

FILED  
Court of Appeals  
Division II  
State of Washington  
10/12/2020 8:00 AM

SUPERIOR COURT NO. 95-1-415-9  
COURT OF APPEALS NO. 53721-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

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STATE OF WASHINGTON,

Respondent.

vs.

BRIAN M. BASSETT,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY  
The Honorable David Edwards

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REPLY OF APPELLANT

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## I. INTRODUCTION

In 1996, at age 16, Brian Bassett was sentenced in Grays Harbor Superior Court to serve three consecutive terms of life in prison without parole for crimes he and an older co-defendant committed.

In 2015, pursuant to amended RCW 10.95.030, a Washington “*Miller*<sup>1</sup> fix” statute, Mr. Bassett was returned to Grays Harbor for a re-sentencing hearing. The court again sentenced Mr. Bassett to three consecutive terms of juvenile life in prison without parole.

On appeal, Mr. Bassett's life sentence was reversed, first by the Court of Appeals and then by the Supreme Court.<sup>2</sup>

In 2019 Mr. Bassett was returned to Grays Harbor for another *Miller* hearing. During that hearing Mr. Bassett presented a broad range of

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1. See, *Miller v. Alabama*, 560 U.S. 460 (2012).

2. In its brief, the Respondent asserts that the reversals were “unrelated to the Superior Court's findings” regarding Mr. Bassett's youth. Brief of Respondent at 7. However, Washington's Supreme Court specifically identified the Superior Court's findings regarding Mr. Bassett's youth as “an illustration of the imprecise and subjective judgments a sentencing court could make regarding transient immaturity and irreparable corruption.” *State v. Bassett*, 192 Wn.2d 67, 89 (2018). Recognizing that “imprecise and subjective judgments” by a sentencer created an unacceptable risk that an underserving juvenile could be sentenced to life without parole, the Supreme Court categorically banned life without parole as a possible punishment for juvenile offenders. *Id.* at 90.

evidence both mitigating his 1996 crimes and demonstrating his post-offense rehabilitation.

When imposing sentence, the Superior Court failed to comply with RCW 10.95.030(3)(b), improperly limited its review to the circumstances surrounding the 1996 crimes, and, failed to give “meaningful consideration” either to evidence that mitigated those crimes, or, the uncontested evidence of Mr. Bassett's subsequent rehabilitation. Instead, after observing that, but for the fact that Mr. Bassett was not an adult when his crimes occurred, he “could certainly” be sentenced to either life without parole or death (II VRP 6-6-19, p. 54-55), the court sentenced Mr. Bassett to serve 60 years in prison before his release could be considered.

Mr. Bassett appeals his 60-year juvenile *de facto* life sentence.

## **II. ASSIGNMENTS OF ERROR**

The Appellant's Assignments of Error are detailed in pages one and two of the Brief of Appellant and are incorporated herein by this reference.

### III. STATEMENT OF THE ISSUES ON REPLY

The Respondent asserts that a 60-year juvenile prison sentence is not actually a *de facto* life sentence. Brief of Respondent at 15. However, the Respondent fails to address either the fact that Mr. Bassett's sentence exceeds his life expectancy or that a Washington appellate court has already identified a 60-year juvenile prison sentence as an improper *de facto* life sentence. E.g. *State v. Saloy*, 2017 WL 758539, 197 Wa. App. 1080, *rev. den.* 188 Wn.2d 1018 (2017) (“Here Saloy was sentenced to nearly 60 years for a crime he committed as a 16-year old...Saloy's sentence is a *de facto* life sentence”).

