harris. He voluntarily gave additional statements knowing that it was against his attorney's advice.

Nineteen, the defense expert, Dr. Young, testified about the differences between juveniles and adults and the new developments in adolescent brain research over the past 20 years. He also conducted a forensic psychological evaluation on the defendant.

Twenty, Dr. Young testified to the following: That basically adolescences are less culpable than adults

of committing the same crime; research into cognitive and brain development over the past 20 years shows that juveniles, as a class, are less capable of exercising social/emotional judgment, are less capable of assuming responsibility and are less mature. Juveniles tend to have poor impulse control, poor judgment, are highly susceptible to peer influences, and have poor executive functions. He further testified that the defendant's psychological development was severely damaged from his early childhood on from the chronic instability, neglect, and abuse he suffered? He experienced an inordinate amount of, quote, adverse childhood experiences, also known as ACEs; including an unstable home, he moved 17 times over a four year period, and was bounced between family members multiple times; he was neglected and malnourished when he was between ages three and five; sexually abused at age eight by an older female and again at 13 by an older boy. His parents divorced when he was eight, and he took this particularly hard and blamed himself. His mother's boyfriend taught him how to steal and commit burglaries. He had an abusive stepmother who insisted he be called, quote, Jason, instead of his real name. His stepmother forced him to kill a pet. His sister was sexually abused by his father, and as a result he became overly protective of his other sister and moved up to Washington to be with her. He had an absentee father. His mother became depressed and suicidal. He saw evidence of her attempts to commit suicide. He abused drugs and began setting fires at age eight, a common method of expressing anger at being sexually abused. He was also emotionally abused.

Twenty-one, most children can overcome a few ACEs. But too many ACEs impact a child's ability to adapt, develop their self-worth, and identity. ACEs also impact their growth and development, undermines cognitive and emotional development,

and makes it difficult for them to develop appropriate social skills or regulate emotions. Sexual abuse also damages a person's psychological development.

Twenty-two, Dr. Young described the defendant as being a, quote, psychological train wreck in his teens. He was lousy student, had a lack of interpersonal skills, no goals, no friends, no pursuit or hobbies expect drugs.

Twenty-three, the defendant was evaluated twice, once in 1986 and again in 1989 after his arrest. He had a low IQ, was depressed, angry, and overly sensitive. In 1989, his tests showed he had poor reception focus, poor emotional control, had a low frustration tolerance, and impulsive. He was described as emotionally self-defeating, immature, a drug abuser, and lacking self-esteem.

Twenty-four, Dr. Young, however, could not affirmatively state that there's a direct causal link to establishing the brain -- or linking the defendant's brain development, or lack thereof, and the murder of Ms. Presler.

Twenty-five, despite his being in the lower quartile of emotional maturity and cognitive development, the defendant knew that rape and murder were wrong.

Twenty-six, Dr. Young reviewed the defendant's records and acknowledges his exemplary behaviors, educational, and vocational achievements accomplished in prison. He could not, though, say how this translates to him and how he would behave if out of prison.

Twenty-seven, juvenile brain research does not show that juveniles are necessarily incapable of exercising good judgment or that their failure to control antisocial impulses is necessarily excusable. Dr. Young did not

say that the defendant couldn't exercise good judgment or control his impulses.

Twenty-eight, the defendant's instructor, John Stubbs, from Clallam Bay Correctional Center testified as to the defendant's accomplishments while in prison. He supervised the defendant for 12 years. The defendant did obtain his GED early on in his incarceration. And has been major infraction free since 1999 and minor infraction free since 2012. He has been in medium custody, and is allowed free access to the tool room; which includes Class A tools which can potentially cause bodily harm. The defendant has earned numerous certificates, has given PowerPoint presentations to other inmates, and mentors them. He works on weekends, is consistently rated superior on his evaluations, and is a meticulous, hardworking, and is rated to be a medium security risk. Mr. Stubbs described the defendant as being a, quote, awesome, dedicated worker. Mr. Stubbs stated he had no fear of being around the defendant whatsoever, and had never seen him lash out or lose control.

Twenty-nine, the defendant testified. He sobbed and expressed his remorse at what he had done. He recounted his traumatic childhood, describing how he was beaten and abused by his father and stepmother, sexually molested, and forced to kill a litter of puppies. He stated that his parents' divorce traumatized him and that he felt responsible.

Thirty, the defendant stated as he got older he bottled up his feelings, began using drugs to cope, and stole more money to get more drugs. He stated that he used marijuana and methamphetamine the day he killed Ms. Presler, but admits that wasn't an excuse. He admitted being angry when he went door-to-door looking for work. And he took his anger out on Ms. Presler.

Conclusions of Law.

This Court is required by the US Supreme Court case of *Miller vs. Alabama* and RCW 10.95.030 -- the, quote, *Miller* fix statute -- to consider certain mitigating to factors that account for the diminished capability of youth before imposing a sentence upon a defendant. The Court must impose a minimum term of no less than 25 years and a maximum term of life imprisonment. The four mitigating factors that must be considered are: The age of the individual; the child's -- the youth's childhood and life experience; the degree of responsibility the youth was capable of exercising; and the youth's chance of becoming rehabilitated.

