

FILED
Court of Appeals
Division III
State of Washington
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IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

SHALIN E. ALLTUS,

Appellant.

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

The Honorable Judge Henry Rawson

APPELLANT'S REPLY BRIEF

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A. INTRODUCTION

Appellant Shalin E. Alltus accepts this opportunity to reply to the State’s brief. Ms. Alltus requests that the Court refer to her opening brief for issues not addressed in this reply.

B. COUNTERSTATEMENT OF THE CASE

Ms. Alltus offers the following counterstatement of the case, in response to the State’s Statement of the Case. *See* Respondent’s Brief pgs. 1-7.

The State first correctly asserts that after the State requested sentencing be held the day after the verdict was given, “[d]efense counsel objected citing the need to prepare mitigating circumstances for sentencing.” *See* Respondent’s Brief pgs. 6 (citing 3 RP 211). The State then asserts “defense counsel then indicated her contract with public defense had expired and *she would not be continuing on with sentencing and new counsel would have to handle sentencing.*” *See* Respondent’s Brief pgs. 6 (emphasis added) (citing 3 RP 212). However, defense counsel did not indicate these facts to the trial court. (3 RP 211-212, 222). First, defense counsel stated:

Well, Judge, as you know, I will no longer be under the public defender contract as of Wednesday, so I will endeavor to get every possible piece of information ready that I can and try to contact the persons of which to speak on Ms. Alltus’ behalf, but I will try to be available by Wednesday.

(3 RP 211-212).

Second, in a colloquy with the trial court the next day, defense counsel stated:

[Trial court:] ...Recognizing your argument and such, something that’s in the back of the Court’s mind is the fact that your contract services will be up - - -

[Defense counsel:] *Judge, I will make myself available.*

[Trial court:] We need to know that you will be present when the matter is scheduled.

[Defense counsel:] *I will make myself available, yes, Judge.* If the matter is scheduled - - -

[Trial court:] What are you going to do for the next forty-five days? What will you do?

[Defense counsel:] *I will be here on the date that is set.* I'm not positive where I'm going to be otherwise, but I will be in Okanogan. I can make the Court assurance. I've made Ms. Alltus that assurance.

(3 RP 222) (emphasis added).

C. ARGUMENT IN REPLY

1. The trial court erred in sentencing Ms. Alltus to a de facto life sentence without conducting a *Miller* hearing to consider mitigating circumstances related to her age at the time of the crimes.

This argument pertains to Issue 6 raised in Ms. Alltus' opening brief. Ms. Alltus argues the trial court erred in sentencing Ms. Alltus to a de facto life sentence without conducting a *Miller* hearing to consider mitigating circumstances related to her age at the time of the crimes. *See* Appellant's Opening Brief pgs. 45-51; *see also Miller v. Alabama*, 567 U.S. 460, 479, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

In response, the State argues the trial court was not required to conduct a *Miller* hearing, because Ms. Alltus was not sentenced to a de facto life sentence. *See* Respondent's Brief pgs. 43-47. Both parties acknowledge that our Supreme Court has not decided the specific number of years required for a sentence to be considered a de facto life sentence. *See* Appellant's Opening Brief pg. 47, n.2; Respondent's Brief pg. 43-44; *see State v. Ramos*, 187 Wn.2d 420, 439 n.6, 387 P.3d 650 (2017) (acknowledging this question has not been decided by the Court). The State then goes on to argue that Ms. Alltus' 460 month sentence is not a de facto life sentence. *See* Respondent's Brief pgs. 44-47.

In making its arguments, the State misconstrues *State v. Houston-Sconiers*. See Respondent’s Brief pgs. 44-45; see also *State v. Houston-Sconiers*, 188 Wn.2d 1, 34, 391 P.3d 409 (2017).

In *Houston-Sconiers*, the two defendants received sentences comprised entirely of firearm sentencing enhancements; the State had recommended, and the trial imposed, exceptional sentences downward of zero months on the substantive charges. *Houston-Sconiers*, 188 Wn.2d at 13. In making these sentencing recommendations, the State told the trial court “there are no statutorily legitimate reasons for imposition of an exceptional sentence downward” and that the rationale for its recommendation was “based simply on the State’s assessment” that the resulting sentences on the substantive charges were “perhaps excessive.” *Id.* Contrary to the State’s assertion here, the trial court there did not “hold what, in effect, was a *Miller* hearing, as the court heard mitigating evidence for the defendants based on their youth.” See Respondent’s Brief pgs. 44-45 (citing *Houston-Sconiers*, 188 Wn.2d at 13). There was no discussion at sentencing regarding youthfulness, but rather, only that the sentences were “perhaps excessive.” *Houston-Sconiers*, 188 Wn.2d at 13. In addition, the *Houston-Sconiers* Court specifically acknowledged the trial court did not consider mitigating factors in the context of youth: “[t]he sentencing judge did not do that here.” *Id.* at 20.