The Respondent alleges that a juvenile *de facto* life sentence is not unconstitutional. Brief of Respondent at 18. However, the same protections contained in Article I, Section 14 of Washington's Constitution that prohibit juvenile life without parole, also prohibit juvenile *de facto* life sentences. See, *State v. Bassett*, 192 Wn.2d at 81; *State v. Ramos*, 187 Wn.2d 420, 437 (2017). As a result, a juvenile offender who, like Mr. Bassett, is not “permanently incorrigible” or “irreparably corrupt,”

is constitutionally ineligible for a *de facto* life in prison sentence. See, *State v. Delbosque*, 195 Wn.2d. 106, 122 (2020); *U.S. v. Briones*, 929 F.3d 1057, 1067 (9<sup>th</sup> Cir. 2019); *State v. Bassett*, 192 Wn.2d. at 89-90; *Montgomery v. Louisiana*, 577 U.S. \_\_\_, 136 S. Ct. at 735 (2016) (citation omitted).

The Respondent alleges that the sentencing court “carefully weighed defendant Bassett's mitigation record and prison record.” Brief of Respondent at 3.<sup>3</sup> However, the court's record speaks for itself. When sentencing Mr. Bassett, the court did not mention, let alone conduct, the “meaningful analysis” into the *Miller* factors that RCW 10.95.030(b)(3) requires. Nor did the court conduct any analysis into the extensive evidence of rehabilitation Mr. Bassett presented during his 2019 *Miller* hearing. See, II RVP 6-6-19, p. 46-55; *and see*, Brief of Appellant, at 28-42.

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3. The Respondent, at p.6-7 of its brief, quotes in some detail from the findings the sentencing court made back in 2015, findings the Supreme Court subsequently identified as “imprecise and subjective.” See, *Bassett*, 192 Wn.2d at 89-90. During Mr. Bassett's 2019 *Miller* hearing, Mr. Bassett presented a broad range of evidence and expert testimony not presented to the court back in 2015, making the analysis the court performed in 2015 irrelevant to determining whether in 2019 the court complied with statutory and constitutional mandates.

#### IV. STATEMENT OF THE CASE IN REPLY

In sum, during his 2019 *Miller* hearing, Mr. Bassett presented the court with mitigating evidence of his youth that included, but was not limited to: that he suffered from neurodevelopmental deficiencies as a result of his having been born two months prematurely, (I VRP 6-6-19, p. 54, 55, 109-110); that at the time of his crimes Mr. Bassett had been diagnosed as suffering from an Adjustment Disorder, (CP 89-90); and that his social and emotional development was adversely affected by both his alcohol abuse (I VRP 6-6-19, p.56-59, 61-63, 68-69) and teen homelessness (I VRP 6-6-19, p. 70-74, CP 255). Considering those mitigating factors, an expert psychologist testified that Mr. Bassett was even “less functionally mature at the time of the offense than a normally situated 16-year old.” I VRP 6-6-19, p. 22, 74.

The sentencing court also received an extensive amount of evidence directly addressing the seminal issue in a *Miller* re-sentencing - the offender's post-offense rehabilitation. That evidence included, but was

not limited to: Mr. Bassett had not violated a prison rule in 16 years (I VRP 6-6-19, p. 83); two DOC officers who supervised Mr. Bassett in the prison where he was serving his life sentence attested to his reliability, maturity, trustworthiness, and good character - with one of those supervisors stating he did not see the point in continuing to incarcerate Mr. Bassett. CP 257-260, 261-263. Mr. Bassett also presented proof of his impressive academic record and his stable marriage, along with 70 pages of letters outlining his mentorship and the positive impact he's had on other inmates. CP 99-223. Consistent with that evidence, the court received expert testimony that Mr. Bassett was not, and is not, either “permanently incorrigible or irreparably corrupt” (I VRP 6-6-19, p. 22-23), and that Mr. Bassett's history and profile placed him among inmates with the lowest risk to reoffend and among paroled inmates with the highest chance of success upon release. I VRP 6-6-19, p. 22, 23, 75-98.

The evidence of Mr. Bassett's mitigation and his post-offense rehabilitation were unrefuted by any evidence presented to the sentencing court.