Number one, age of the defendant. **The defendant was just two months shy of his 18th birthday, almost an adult. The Court does not consider this a mitigating factor the same way it would have if he had been between 14 and 16. However, in light of the juvenile brain research and the case law, the Court is giving it minimal weight.**

Number two, childhood and life experiences. Without question the defendant had a horrible childhood, and the Court will consider it as a mitigating factor in its sentence. The defendant experienced chronic instability, neglect, physical, sexual, and emotional abuse, and there's no doubt it impacted his psychological development.

Number Three, degree of responsibility Defendant capable of exercising. Despite his abusive childhood, this Court finds the defendant exercised a great deal of responsibility and deliberate conduct in committing this horrific crime. Drugs were not a factor, which he admitted. And there's no evidence he was suffering from any mental health defects, which would count as a mitigating factor. **This is not a reckless or impulsive act, but rather one of a clear, cold,**

calculating decision of a mind fully cognizant of future consequences. And according to Mr. Corn, who again described the defendant's actions as constituting, quote, almost controlled rage. The defendant did not go to Ms. Presler's intending to kill her, but quickly made the decision to do so shortly after entering her house and seeing the money in her purse. He made a series of strategic choices in killing her and raping her and then covering up the crime. He used rags on the vases he struck her with and on the door to avoid leaving fingerprints. He lied to the detective about whether he had ever been there and said that she had slapped first. **And he showed callous disregard and absolute cruelty in raping an 85-year-old woman who was already lying on the floor suffering from severe head wounds from the first two vases he hit her with.**

Finally, he admitted that he had to kill to eliminate her as a witness, and he deliberately and intentionally hit her again and again with a crystal vase. He also tried to cover up the crime by washing his jeans and hiding his shirt. And when he left the house, he alternated between running and walking so he wouldn't arouse any suspicion.

Further, he showed no remorse. The degree of responsibility he was capable of exercising in this instance was quite high, despite his general diminished capacity for self-control and judgment as a juvenile.

Four, the defendant's chances of becoming rehabilitated. Quote, while a resentencing court may certainly exercise its discretion to consider evidence of subsequent rehabilitation where such evidence is relevant to the circumstances of the crime or the defendant's culpability, we decline to hold that the Court is constitutionally required to consider such evidence in every case. *State v. Ramos*, 187 Wn.2d

420, a 2017 case. The Court further stated, quote, *Miller* requires courts to consider the capacity for rehabilitation when deciding whether a juvenile should be subject to life without parole. However, evidence of actual demonstrated maturity and rehabilitation is generally considered later, when it is time to determine whether a former juvenile offender who is up for parole should be given an early release. Citing *Ramos again*.

The defendant presented substantial evidence of subsequent rehabilitation while in prison. He obtained his GED, numerous certificates in electronics and computers, has been virtually infraction free, is a medium risk offender, and has consistently received high marks academically and amongst his superiors in his behaviors and interactions with staff, guards, and fellow inmates. While this Court does not find any of -- the Court does not find any of this evidence relevant to the circumstances of the crime. However, it acknowledges it may be relevant to the level of his culpability, especially in light of the research on the adolescent brain research; which *Miller* requires courts to consider. Again, the basic premise of *Miller* is that children are constitutionally different from adults. *Miller* and its progeny hold that children have a lack of maturity and an underdeveloped sense of responsibility; which can lead to recklessness, impulsivity, and heedless risk taking. Second, juveniles are more vulnerable to negative influences and outside pressures from family and peers, and they have limited control over their environment.

The research shows that adolescents, as a class, are less capable than adults in exercising social/emotional judgment, and are less capable of assuming responsibility. Diminished judgment applies diminished culpability. The Court also is mindful of the new research using brain imaging methods, which corroborate that the regions of the brain that govern cognitive control continue to mature over the course

of adolescence into adulthood. The research shows that adolescent brains continue to develop well into their late teens and into their 20s. The Court wants to make clear, however, that there is no absolutely no justification for this crime, and that mitigating factors, which the Court has to follow and consider, are different from excuses or justification. Would the defendant had committed this crime if he had come from a normal, healthy upbringing? We'll never know. **But this Court agrees that juveniles must be treated differently in sentencing, due to the case law and the brain research showing the differences between juveniles and adults in their levels of maturity decision-making ability.**

Therefore, considering the *Miller* factors the question is, what should the minimum length of sentence be? As stated earlier, the maximum sentence of life in prison will remain in place. The Court is guiding by some recent case law.

State vs. Ronquillo, 190 Wn.App. 765, a 2015 case, is a case that held a sentence that would allow for a juvenile homicide offender to be paroled at age 68 was a, quote, de facto life sentence.

State vs. Bassett, 198 Wn.App. 714, also a 2017 case, which is currently on appeal before the Washington Supreme Court. There the Court of Appeals held that a life without parole sentence for juvenile offenders is unconstitutional, Article I, Section 14 of the Washington State Constitution.

