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Court of Appeals  
Division II  
State of Washington  
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NO. 52535-6-II

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

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**STATE OF WASHINGTON,**

Respondent,

v.

**BRUCE BENNETT,**

Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SKAMANIA COUNTY

HONORABLE JUDGE RANDALL C. KROG

SKAMANIA COUNTY SUPERIOR COURT CASE NO. 93-1-00102-7

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**BRIEF OF RESPONDENT**

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**A. ISSUE PRESENTED**

Did the trial court abuse its discretion when it considered Mr. Bennett's age and made specific findings regarding his level of sophistication and responsibility prior to re-imposing a sentence after the court determined that it should correct the defendants Judgment and Sentence to include community custody, which was required at the time that Mr. Bennett was originally sentenced?

## **B. STATEMENT OF THE CASE**

### **1. PROCEDURAL FACTS**

On August 17, 2018, Appellant Bruce Bennett was re-sentenced after the trial judge determined that it should impose a term of 24 months community custody, which was mandatory at the time Mr. Bennett committed the crime of Murder in the Second Degree in 1993.

### **2. SUBSTANTIVE FACTS**

Mr. Bennett was 23 years of age when he committed the crimes of Murder in the Second Degree and Robbery in the Second Degree. At that time, Mr. Bennett had some work history and also had two children. RP 49.

## **C. ARGUMENT**

The trial judge considered the age and maturity of the defendant, Mr. Bennett when it imposed its sentence. Mr. Bennett mischaracterizes the trial judge's decision when it says that he categorically determined that a 23 year old does not have a "juvenile brain." The trial Judge considered the O'Dell factors in imposing Mr. Bennett's sentence.

In his own brief, Mr. Bennett himself provides information that differentiates him from the Defendant in *O'Dell*. Mr. Bennett states that he “was the only man in the house and felt responsible” for protecting his family. Feeling responsible for protecting his family seems like the act of a mature adult and of the act of someone with a fully developed brain.

Furthermore, Mr. Bennett misstates the Court’s reasoning when he says that “[t]he resentencing court below categorically decided that a 23 year old brain could not be considered a youthful brain for sentencing mitigation.” Appellant Brief at 2, citing RP 49-50. What the Court determined is that Mr. Bennett’s arguments *in this case* were not persuasive “in imposing a finding that is a mitigating factor for a reduction of the sentence below the standard range sentence that is necessary to be imposed in this case of 298-397 months.” RP 49. In *O'Dell* the Court mentions that the brain isn’t fully mature at age 18 but is more mature closer to age 25. *State v. O'Dell*, 183 Wn.2d 680, 692, n.5, 358 P.3d 359 (2015). Juxtaposed with the present case, Appellant was 23 on the date in question, much closer a mature age as mentioned in *O'Dell*.

The trial court did not make the blanket determination that a 23 year old brain could never be considered a youthful brain for

mitigation purposes. The Court supported the reasoning for determining the factors were not persuasive in this case by pointing out that Mr. Bennett was 23 years of age . . . had some work history . . . and that he already was the father of two children at that point in time. RP 49. The trial court continued to discuss the *O'Dell* analysis: “the court’s very well aware of the adolescent brain, how it works and effected by that and why age, youth of an individual should be taken into consideration based upon a prior sentencing in the *Stevenson* matter, which was the issue raised with regards to a juvenile that was under the age of 18, that was sentenced for murder in this case and cannot find that that same scenario applies here with regards to Mr. Bennett who was 23 years of age at the time, had two children, had I think, don’t recall if he said it was a wife or a significant other, at that point in time and had a employment history at that point in time.” RP 49.

Mr. Bennett further mischaracterizes the trial court’s ruling by stating that the court refused to consider age as a mitigating factor. Appellant Brief at 5. As mentioned above, the Court specifically considered Mr. Bennett’s age, his life circumstances at the time, and compared those to the Defendant’s listed in the *O’Dell* line of cases. All of these factors were considered and found to be

unpersuasive. Mr. Bennett's further criticizes the trial court saying his age was the only consideration: "because he was 23 years old rather than a teenager." Appellant Brief at 5. The trial court, however, discussed multiple factors including specifically Mr. Bennett's actions and life circumstances which informed the court's decision *in addition to* Appellant's age.

For the aforementioned reasons, the trial court properly applied the *O'Dell* factors in imposing sentence on Mr. Bennett and did not abuse its discretion.

**D. CONCLUSION**

This Court should reject Mr. Bennett's arguments and affirm his sentence.

DATED this 25th day of February, 2018.  
RESPECTFULLY submitted,

By:   
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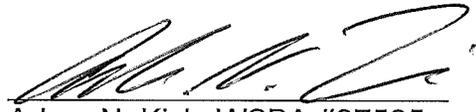
**E. CERTIFICATE OF SERVICE**

Electronic service was effected via the Division II upload portal upon opposing counsel:

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February 25, 2018, City of Stevenson, Washington

# SKAMANIA COUNTY PROSECUTOR

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## Transmittal Information

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**Appellate Court Case Title:** State of Washington, Respondent v. Bruce L. Bennett, Jr., Appellant  
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