Prior to hearing argument from Mr. Bassett's counsel regarding mitigation and rehabilitation, the court asked the prosecutor for guidance in identifying those sentence lengths that constituted the functional equivalent of a life without parole sentence. See, II RVP 6-6-19, p. 40.

When sentencing Mr. Bassett, contrary to the plain terms of RCW 10.95.030(3)(b),<sup>4</sup> the court did not address Mr. Bassett's age, his childhood and life experience, the degree of responsibility he was capable of exercising or, significantly, his chances of becoming rehabilitated. Instead, the court selected three terms out of their context from the *Miller* opinion, and improperly limited their application to the circumstances surrounding the commission of Mr. Bassett's 1996 crimes. See e.g. II VRP 6-6-19, p. 46-56. When performing its limited analysis, the court, after acknowledging it was unfamiliar with some of the terms it was using,<sup>5</sup>

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4. [T]he court *must* take into account *mitigating factors* that account for the diminished culpability of youth as provided in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *including*, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated. RCW 10.95.030(3)(b) (emphasis added); *accord*, *State v. Bassett*, 192 Wn.2d at 74.

5. II VRP 6-6-19, p. 47. Court explaining it had never heard the term “transient rashness” before.

simply applied a dictionary definition to some of the words within the terms.<sup>6</sup> Further, although sentencing law prohibited treating juvenile offenders as though they were “miniature adults”<sup>7</sup> the court did just that, reasoning that, because Mr. Bassett had failed to take steps to conceal his crimes and that adult defendants likewise often failed to conceal their crimes, the crimes Mr. Bassett committed at age 16 were unrelated to his youth. II VRP 6-6-19, p. 52.<sup>8</sup>

After twice noting that the Supreme Court's reversal of Mr. Bassett's 2015 sentence prevented re-sentencing Mr. Bassett to life in prison without parole (II VRP6-6-19, p. 46, 55), the court sentenced Mr.

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6. E.g. *Compare*, II VRP 6-6-19, p. 47, defining “rash” as meaning “to act hastily or without due consideration” with <https://www.dictionary.com/browse/rash>. The Court did not define the remainder of the term, which included the key concept of “transience.”

7. *State v. Bassett*, 198 Wn. App. 714, 738, (2017), *aff'd*, 192 Wn.2d 67 (2019).

8. E.g. “The overwhelming majority of adult criminal offenders that I have seen have similarly failed to take steps to avoid detection and arrest. That is not something that is unique to a juvenile. To state that - that Mr. Bassett should somehow be found less culpable of his conduct because he didn't take appropriate steps to avoid detection, arrest and prosecution is simply not related to his age or his lack of maturity. The - the overwhelming majority of criminal offenders that appear in this [Superior] court have engaged in - in similar behavior of failing to avoid detection and arrest, it is not related to brain immaturity.” II VRP 6-6-19, p. 52.

Bassett to a *de facto* life term, ordering that he spend 60 years in prison before his release could even be considered.

#### IV. ARGUMENT IN REPLY

Our Supreme Court previously announced that, “in the context of juvenile sentencing, Article I, Section 14 provides greater protection than the Eighth Amendment.”<sup>9</sup> *State v. Bassett*, 192 Wn.2d at 82. Those constitutional protections apply to juvenile *de facto* life sentences. *Id.* at 81.

A. Mr. Bassett's 60-year prison term is a juvenile *de facto* life sentence.

The Respondent's primary argument here is that because neither the legislature nor our courts have specifically identified a sentence length

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9. Article I, Section 14 of the Washington Constitution provides “Excessive bail shall not be required, excessive fines imposed, nor cruel or unusual punishment inflicted.”

that constitutes *de facto* life, Mr. Bassett's 60-year sentence is not a *de facto* life sentence. Brief of Respondent at 15, 17-18.<sup>10</sup>