In *State vs. Ramos*, another Washington Supreme Court case held, that the *Miller* mandated resentencing hearings applies equally to literal and de facto life without parole sentences.

The Court has struggled with how to reconcile the *Ramos* case, because despite its holding it upheld

the trial court's resentencing a juvenile offender to an 85-year sentence. Although the *Ramos* court was dealing with the issue of exceptional sentences, concurrent vs. consecutive, which is not the issue before the Court here.

Nonetheless, based on the case law I've just cited, this Court believes the current state of the law is, that it is unconstitutional to impose either a literal or de facto life sentence for a juvenile homicide offender. And the Court must consider *Ronquillo*, which the Court held that a juvenile being sentenced to prison until age 68 is de facto life sentence.

Therefore, based on the seriousness of the crime, it's deliberate cruel and intentional conduct, the low end, 25 years, is not appropriate.

Taking into consideration his age and abusive childhood, which may have had some part in his commission of the crime, plus his immaturity and lack of judgment -- again, based on his age -- and his demonstrated rehabilitation while in prison, the Court believes he must at some point be given a meaningful opportunity of parole. Therefore, the Court will sentence the defendant to a minimum term of 48 years in prison, being first eligible for parole at age 65. His maximum term remains life.

CP 329 (emphasis added).

The court's oral ruling is as follows:

Nonetheless, based on the case law I've just cited [Miller, Ramos} this Court believes the current state of the law is, that it is unconstitutional to impose either a literal or de facto life sentence for a juvenile homicide offender. And the Court must consider *Ronquillo*, which the Court held that a juvenile being sentenced to prison until age 68 is de facto life sentence.

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RP 23-24.

The court re-imposed a de facto LWOP with a minimum possible term of 48 years. This timely appeal follows.

DALTON YOUNG PHD

Dr. Young was the expert who evaluated Mr. Furman and provided an opinion regarding the factors impacting culpability due to Mr. Furman's youth and childhood experiences. RP 75-138. Dr. Young explained that scientifically, children's brains are not fully developed until the mid-twenties, and adolescents in particular are more susceptible to peer pressure, less culpable than adults because they have "relatively poor emotional control, adolescents tend to have stronger, emotion-driven responses and to be more emotionally reactive, poorer impulse control. They tend to act without thinking. Anticipating consequences is a big one that has to

do with what I call the assessing scale and proportionally of the likely out comes". RP 83-88, 94.

The second factor impacting juvenile culpability is referred to as "ACE" which considers the child's 'adverse childhood experiences' RP 94 These factors consider the individual conditions, incidents, factors related to Mr. Furman's mental and emotional development, and things like family and home circumstances, abuse, neglect, support, love; all of the conditions that can promote or hinder normal psychological development. RP 94-95.

Significant ACE leads to bad outcomes later. RP 95. Dr. Young conducted his own interview of Furman and reviewed Dr. Teresa McMayhill's 1989 decline evaluation in addition to a number of other mental health and psychological and psychiatric evaluations: Dr. Bruce Olsen, Dr. Herbert Marra. RP 95. Dr. Young also interviewed probation officer Corn and Mr. Furman's sisters. RP 95-96.

Dr. Young discovered that Mr. Furman suffered from a damaging upbringing that was extraordinarily severe. RP 97-98. "Young Michael endured 19 moves; that is, the family moved 19

times in 14 years. And in addition, I counted eight switches between parents back and forth over a period of nine years from ages 8 to 17.” Id. Mr. Furman was severely neglected and malnourished at ages 3 and 5 and he was kidnapped as a young child. RP 98. Children’s brain development is affected by early childhood neglect and malnourishment. RP 102-03.

Mr. Furman was sexually abused at ages 8, and 13, repeatedly by both a male and a female. Mr. Furman did not have anyone safe to tell or protect. RP 99-100. Mr. Furman suffered from internal chaos anxiety, and self-doubt. RP 101. Dr. Young explained that “when bad things happen to little kids, one of the sort of counterintuitive things that happen is that kids blame themselves even when the child had nothing to do with a certain event. It’s very common that young people think it’s their fault or they did something wrong. So here is eight or nine-year-old Michael stressed, and nobody knew”. RP 101.

To get away from the abuse and to get relief from his internal chaos, Mr. Furman began setting fires at age 8 years old, a known symptom of distress from sexual abuse. RP 101-102. Additionally children’s brain development is affected by early childhood neglect

and malnourishment. RP 102-03.

Mr. Furman blamed himself for his parents' divorce and for his mother's suicide attempt when Mr. Furman was 8 years old and found his mother bleeding at home. RP 105-06. Mr. Furman's mother's new boyfriend kidnapped Toni, Mr. Furman's younger sister and their father sexually abused Toni. Mr. Furman tried to protect both his sisters Toni and Teresa. RP 107-109. In 1988 the children were moved to their father's house. RP 108-09. The stepmother did not want Mr. Furman and was abusive towards him. She made Mr. Furman kill a beloved dog. RP 108-110.

