

FILED
Court of Appeals
Division II
State of Washington
4/16/2020 4:18 PM

NO. 53841-5-II

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

STATE OF WASHINGTON,

Respondent

v.

S.D.H,

Appellant.

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

REPLY BRIEF OF APPELLANT

KYLE BERTI
Rule 9 Intern

GREGORY LINK
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIES ii

A. ARGUMENT IN REPLY 1

 1. O’Dell and Houston-Sconiers applies to any juvenile being sentenced including a juvenile in adult court. 1

 2. The JJA does not account for the youthful characteristics of a juvenile, it only takes into account the numerical age of the juvenile..... 3

 3. The mitigating factors in RCW 13.40.150 are not the only factors a sentencing court is required to consider..... 5

B. CONCLUSION8

TABLE OF AUTHORITIES

Cases

Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) 8

Houston-Sconiars, 188 Wn.2d 1, 391 P.3d 409 (2017) passim

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)..... 6, 8

Roper v. Simmons, 5 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)..... 8

State v. O'Dell, 183 Wn2.d 680, 358 P.3d 359 (2015) passim

Statutes

Laws of 1977, ch. 291 1st Ex. Sess. 7

RCW 13.40.0357 4

RCW 13.40.150..... 1, 5, 6, 7

A. ARGUMENT

S.D.H. presented substantial evidence of mitigating factors attributable to his youth including Post-traumatic Stress Disorder (PTSD), depression, and anxiety. RP at 26. In leading up to the incident, S.D.H. faced extreme pressure from his mother to “bring home money”, as well as, emotional pressure from his little sister crying about her hunger. RP at 102-3. At closing arguments, S.D.H. argued that the Court should consider the individual circumstance of S.D.H. based on *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017), *State v. O’Dell*, 183 Wn2.d 680, 358 P.3d 359 (2015), and other United States and Washington Supreme Court case law. RP at 97-9.

The Court refused to consider any of the mitigating factors: basing its decision on the belief that the only mitigating factors it could consider are those listed in RCW 13.40.150, the Court sentenced S.D.H to the standard range based on his numerical age, 103 to 129 weeks. RP at 125.

- 1. *O’Dell* and *Houston-Sconiers* apply anytime a court sentences a child.**

The State asserts that *O’Dell* and *Houston-Sconiers* do not apply because the juveniles in those cases were sentenced

under the Sentence Reform Act (SRA) rather than the Juvenile Justice Act (JJA). Brief of Resp. at 7. The State contends that the policy behind the JJA, its “equal focus on rehabilitation and retribution”, bars the use of cases that involve juveniles and the SRA. Brief of Resp. at 7, 20. The focus on the policy behind the two schemes is misplaced and in doing so the State overlooks the rationales and holdings put forth by the *O’Dell* and *Houston-Sconiers*.

O’Dell and *Houston-Sconiers*, require courts to consider the “hallmark features” of youth as a mitigating factor whenever sentencing a child or young adult. *O’Dell*, 183 Wn.2d at 696; *Houston-Sconiers*, 188 Wn.2d at 21.

In *O’Dell* the Court found the trial court wrongly refused to consider the hallmark features of youth at sentencing. *O’Dell*, 183 Wn.2d at 696. The Court noted that the legislature determined “all defendants 18 and over are, in general, equally culpable for equivalent crimes.” *Id.* at 691 (emphasis removed). The Court reasoned that the legislature could not have considered the “particular vulnerabilities—for example,

impulsivity, poor judgment, and susceptibility to outside influences—of specific individuals.” *Id.*

Similarly, in *Houston-Sconiers*, the Court stated “courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system...” 188 Wn.2d at 21.

Although the juveniles in *O’Dell* and *Houston-Sconiers* were sentenced as adults, the courts in those cases did not limit their holdings to *only* cases involving the SRA. *See O’Dell*, 183 Wn.2d at 696; *see also Houston-Sconiers*, 188 Wn.2d at 21.

O’Dell and *Houston-Sconiers* make clear that a court sentencing a juvenile must exercise its discretion to consider the “hallmark features” of youth specific to the juvenile being sentenced.

O’Dell, 183 Wn.2d at 696; *Houston-Sconiers*, 188 Wn.2d at 21.

2. The JJA does not account for the youthful characteristics of a child, it only takes into account the child’s numerical.

Next the State argues that the JJA necessarily considers youthful characteristics of a child because the statutory scheme only applies to “juveniles”. Brief of Resp. at 7. The State argues

that because the JJA only applies to juveniles, juveniles receive shorter sentences, and a juvenile cannot be held beyond her/his 25 birthday, the JJA accounts for the youthfulness of a juvenile. Brief of Resp. at 11.

Though the State correctly points out the characteristics of the JJA, it misconstrues youthfulness as numerical age with the “hallmark features” of youth that mitigate the culpability of a specific juvenile. *See O’Dell*, 183 Wn.2d at 693.

The JJA and SRA are comparable in many respects. The JJA just like the SRA identifies a standard sentencing range based on numerical age, prior criminal history, and crime convicted. RCW 13.40.0357. One important difference between the schemes is that the JJA further breaks down the standard sentencing range by age. *Id.* A juvenile aged 16-18 will face a lower sentence than an individual over the age of 18: a juvenile under the age of 16 will face a lower sentence than a juvenile 16 or over, for the exact same crime. RCW 13.40.0357. The State believes this more discrete sentence scheme, based on numerical age, is evidence that the JJA accounts for the “hallmark features” of youth for a specific juvenile. Brief of Resp. at 8-9

Just because the JJA has more discrete sentencing ranges it does not mean the legislature necessarily considered the culpability of a specific child. *O'Dell*, 183 Wn.2d at 691. As in the case of S.D.H., the court sentenced him to a standard range based solely on his age. RP at 122. Moreover, the court noted that if S.D.H. had been just slightly older he would have faced a “much-longer range.” RP at 122-23.