The Respondent fails to address how Mr. Bassett's 60-year sentence is not the functional equivalent of a life sentence even though the U.S. Sentencing Commission previously identified 39.3 years as a life sentence.<sup>11</sup> Further, the Respondent does not refute the fact that, for Mr. Bassett to see his release date would require that he survive slightly longer than the average life expectancy for an *unincarcerated* male.<sup>12</sup> Nor does the Respondent address those studies that conclude that the life expectancy

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10. But see, e.g. *State v. Saloy*, 2017 WL 758539, 197 Wa. App. 1080, *rev. den.* 188 Wn.2d 1018 (2017) (a 60-year juvenile “sentence is a *de facto* life sentence.”); *State v. Ronquillo*, 190 Wn. App. 765, 775 (2015) (sentence requiring juvenile to remain in prison until age 68, “[t]his is a *de facto* juvenile life sentence.”); *People v. Contreras*, 411 P. 3d 445 (Cal. Sup. Ct. 2018) (juvenile's sentence of 50 years to life violates prohibition against *de facto* life.); *Carter v. State*, 192 A.3d 695 (Md. Ct. App. 2018) (juvenile's 50-year minimum sentence is *de facto* life); *People v. Buffer*, 75 NE 3d 470 (Ill. App. 2017) (juvenile's 50-year minimum sentence is *de facto* life); *Sam v. State*, 401 P.3d 834, 860 (Wyo. S. Ct. 2017) (52-year *de facto* life sentence).

11. U.S. Sentencing Commission Preliminary Quarterly Data Report (through March 31, 2014), at 8.<http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC-2014-Quarter-Report-2nd.pdf>.

12. WPIC 6A, CIVIL App. B, Life Expectancy Table (2019) (Identifying 76.2 as average life expectancy for a male. Mr. Bassett was 16.4 when incarcerated. RP 6-6-2019, Vol. I, p. 21).

for an incarcerated male, like Mr. Bassett, is significantly less than that of the average unincarcerated male.<sup>13</sup>

In an apparent concession that a 60-year sentence is a *de facto* juvenile life sentence, the Respondent states, “But if the Court accepts defendant's argument [that 60-years is a *de facto* life sentence] the State respectfully requests the Court to specify the minimum term of a *de facto* life sentence to guide trial courts in future sentencing.” Brief of Respondent at 17-18.

B. Sentencing Mr. Bassett to 60-years in prison was unconstitutional.<sup>14</sup>

The *Miller* line of cases stand for the proposition that, unless a juvenile is proven to be one of the exceptionally rare “permanently

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13. See, e.g. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003* (2013), 103 Am. J. Pub. Health 523, 526 (finding that each year of incarceration correlated with a 15.6 percent increase in odds of death for parolees and a two-year decline in life expectancy); and see, Brief of Appellant, fn.12 for additional authority.

14. The Respondent erroneously asserts that the “Defendant urges this Court to move far beyond the Supreme Court's earlier decision [in *Bassett*] into uncharted constitutional water,” contending that the Appellant has asked this Court to “categorically bar” 60-year prison terms. Brief of Respondent at 20. Not every decision a trial court makes in contravention of the constitution requires a “categorical bar” in order for relief to be granted. The Appellant did not argue, and has not provided this Court, with the appropriate analysis to raise a “categorical bar” challenge. See, Brief of Appellant.

incorrigible” offenders for whom rehabilitation at some point in the future is impossible, a sentence of life in prison without parole is constitutionally prohibited. See *Montgomery v. Louisiana*, 136 S. Ct. at 733-36 (interpreting *Miller*); and see, *State v. Bassett*, 192, Wn.2d at 81 (*Miller*'s reasoning applies to *de facto* juvenile life sentences).

During Mr. Bassett's 2019 *Miller* hearing, he presented extensive evidence of his rehabilitation, including testimony from an expert psychologist who had examined Mr. Bassett, his upbringing, and the facts of his case, and concluded that Mr. Bassett is not “permanently incorrigible” or “irreparably corrupt.” I VRP 6-6-19, p. 22-23; and see e.g. p. 6-7 *supra*. That evidence was undisputed in the trial court.