These events so damaged Mr. Furman that he was unable to develop an ability to regulate impulses and emotions as a child and acted out and turned to drugs. RP 111-14. In 1986 Mr. Furman's IQ was very low: 83, which is in the 11-12th percentile. RP 115-16, 119. When Mr. Furman was 14 years old he was depressed and suicidal and needed counseling but none was provided. RP 116-119. In 1989, Michael was evaluated three times, by Dr. Lloyd Creight (phonetic), a psychologist who measured Mr. Furman's IQ 90 to be in the 25th percentile. RP 117. Michael's Rorschach test scores showed very poor perceptual accuracy. The

test was administered with Exner which is “the system that allows the Rorschach test to be highly reliable and increases the validity.” RP 118. The test scores revealed that Michael “tended to see things in odd or peculiar or unusual ways in his own egocentric manner. It also described very poor emotional control”. RP 118.

Based on all of the information reviewed, Dr. Young assessed Mr. Furman’s ACE at the time he committed the crime and determined it to be “exceptionally severe and protractive.” RP 125.

By 1992, after spending 3 years in prison, Michael earned a GED and had exemplary behavior. He was employed in prison between 1992-97 where “he underwent numerous training and certificate programs, including computers, electronics, electrical safety, electrical safety training, bookkeeping, accounting, auditing and very positive remarks from supervisors and trainers. He, “continues to be accountable, fulfilling all staff recommendations.” RP 119-20.

Mr. Furman has “[c]ontinued focus on learning. He would be successful in any position he pursues. So what I have suggested is that he had made quite a grand turnaround in terms of his own

capacities to function.” RP 121. Before prison Mr. Furman had no opportunity to develop frustration tolerance. RP 122.

Mr. Corn the probation officer who wrote the decline report in 1989 agreed that Michael was “pretty immature. I find Michael to be, in many ways, not socially developed. I came to the conclusion, after talking with a lot of different people, that Michael was not fully grown, not an adult in all of the sense of the word.” RP 128.

Dr. Young explained that Michael was unable to develop normal psychological strengths through childhood, such as frustration tolerance, emotional regulation, impulse control, and ultimately identity, but because he couldn't develop those normal psychological strengths that we want to see in a child, his ability to take up and exercise responsibility was very weak.” RP 142-43. In other words his culpability was diminished by his youth and family circumstances. RP 122, 139, 142-44.

After only a few years “his maturity level overall increased a great deal.” “The vast majority of adolescence, when engaged in criminal conduct, age out of that; meaning that they desist in violent and criminal conduct as they age.”. RP 144. “Michael in particular demonstrated a ‘quite impressive’ ability to change.” RP 148.

Mr. Furman feels tremendous remorse for committing the crime – an act committed while he was suffering from years of physical, sexual, and emotional abuse. RP 98-103. Harris too informed the court that Mr. Furman apologized for committing the crime, but the detective, not a psychologist, testified that this was not “real remorse”. RP 32; CP 329.

ANTHONY STUBBS, GENERAL
MANAGER CLALLAM BAY DOC
INDUSTRIES

Anthony Stubbs is the Clallam Bay Department of Corrections Industries general manger. RP 5. This non-profit hires inmates to manufacture products. RP 4-5. The non-profit has a tool room in the prison that has: scissors, tweezers, seam rippers, hammers, screwdrivers, wrenches, screwdriver that's 14 inches long, a ten-inch pipe wrench, an electric corded drill, wire cutters, two saws that are called maintenance saws, with eight-inch straight razor blades in them. RP 5, 7. These tools can cause sever bodily harm and are kept under strict lock and key. RP 7-8. To use these tools, an inmate must receive special clearance, something few inmates attain. RP 9.

Mr. Stubbs has supervised Mr. Furman for 12 years. RP 5.

Mr. Furman has full access to all of the tools because he is safe and trusted. RP 8, 17, 22-24. Mr. Furman does all of the repair work: he also revolutionized the cataloguing, safety and efficiency of the tool room. RP 11. Mr. Furman is a superior employee who trains and helps other inmates. RP 15, 19.

Mr. Furman has never lost control in prison or acted in a violent manner when frustrated. RP 20. He addresses frustration in a professional manner, by taking time to address an issue when he is calm after giving the issue a great deal of thought, rather than acting out in a frustrated manner in the moment. RP 20-22. Mr. Stubbs would have no objection to having Mr. Furman as a neighbor. RP 24.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. THE TRIAL COURT MISAPPLIED THE “MILLER² FIX” FACTORS AND ENTERED FINDINGS AND CONCLUSIONS NOT SUPPORTED BY THE RECORD

- a. Procedural Posture

Mr. Furman filed a notice of appeal following the trial court’s entry of a *Miller*-fix resentencing order pursuant to a CrR 7.8 motion denying his request for reconsideration. CP 326, 329, 331. Even

² *Miller*, 567 U.S. 460.

though this Court accepted Mr. Furman's notice of appeal, if this Court finds this matter to be more properly considered a post conviction relief petition, this Court should grant relief under RAP 16. *State v. Delbosque*, 85 Wn. App. 1079, 430 P.3d 1153 (2018).