On appeal, the defendants argued that because youth are different from adults, “their lengthy adult sentences, and their mandatory, consecutive, flat time firearm enhancements [are] unlawful.” *Id.* at 18. The Supreme Court agreed, stating:

In accordance with *Miller*, we hold that sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system, regardless of whether the juvenile is there following a decline

hearing or not. . . . *Trial courts must consider mitigating qualities of youth at sentencing* and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements.

Id. at 21 (emphasis added).

The Court then remanded the cases for resentencing, in accordance with its opinion. *Id.* at 34.

The State incorrectly asserts that *Houston-Sconiers* “did not hold that a *Miller* hearing was required.” See Respondent’s Brief pg. 45. To the contrary, *Houston-Sconiers* did hold that a *Miller* hearing was required, and remanded the cases to the trial court to conduct such a hearing. See *Houston-Sconiers*, 188 Wn.2d at 21, 34.

Importantly, the defendants in *Houston-Sconiers* received lower sentences than Ms. Alltus (312 months and 372 months, compared to 460 months for Ms. Alltus). See *Houston-Sconiers*, 188 Wn.2d at 13. The Court stated “we see no way to avoid the Eighth Amendment requirement to treat children differently, with discretion, and with consideration of mitigating factors, in this context.” *Houston-Sconiers*, 188 Wn.2d at 20. Because our Supreme Court held these defendants, with shorter sentences, were entitled to a *Miller* hearing, Ms. Alltus, whose sentence is longer, is also entitled to a *Miller* hearing.

Ms. Alltus was sentenced to a de facto life sentence and she is entitled to a *Miller* hearing. The case should be reversed and remanded for resentencing.

2. The trial court abused its discretion by denying Ms. Alltus' motion to continue the sentencing hearing for preparation of a presentence investigation report.

This argument pertains to Issue 7 raised in Ms. Alltus' opening brief. Ms. Alltus argues the trial court abused its discretion by denying Ms. Alltus' motion to continue the sentencing hearing for preparation of a presentence investigation report. *See* Appellant's Opening Brief pgs. 51-54.

In response, the State argues "[w]hen asked when defense counsel wanted sentencing, counsel indicated that she would no longer be under contract with the public defense as of Wednesday . . . [c]ounsel intended on gathering mitigating information and then passing that information on to new counsel who would handle sentencing." *See* Respondent's Brief pg. 49 (citing 3 RP 211-212).

However, defense counsel never indicated she intended on new counsel handling sentencing. *See* 3 RP 211-212, 222. Instead, defense counsel stated she would be present on the sentencing date set by the court, even if that date was after her defense contract ended. *See* 3 RP 222. Therefore, the fact that defense counsel's contract was ending was not a reason for the trial court to sentence Ms. Alltus a mere 18 hours after the jury returned its verdict, without a presentence investigation report. Defense counsel assured the trial court she would be present for sentencing, regardless of when it was set. *See* 3 RP 222.

The trial court abused its discretion by denying Ms. Alltus' motion to continue the sentencing hearing for preparation of a presentence report. The case should be reversed and remanded for resentencing with a presentence investigation report.

D. CONCLUSION

Based upon the arguments set forth above and those set forth in Ms. Alltus' opening brief, the case should be reversed and remanded for a new trial, a declination hearing, and at a minimum, for resentencing. Ms. Alltus also objects to any appellate costs.

Respectfully submitted this 28th day of March, 2018.



Jill S. Reuter, WSBA #38374

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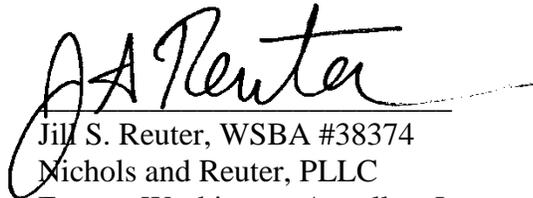
STATE OF WASHINGTON)
Plaintiff/Respondent) COA No. 34677-3-III
vs.)
SHALIN E. ALLTUS)
Defendant/Appellant)
PROOF OF SERVICE)
_____)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on March 28, 2017, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's reply brief to:

Shalin Alltus, DOC No. 393403
Unit: CCU East 311
Washington Corrections Center for Women
9601 Bujacich Rd. NW
Gig Harbor, WA 98332-8300

Having obtained prior permission from the Okanogan County Prosecutor's Office, I also served the Respondent State of Washington at bjplatter@co.okanogan.wa.us and sfield@co.okanogan.wa.us using the Washington State Appellate Courts' Portal.

Dated this 28th day of March, 2018.


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