A *de facto* life sentence is unconstitutionally cruel under Washington's Article I, Section 14 for a juvenile offender, like Mr. Bassett, who has established, through both expert testimony and uncontradicted evidence of his rehabilitation, that he is not “permanently incorrigible” or “irreparably corrupt.”

C. The trial court failed to comply with the *Miller* fix statute that controlled Mr. Bassett's 2019 sentencing hearing.

In its brief, the Respondent, describes Mr. Bassett's judge as having properly imposed a “standard range sentence” and the Appellant as having requested a “downward departure,” (e.g. Brief of Respondent, p. 1, 2, 8, 15). That description is inaccurate. Mr. Bassett was not sentenced under the authority of RCW 9.94A, Washington's Sentence Reform Act. Mr. Bassett was sentenced under RCW 10.35.030(3)(b), a “*Miller* fix” statute, specifically enacted to ensure that *Miller's* central tenets were followed when child offenders are sentenced for aggravated murder.<sup>15</sup>

A *Miller* hearing requires “heightened scrutiny” and imposes an affirmative duty on the sentencing court to ‘fully and meaningfully’ explore the impact of the defendant's “juvenility” on any sentence. See, *State v. Delbosque*, 195 Wn.2d at 112 (citations omitted). A judge conducting a *Miller* hearing must do far more than simply make conclusory statements about the juvenile offender. *Id.* at 121 (citation

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15. 2014 Wash. Laws. ch. 130, §9(3)(b) (the legislative purpose behind the amendments to RCW 10.95.030 is to require sentencing courts to “take into account mitigating factors that account for the diminished culpability of youth as provided in *Mille.*”); see also, *State v. Delbosque*, 195 Wn.2d at 112.

omitted). Instead, a court conducting a *Miller* hearing must thoroughly explain its reasoning, and how the differences between juveniles and adults apply. *Id.*

Mr. Bassett's sentencing judge did not apply the *Miller* factors required by RCW 10.95.030(3)(b). Because the Court failed to “fully and meaningfully” explore those factors, the record is devoid of evidence that the sentencing court gave “meaningful consideration” to Mr. Bassett's age, childhood, life experience, degree of responsibility he was capable of exercising, and the chances of his becoming rehabilitated.

Despite a record lacking any evidence proving that Mr. Bassett's sentencer “meaningfully considered” the *Miller* factors listed in RCW 10.95.030(3)(b), the Respondent asserts that the court “necessarily addressed” those factors. Brief of Respondent p. 21. However, the Respondent fails to support that blanket assertion by identifying either when the court addressed the required statutory factors, or why the court made no mention of having addressed any of those factors when sentencing Mr. Bassett.

Because the sentencing court failed to comply with RCW 10.95.030(3)(b), Mr. Bassett's sentence was invalid.

1. *The court improperly limited its analysis to the nature of the offense rather than considering the nature offender.*

In addition, to ignoring the requirements of RCW 10.95.030(3)(b), the court improperly limited the analysis it did perform to the circumstances surrounding Mr. Bassett's 1996 crimes.<sup>16</sup>

A sentencer fails to comply with *Miller's* principles when it limits its focus to the nature of the crime, rather than nature of the offender. See, *State v. Bassett*, 198 Wn. App. 714, 738 (2017), *aff'd* 192 Wn.2d 428 (2018); and see, *Miller*, 567 U.S. at 472 (a process used to sentence a juvenile offender that focuses on the nature of the offense, unconstitutionally fails to account for the differences between children and adults and how those differences counsel against sentencing a juvenile to a lifetime in prison).

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16. E.g. II VRP 6-6-19 p. 47 (“[t]here is nothing *about the crimes* that Mr. Bassett committed that could be characterized as a rash act”) (emphasis added); *also*, II VRP 6-6-19, p. 48-49 (because the crimes appeared planned, the court declared, “there is *nothing about the facts of this case* that exhibit a proclivity by Mr. Bassett to want to engage in risky behavior.”; *and see*, II VRP 6-6-19, p. 49 (sentencing court concluding that, because Mr. Bassett had taken steps to conceal his crimes, “Mr. Bassett clearly assessed the consequences of his actions”).