To obtain relief under a PRP Mr. Furman establishes he has had no prior opportunity for judicial review and he is unlawfully restrained under RAP 16.4(b) because the sentencing court failed to properly apply the *Miller*-fix criteria and imposed a de facto life sentence that is cruel and unusual punishment under the Federal and Washington state constitutions: U.S. Const. Amend. VIII, Wash. Const. art. I, § 14. *Miller*, 567 U.S. at 479; *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343, 352 (2018); *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 299, 88 P.3d 390 (2004). The sentencing court also relied on now unconstitutional RCW 10.95.030(3)(a). *Bassett*, 192 Wn.2d at 91.

Miller

The U.S. Supreme Court in *Miller*, held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison for those under the age of 18 at the time of committing a homicide crime. *Miller*, 567 U.S. at 479. *Miller* combined the

Graham v. Fla., 560 U.S. 48, 68, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), “categorical” analysis with an individualized assessment of culpability that would account for a defendant's age and “environmental vulnerabilities.” *Miller*, 567 U.S. at 472-73.

The Supreme Court specifically articulated its understanding that juvenile offenders have diminished culpability and are less deserving of the most severe punishments because they are immature and have an underdeveloped sense of responsibility, are more vulnerable to outside pressures and negative influences, and their traits are less likely to be evidence of irretrievable depravity. *Delbosque*, 430 P.3d at 1158 (citing *Miller*, 567 U.S. at 471).

“It is difficult to imagine any reason for an exceptional sentence downward that could be *more* substantial and compelling than the fact that a standard range sentence would be unconstitutional. Therefore, when a juvenile facing a standard range life-without-parole sentence shows that his or her crimes reflect transient immaturity, the juvenile has necessarily proved that substantial and compelling reasons justify an exceptional sentence below the standard range.” *State v. Ramos*, 187 Wn.2d 420, 442-443, 387 P.3d 650 (2017).

Before *Miller*, Washington law imposed a mandatory sentence of life without the possibility of release or parole for an offender convicted of aggravated first degree murder, regardless of the offender's age. *Bassett*, 198 Wn. App.at 726. Following *Miller*, the legislature enacted RCW 10.95.030(3)(a)(ii) to satisfy, this mandate. RCW 10.95.030(3)(a)(ii) is now unconstitutional. It provides in relevant part:

(3)(a) (ii) Any person convicted of the crime of aggravated first degree murder for an offense committed when the person is at least sixteen years old but less than eighteen years old shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than twenty-five years. **A minimum term of life may be imposed, in which case the person will be ineligible for parole or early release.**

Id. (Emphasis added) *Bassett*, 428 P.3d at 351-52.

Following *Miller* sentencing courts must consider the “mitigating qualities of youth,” including an offender’s: “chronological age, immaturity, failure to appreciate risks and consequences, the circumstances of the homicide offense, and the possibility of rehabilitation.” *Delbosque*, 430 P.3d at 1158; *Bassett*, 192 Wn.2d at 81 (citing *Miller*).

De Facto Life Sentence

No court has defined precisely what constitutes a de facto life sentence for a juvenile, but this court reversed a 48 year minimum sentence identical to Mr. Furman's in *Delbosque*. *Delbosque*, 430 P.3d at 1160-61. In *Ronquillo*, the Court determined that a sentence with a possible parole at 68 years after 51 years in prison is a de facto life sentence. *State v. Ronquillo*, 190 Wn. App. 765, 775, 361 P.3d 779 (2015). A sentence to age 65 is not appreciably different from possible release at age 68. Both deny a meaningful opportunity to live outside of incarceration.

Under *Miller*, a de facto life sentence is a sentence where a juvenile "might be sentenced to die in prison". *Ramos*, 187 Wn.2d at 438 (*citing Miller*, 132 S.Ct. at 2465). Age seventy seven is the life expectancy for men, as predicted by official state records³. According to a study conducted by Vanderbilt University and data

³ When life expectancy is at issue in litigation, the Washington Pattern Jury Instructions contain a suggested pattern jury instruction addressing the issue. That instruction, WPIC 34.04 (6 Washington Practice: Washington Pattern Jury Instructions: Civil 34.04 (6th ed. 2012)) allows the jury to be instructed on a person's life expectancy based on data routinely gathered by the Washington Insurance Commissioner. See 6A Washington Practice: Washington Pattern Jury Instructions: Civil Appendix B Life Expectancy Table, at 665–68 (6th ed. 2012). See [Life-expectancy table](https://insurance.wa.gov/life-expectancy-table), Office of the Insurance Commissioner Washington State (April 18, 2018, 10:46 a.m.), <https://insurance.wa.gov/life-expectancy-table>.

from New York, for every year spent behind bars, overall life expectancy decreases two years. American Journal of Public Health, January 7, 2013; Nick Straley, *Miller's Promise: Re-Evaluating Extreme Criminal Sentences for Children*, 89 WASH. L. REV. 963, 986 n.142 (2014); Michael Massoglia & William Alex Pridemore, *Incarceration and Health*, 41 ANN. REV. SOC. 291 (2015).

This evidence suggests that a juvenile offender sentenced to a fifty-year term of imprisonment may never experience freedom. *Casiano v. Commissioner of Corrections*, 317 Conn. 52, 115 A.3d 1031, 1046 (2015). For Mr. Furman this means he may die in prison before he is eligible for release.