Regardless if the JJA only applies to juveniles, or that a juvenile’s sentence is restricted to, at most the age of 25, does not mean it accounts for the “hallmark features” of youth, for a specific child. *O'Dell*, 183 Wn.2d at 696; *Houston-Sconiers*, 188 Wn.2d at 21.

3. The mitigating factors in RCW 13.40.150 are not the only factors a sentencing court is required to consider.

During sentencing the Court did not consider the individual circumstances of S.D.H. as a mitigating factor because it believed his circumstances were not within the “applicable framework set up by the legislature in mitigating the sentence.” RP at 126.

The State implies that the mitigating factors in RCW 13.40.150 are the only mitigating factors a court can consider when sentencing a juvenile. Brief of Resp. at 12. And the sentencing court can only exercise its discretion *after* sufficient evidence is presented to satisfy one of those factors. RP at 8.

The State's assertion directly contradicts the court's holding in *Houston-Sconiers*. There the court stated that "sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant ..." *Houston-Sconiers*, 188 Wn.2d at 21.

Building off the Supreme Court in *Miller*, the court in *O'Dell* described youthful mitigating factors as impulsivity, poor judgment, and susceptibility to outside influences. *O'Dell*, 183 Wn.2d at 691. In *Houston-Sconiers*, the court stated that a court sentencing a juvenile must consider the "hallmark features" of the defendant's youth such as "immaturity, impetuosity, and failure to appreciate risks and consequences." *Houston-Sconiers*, 188 Wn.2d at 23 (citing *Miller*, 132 S. Ct. at 2468). None of these "hallmark features" of youth are incorporated in RCW 13.40.150;

factors that are required to be considered. *Houston-Sconiers*, 188 Wn.2d at 23.

In this instance, the sentencing court was required to consider the “hallmark features” of S.D.H.’s youth but failed to do so. RP at 126. The Court stated, in response to Dr. Beyer’s testimony that it “does not find that any of this information is applicable within the framework set up by the legislature in mitigating the sentence.” RP at 126. Moreover, the court was required to consider “factors like the nature of the juvenile’s surrounding environment and family circumstances, the extent of the juvenile’s participation in the crime, and the way familial and peer pressures may have affected him or her.” *Houston-Sconiers*, 188 Wn.2d at 23 (internal quotations omitted).

Not only are the mitigating factors listed in RCW 13.40.150 not indicative of “hallmark features” of youth, their genesis further undermines their usefulness post *O’Dell* and *Houston-Sconiers*. The mitigating factors were established in 1977 and have remained essentially unchanged since then. Laws of 1977, ch. 291 1st Ex. Sess.; RCW 13.40.150. The factors are outdated and not based on data that support the Court’s

holdings in *O'Dell*, *Houston-Sconiers*, *Roper*, *Graham*, or *Miller*.
See O'Dell, 183 Wn.2d at 691 (citing *Roper v. Simmons*, 5 U.S.
551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)); *Graham v. Florida*,
560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); *Miller v.*
Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407
(2012)); *Houston-Sconiers*, 188 Wn.2d at 22-3.

B. CONCLUSION

Because the court failed to exercise its discretion to consider the individualized mitigating factors of S.D.H. this court should remand the case for reconsideration of S.D.H.'s sentence.

DATED this 13 day of April, 2020.



KYLE BERTI -Rule 9 9876638



GREGORY C. LINK - 25228
Washington Appellate Project - 91052
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	NO. 53841-5-II
v.)	
)	
S.D.H.,)	
)	
JUVENILE APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16TH DAY OF APRIL, 2020, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> MEGHAN DUNLAP	()	U.S. MAIL
[Dunlapm@co.cowlitz.wa.us]	()	HAND DELIVERY
[appeals@co.cowlitz.wa.us]	(X)	E-SERVICE VIA
COWLITZ COUNTY PROSECUTING ATTORNEY		PORTAL
312 SW 1 ST AVE		
KELSO, WA 98626-1739		
<input checked="" type="checkbox"/> S.D.H.	(X)	U.S. MAIL
ECHO GLENN CHILDREN'S CENTER	()	HAND DELIVERY
33010 SE 99TH ST	()	_____
SNOQUALMIE, WA 98065		

SIGNED IN SEATTLE, WASHINGTON THIS 16TH DAY OF APRIL, 2020.



X _____

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, Washington 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

April 16, 2020 - 4:18 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53841-5
Appellate Court Case Title: State of Washington, Respondent v. S.D.H., Appellant
Superior Court Case Number: 19-8-00051-4

The following documents have been uploaded:

- 538415_Briefs_20200416161833D2013225_4744.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was washapp.041620-02.pdf

A copy of the uploaded files will be sent to:

- Dunlapm@co.cowlitz.wa.us
- appeals@co.cowlitz.wa.us
- Richard Wayne Lechich (Undisclosed Email Address)
- Gregory Charles Link (Undisclosed Email Address)

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Gregory Charles Link - Email: greg@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20200416161833D2013225