2. *The sentencing court failed to meaningfully consider the extensive evidence of Mr. Bassett's post-offense rehabilitation.*

In announcing its sentence, the sentencing court declared that “[u]ltimately the decision today comes down to moral culpability.” II VRP 6-6-19, p.52, 54. However, the case law says otherwise.

Ultimately, when sentencing a juvenile offender, “[t]he key question is whether the defendant is capable of future change.” *State v. Delbosque*, 195 Wn.2d. a 121-122; *Montgomery*, 136 S. Ct. at 734-36 (*Miller's* critical question is whether the defendant is permanently incorrigible or capable of change in the future); *accord*, *State v. Bassett*, 192 Wn.2d. at 89-90; *accord*, *U.S. v. Briones*, 929 F. 3d 1057, 1066, 1067 (9th Cir. 2019).

In order to assess whether a defendant is permanently incorrigible, “[r]esentencing courts must consider the measure of rehabilitation that has occurred since a youth was originally sentenced to life without parole.” *Delbosque*, 195 Wn.2d at 121; *accord*, *Briones*, 929 F. 3d. at 1067 (if post-incarceration events effectively show that the defendant *has* changed

or *is capable* of changing, a [life sentence] is not an option”) (citation omitted) (emphasis added).

The record of Mr. Bassett's sentencing is devoid of any proof that the court “meaningfully considered” the evidence of Mr. Bassett's post-offense rehabilitation. To the contrary, the sum total of the court's analysis of the comprehensive evidence of Mr. Bassett's post-offense rehabilitation consists of a single statement:

I haven't discussed the potential for rehabilitation, [Mr. Bassett's counsel] has mentioned that. And he's correct, this is one of the *Miller* factors. And - and I have considered that today in reaching my decision and – and there is evidence that – that Mr. Bassett possesses some potential for rehabilitation.

II VRP 6-6-19, p. 52-53.<sup>17</sup>

The failure of a record to show that the court properly considered rehabilitation evidence when determining whether the defendant is

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17. In its brief, the Respondent, quoting the last sentence of the court's statement regarding rehabilitation, describes the court as having “looked again at the defendant Bassett's prison record and effort at rehabilitation.” Brief of Respondent at 13. That statement infers that the court had actually scrutinized the extensive evidence of rehabilitation that Mr. Bassett presented during his 2019 *Miller* hearing on some other occasion. However, consistent with the fact that Mr. Bassett's 2019 sentencing hearing took one day, the sentencing court states that it considered evidence of rehabilitation “today.” The Respondent provides no evidence that the court's cursory statement regarding Mr. Bassett's rehabilitation was a “second look” at the evidence of rehabilitation presented during Mr. Bassett's 2019 hearing.

permanently incorrigible - standing alone - requires remand. See, *U.S. v. Briones*, 929 F. 3d at 1067 (citation omitted).

3. *The case most cited as authority by the Respondent, supports reversal of Mr. Bassett's sentence.*

The case most cited by the Respondent is *State v. Delbosque*, 195 Wn.2d 106 (2020). Mr. Delbosque, after having been sentenced to life without parole for aggravated murder and felony murder he committed at age 17, was returned to court for a *Miller* resentencing. Intending to sentence Mr. Delbosque to spend the remainder of his life in prison, Delbosque's judge imposed a 48-year sentence. *Id* at 122.

During Delbosque's *Miller* resentencing, the evidence established that while in prison, Delbosque had become the leader of a prison gang. *Id.* 113. In comparison, during Mr. Bassett *Miller* resentencing, the evidence established that Mr. Bassett had counseled inmates away from gangs toward education. CP 157-158.