Other states agree. In *Sam v. State*, 401 P.3d 834 (Wyo. 2017), the Wyoming high court ruled that a sentence imposed on Phillip Sam of a minimum fifty-two years with possible release at age seventy constituted a de facto life sentence. In *Bear Cloud v. State*, 2014 WY 113, 334 P.3d 132 (2014), the same western court adjudged a sentence of a minimum of forty-five years, with possible release at age sixty-one, as the functional equivalent of life without parole. In *State v. Williams-Bey*, 167 Conn. App. 744, 144 A.3d

467 (2016), the court remanded for a new hearing a sentence that would not release a juvenile offender of murder until age fifty-two; *Accord, State v. Null*, 836 N.W. 41, 71 (2013) (potential future release in late sixties after a half century of incarceration sufficient violates *Graham and Miller*); *State v. Zuber*, 227 N.J. 422, 448 (2017) (minimum 55 year prison term for a juvenile is a de facto life sentence).

The 48 year minimum sentence imposed on Mr. Furman is a de facto life sentence were he may never experience freedom, and if by chance Mr. Furman survives to age 65, he will be a geriatric, having served almost a half a century incarcerated, without the chance to have a meaningful life outside of prison. For this reason, this Court should remand for a new sentencing hearing.

Bassett and Delbosque

On June 8, 2018, four months before the decision in *Bassett* was issued, Mr. Furman was resentenced to a de facto life sentence of 48 years under RCW 10.95.030(a)(3)(ii). *Bassett*, 192 Wn.2d at 81 (citing *Miller*). CP 329. In October 2018, the state Supreme Court held “that sentencing juvenile offenders to life without parole or early release constitutes cruel punishment and,

therefore, RCW 10.95.030(a)(ii) is unconstitutional, insofar as it allows such a sentence, under article 1, section 14 of the Washington Constitution.” *Bassett*, 428 P.3d at 351-52. Mr. Furman’s de facto life sentence is unconstitutional.

In *Bassett*, the court applied the categorical analysis which specifically requires courts to consider the characteristics of youth rather than comparing the crime with the punishment under *Fain*.⁴ *Bassett*, 428, P.3d at 351-52.

In finding LWOP unconstitutional for juveniles, the court in *Bassett*, considered and determined under the categorical test that: there is national consensus against sentencing juveniles to LWOP; LWOP constitutes cruel punishment under the court’s own independent judgment; and is unconstitutional under article 1, section 14 because “children are less criminally culpable than adults, and the characteristics of youth do not support the penological goals of a life without parole sentence.” *Bassett*, 428 P.3d at 354.

The Court also held that under the *Fain* test, (weighing the crime against the punishment) LWOP is unconstitutional because “the punishment is extreme” and is grossly disproportionate to other

⁴ Uses proportionality: crime versus punishment considerations.

crimes committed by juvenile offenders. *Bassett*, 428 P.3d at 354-55.

In *Bassett*, a juvenile aggravated murder case, the defendant, Bassett, was 16 when he shot and killed his mother and father and drowned his brother in the bathtub. He was convicted of three counts of aggravated first degree murder. *Bassett*, 428 P.3d at 346. When Bassett was thirty five year old, he obtained a *Miller-fix* hearing, where he was resentenced to another life sentence. after spending almost 20 years in prison. *Id.*

During this hearing, Bassett presented evidence that he was too young to “comprehend the totality” and “see the long-term consequences of [his] actions[]”; he had matured both emotionally and behaviorally, he completed prison courses on stress and family violence to better understand his crimes, he obtained a GED and a full scholarship of Edmunds Community College, he serves as a mentor for other inmates, and he is a moderate to low security risk in prison. *Bassett*, 428 P.3d at 347.

The state did not present any evidence to rebut this mitigation. *Id.* Nonetheless, the trial court re-imposed three consecutive LWOP sentences under RCW 10.95.030(3)(now

unconstitutional). *Id.* The Supreme Court reversed the sentencing court's re-imposition of LWOP as unconstitutional because the sentencing court imposed its subjective considerations of the mitigating facts rather than considering in a meaningful manner that children are less criminally culpable than adults, or that the characteristics of youth do not support the penological goals of a life without parole sentence. *Bassett*, 192 Wn.2d at 90.

In *Bassett*, the Court underscored the problematic, "imprecise and subjective judgments a sentencing court could make regarding transient immaturity and irreparable corruption". *Bassett*, 192 Wn.2d at 89. "Some judges may find an infraction-free record from the last 12 years evidence of rehabilitation, but *Bassett's* judge concluded it didn't "carr[y] much weight" because "prisoners have some incentive to follow the rules" *Id.*

The sentencing judge also minimized *Bassett's* academic achievements and determined that they were "less evidence of rehabilitation and more evidence that ... he is simply doing things to make his time in prison more tolerable." *Bassett*, 348 P.3d at 354. The sentencing court also, determined that because *Bassett* was homeless, he was more mature than other 16 year olds.