Delbosque, while serving his sentence, had been infractioned ten times for fighting, extortion, weapons possession, etc., with his last infraction occurring just six years prior to his *Miller* hearing when he'd

ordered the assault of another inmate. *Id* at 113. In comparison, Mr. Bassett had not been infracted in 16 years, and a DOC officer attested he'd never seen or even heard of Mr. Bassett being involved in the kind of problematic behavior that commonly occurs in prison. CP 259.

A supervisor at Delbosque's prison testified Delbosque was frequently being investigated for “gang violence.” *Id.* at 113. In comparison, a supervisor at Mr. Bassett's prison attested to his maturity and reliability and declared there was “no longer any point” in keeping Mr. Bassett in prison. CP259.

The Supreme Court reversed Delbosque's 48-year sentence, concluding that the sentencing court lacked “substantial evidence” that Delbosque's post-offense prison behavior supported the finding of “permanent incorrigibility” necessary to justify a 48-year term. *Id.* 116. In reversing, the Supreme Court noted with significance, that Delbosque's judge had “oversimplified and sometimes disregarded” mitigation evidence. *Id* at 118-19.

In comparison, Mr. Bassett's judge didn't “oversimplify” the extensive evidence of Mr. Bassett's rehabilitation, he'd failed to give it any

meaningful consideration at all. In fact, the record in Mr. Bassett's case lacks a sufficient quantity of evidence to persuade a fair-minded rational person that Mr. Bassett is one of the rare “permanently incorrigible” youthful offenders who should spend what would likely be the remainder of his life in prison. Accordingly, this Court should reverse Mr. Bassett's 60-year sentence.

D. The Superior Court erred by denying Mr. Bassett's Motion for Immediate Referral to the Parole Board so his release could be considered.

Denial of Mr. Bassett's motion for immediate referral to the parole board violated his substantive right to have his “individual circumstances” given “meaningful consideration” during sentencing and constitutes cruel punishment in violation of Article I, Section of 14 of Washington's constitution.

The *Miller* line of cases rests upon scientific and psychological research establishing that the areas of the brain responsible for regulating behavior, and the ability to fully consider consequences, generally mature when a person reaches their mid-twenties. See, *Roper v. Simmons*, 543

U.S. 551, 569-570 (2005). Washington courts have accepted *Miller's* interpretation of that research. E.g. *State v. O'Dell*, 183 Wn.2d 680, 692 n.5 (2015) (multiple citations omitted).

Further, both the U.S. Supreme Court in *Miller* and Washington's Supreme Court in *Bassett* have recognized that as a result of immature brain development, the traditional purposes that justify punishing adults, including retribution and incapacity, do not readily apply to adolescent offenders. See, *Miller* 567 U.S. at 472-473; *accord*, *Bassett*, 192 Wn.2d at 88-89 (citations omitted).<sup>18</sup>

To ensure that *Miller's* central edicts regarding youth and their potential for rehabilitation are properly recognized in sentencing, Washington's sentencing judges have been freed from complying with even mandatory minimum and mandatory consecutive sentences when

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18. Deterrence is a flawed rationale because juveniles are impulsive and unable to consider the consequences of their actions. *Miller* at 472. Retribution's focus on an offender's blameworthiness does not justify an LWOP sentence because juveniles have a severely diminished moral culpability. *Id.* Incapacitation fails to justify an LWOP sentence because it presumes that a child is forever incorrigible and "incorrigibility is inconsistent with youth." *Id.* at 472-73. Lastly, the rehabilitative theory of punishment doesn't justify an LWOP sentence because such a sentence entirely precludes any hope for a child's ultimate rehabilitation. *Id.* at 473; *accord*, *Bassett*, 192 Wn.2d at 88-89.

sentencing juvenile offenders. *State v. Bassett*, 192 Wn.2d at 81 (citing to *State v. Houston-Sconiers*, 188 Wn.2d 1, 21 (2017)).

Mr. Bassett long ago exceeded the age generally recognized as signifying physiological brain maturity. Further, credible, unrefuted evidence, presented during Mr. Bassett's 2019 resentencing, established that Mr. Bassett was not, and is not, “permanently incorrigible or irreparably corrupt.” I VRP 6-6-19 p. 22-23. Consistent with that evidence, a DOC supervisor in the prison where Mr. Bassett is serving his sentence has opined that there is no longer any point in keeping Mr. Bassett in prison. CP 259.

Under those circumstances, it was error to deny Mr. Bassett's motion for immediate referral to the Parole Board so the Board could determine whether he is eligible for release.

E. The sentencing court improperly denied Mr. Bassett's Motion for Recusal.

The Respondent does not specifically address the issues raised in the Appellant's brief regarding denial of the Appellant's recusal motion.

Accordingly, the Appellant's argument is contained at p. 44-48 of the Brief of Appellant.

## VI. CONCLUSION

The Respondent argues that sentencing Mr. Bassett has been "impossible." Brief of Respondent, p.3. The "impossibility" does not lie with Mr. Bassett. Mr. Bassett is exactly the type of adolescent offender the *Miller* line of cases was intended to apply to; a juvenile with some significant, age related mitigating issues, who, after having committed one horrific crime at age 16, established over the two decades following his crime that he is not "irreparably corrupt," but, instead, that he has rehabilitated.

The evidence before Mr. Bassett's sentencing court included that he is not "permanently incorrigible," that he hadn't committed an infraction in prison in 16 years, and, that a DOC officer who supervised Mr. Bassett had concluded there is no longer any point in continuing to incarcerate him. Based on the record presented, to sentence Mr. Bassett to remain in prison for an additional 36 years before his release can even be

considered, directly conflicts with the reasoning behind the U.S. Supreme Court in *Miller* and Washington's Supreme Court in *Bassett*.

For the reasons noted herein, the Appellant's *de facto* life in prison sentence should be reversed. Further, the trial court should be ordered on remand to immediately refer the Appellant to the State ISRB for a hearing to determine his eligibility for, and the conditions of, his release.

DATED this 9th day of October 2020.

Eric W. Lindell

ERIC W. LINDELL WSBA# 18972  
Attorney for Appellant, Brian Bassett

1  
2 IN THE COURT OF APPEALS, DIVISION II,  
3 STATE OF WASHINGTON

4 STATE OF WASHINGTON, )

5 Plaintiff, )

6 vs. )

7 BRIAN M. BASSETT, )

8 Defendant. )

) Court of Appeals No.:53721-4-II  
) Superior Court No: 95-1-415-9

) PROOF OF SERVICE

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11 I certify that on the dates noted below, I caused to be delivered to the following  
12 persons and/or parties in the means specified herein, the Reply of Appellant, in the above  
13 referenced cause:

14 Derek Byrne, Clerk of the Court 15 Court of Appeals, Division II 16 950 Broadway, Ste 300, MS TB-06 17 Tacoma, WA. 984025-4454 via email portal	Katherine Svoboda - April 18, 2016 Prosecuting Attorney Grays Harbor County Courthouse 102 West Broadway, Room 102 Montesano, WA 98563 via email: ksvoboda@cp.grays-harbor.wa.us
18 Brian Bassett DOC#749363 19 Monroe Correctional Complex - WSR P.O. Box777 20 Monroe, WA. 98272	Philip Buri, Attorney at Law 1601 F. Street Bellingham WA 98225 via email portal: philip@burifunston.com

21 DATED this 11th day of October 2020.

22 Eric W. Lindell

23 Eric W. Lindell, WSBA # 18972  
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**October 11, 2020 - 7:21 AM**

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**Appellate Court Case Number:** 53721-4  
**Appellate Court Case Title:** State of Washington, Respondent v. Brian M. Bassett, Appellant  
**Superior Court Case Number:** 95-1-00415-9

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