The state Supreme Court upheld the Court of Appeals reversal of this sentence and held that under either the *Fain* test or the categorical bar test, the sentence violated article 1, section 14.

(i) Mr. Furman's Case Post-Bassett

When comparing Mr. Furman's case to Bassett's case, the similarities are striking. CP 329. Mr. Furman, like Bassett, proved by a preponderance of the evidence that his crime reflected his transient immaturity, and substantial and compelling reasons justify an exceptional sentence below the standard range. Bassett presented evidence "that acknowledges his exemplary behaviors, educational, and vocational achievements accomplished in prison". CP 329.

Here Mr. Furman presented evidence that he obtained his GED early on in his incarceration; he has not had any major infractions since 1999 and none since 2012. CP 329. "He is allowed free access to the tool room; which includes Class A tools which can potentially cause bodily harm. He has earned numerous certificates, has given PowerPoint presentations to other inmates, and mentors them. He works on weekends, is consistently rated superior on his evaluations, and is a meticulous, hardworking, and

is rated to be a medium security risk.” CP 329. “Mr. Stubbs described the defendant as being a, quote, awesome, dedicated worker. Mr. Stubbs stated he had no fear of being around the defendant whatsoever, and had never seen him lash out or lose control.” Id.

Mr. Furman also testified that he felt tremendous remorse for committing the crime – an act committed while he was suffering from years of physical, sexual, and emotional abuse. RP 98-103. Harris too informed the court that Mr. Furman apologized for committing the crime when he was a child, but the detective, not a psychologist, testified that this was not “real remorse”. RP 32; CP 329.

Dr. Young determined Mr. Furman’s ACE factors to be “exceptionally severe and protractive.” RP 125. When Mr. Furman was tested as a child, his Rorschach test revealed that Mr. Furman “tended to see things in odd or peculiar or unusual ways in his own egocentric manner. It also described very poor emotional control”. RP 118.

Concluding the evaluation, Dr. Young determined that Mr. Furman has “[c]ontinued focus on learning. He would be successful

in any position he pursues. So what I have suggested is that he had made quite a grand turnaround in terms of his own capacities to function.” RP 121. “Before prison Mr. Furman had no opportunity to develop frustration tolerance.” RP 122.

All of this evidence establishes that Mr. Furman’s juvenile behavior was the result of transient immaturity, and that Mr. Furman is no longer the same person- is no longer a threat to society- and should be released.

The sentencing court made findings and conclusions that Mr. Furman suffered egregious abuse and that it was required to consider these factors, but did not do so. CP 329 (conclusion of law 1). In the next paragraph of the same conclusion 1, and despite finding that Mr. Furman was a child, and that children are less culpable and Mr. Furman in specific was horrifically abused, the court refused to fully consider Mr. Furman’s youth because he was seventeen, not sixteen. CP 329 (findings of fact 19-23; conclusion of law 4). CP 329.

In Mr. Furman’s case unlike in *Bassett*, the court did not just minimize Mr. Furman’s juvenile status, and his subsequent, unparalleled progress and growth, it completely disregarded it in

favor of summarily deciding, based on the judge's apparent unsupported reasoning that a 17 year old's transient immaturity should not be given much weight.

The court also mistakenly applied a *Fain* analysis which focused on the seriousness of the aggravated murder to improperly assume that since aggravated murder is serious, Mr. Furman's commission of the crime by default was intentional, serious and cruel. CP 329. This was reversible error similar to *Bassett*, where the court applied the *Fain* proportionality test, rejected in *Bassett*, rather than actually considering Mr. Furman's youthful diminished capacity and transient immaturity.

All aggravated murder by definition, are deliberate, intentional, serious and arguably cruel. *State v. Jeffries*, 105 Wn.2d 398, 410, 717 P.2d 722 (1986); *State v. Condon*, 182 Wn.2d 307, 315, 343 P.3d 357 (2015). *Bassett* shot and killed his mother and father and drowned his brother in the bathtub. This was serious, intentional and cruel. Similar to *Bassett*. *Delbosque*, at age 17, hacked a person to death with a meat cleaver. *Delbosque*, 85 Wn. App. 1079 (1997) (**Unpublished**).⁵ This too was a serious, intentional, and arguably cruel act.

⁵ This case is not cited for precedential value under GR 14.1.

Mr. Furman committed a horrific crime; it was serious, and likely on par with drowning a sibling. The acts were cruel, but there was no evidence of deliberate cruelty. Rather, Mr. Furman was a panicked, disturbed child.

Delbosque, decided in December 2018, provides further insight. After a flawed *Miller*-fix hearing, Division Two reversed Delbosque's 48 year sentence holding that the sentencing court failed to meaningfully consider Delbosque's youthful diminished capacity and the facts did not establish: that Delbosque had an "attitude towards others reflective of the underlying crime, and of permanent incorrigibility and irretrievable depravity". *Delbosque*, 430 P.3d at 1159-60.

Dr. Heavin testified on behalf of Delbosque and explained in almost identical terms to Dr. Young in Mr. Furman's case how diminished culpability of youth relates to juveniles underdeveloped executive brain functioning, including increased risk taking, failure to appreciate consequences and responsibility, and susceptibility to outside influences. Dr. Heavin also testified that Delbosque's childhood and life experiences and degree of responsibility exacerbated the poor executive functioning characteristic of youth.

The sentencing court did not however, address how any of the factors it analyzed related to the poor executive functioning or increased risk taking that Dr. Heavin identified as reflective of Delbosque's diminished culpability. *Delbosque*, 430 P.3d at 1161.

Indistinguishably, here too, Dr. Young testified to Mr. Furman's diminished culpability, underdeveloped executive brain functioning, including increased risk taking, failure to appreciate consequences and responsibility, and susceptibility to outside influences. RP 83-88, 94-103. Dr. Young also testified that Mr. Furman's childhood and life experiences and degree of responsibility were horrific and exacerbated Mr. Furman's inability to make reasoned decisions or control his emotions and behavior. *Id.*

The sentencing court did not however, address how any of the factors it analyzed related to Mr. Furman's poor executive functioning or increased risk taking that Dr. Young identified as reflective of Mr. Furman's diminished culpability. *Id.* Rather, the court dismissed as largely irrelevant, Mr. Furman's age, because he was 17 years old- not 16. CP 329 (conclusion of law 1). This

was reversible error under *Miller* and *Delbosque*, because “children are constitutionally different from adults for purposes of sentencing” *Delbosque*, 430 P.3d at 1160 (citing, *Miller*, 567 U.S. at 471 (quoting *Graham*, 560 U.S. at 68)).

The remedy is to reverse and vacate the sentence and remand for a new sentencing hearing.

Consideration of Rehabilitation

The trial court erred by concluding that under *Ramos*, it was not required to consider Mr. Furman’s rehabilitation during the resentencing. RP 19; CP 329. *Ramos*, *Miller*, and *Delbosque* provide the opposite. “*Miller* plainly provides that a juvenile homicide offender cannot be sentenced to die in prison without a meaningful opportunity to gain early **release based on demonstrated rehabilitation** unless the offender first receives a constitutionally adequate *Miller* hearing. (Emphasis added) *Ramos*, 187 Wn.2d at 440, 447. The actual quote from *Miller* requires sentencing courts to consider “the possibility of rehabilitation”. *Miller*, 132 S.Ct. at 2468.

The Court in *Ramos*, did not consider whether a de facto life without the possibility of parole violated article 1, section 14,

because the parties did not provide a *Gunwall*⁶ analysis. *Bassett*, 192 Wn.2d at 93 (citing *Ramos*, 187 Wn.2d 454, n. 10). The Court in *Ramos* considered the future possibility of rejecting *Fain* and applying the categorical rule but did not apply the categorical analysis rejected in *Bassett*. *Ramos*, 187 Wn.2d at 454-55.

Moreover in *Ramos*, unlike in Mr. Furman's case, or in *Miller*, *Bassett*, and *Delbosque*, *Ramos* had already obtained two *Miller*-fix hearings. The court, referring to the second *Miller*-fix hearing, held that the second sentencing court had the discretion to consider the evidence of rehabilitation between the first and second resentencing hearings, but was not required to do so, because the first resentencing court had previously considered "Ramos' subsequent rehabilitation". *Ramos*, 187 Wn.2d at 448-49.

This procedural posture is not present in Mr. Furman's case where he had only one flawed *Miller*-fix hearing where the court did not consider the tremendous evidence of rehabilitation. While not necessarily dispositive, *Ramos* is also distinguishable from Mr. Furman's case, is that *Ramos* killed four people and his case involved consecutive sentencing issues. In

Under *Miller*, and *Ramos*, the court was required to consider

⁶ *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

Mr. Furman's rehabilitation and transient immaturity. *Miller*, 132 S.Ct. at 2468; *Ramos*, 187 Wn.2d at 440, 447. The sentencing court here erred as a matter of law by entering conclusion of law 4 that is contrary to the established legal authority in *Miller* because it did not actually consider Mr. Furman's transient immaturity, it merely listed the overwhelming evidence in support, and summarily disregarded the evidence. CP 329. *Miller*, 132 S.Ct. at 2468.

F. CONCLUSION

Mr. Furman respectfully requests this Court reverse his sentence and remand for a new sentencing hearing because the sentencing court provided a flawed *Miller*-fix hearing contrary the 8th Amendment and article 1, section 14, in violation of *Bassett* and *Delbosque*, which require the court to meaningfully consider the evidence within the proper context of the diminished culpability of youth as required by the *Miller*-fix statute. This court should also vacate the sentence and remand based on the sentencing court's reliance on now unconstitutional RCW 10.95.030(3)(a)(ii)

DATED this 13th day of February 2019.

Respectfully submitted,



LISE ELLNER
WSBA No. 20955
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Kitsap County Prosecutor's Office kcpa@co.kitsap.wa.us and Michael Furman/DOC#964302, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326 a true copy of the document to which this certificate is affixed on February 13, 2019. Service was made by electronically to the prosecutor and Michael Furman by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

LAW OFFICES OF LISE ELLNER

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