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Division III  
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State of Washington  
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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**

**Plaintiff/Respondent,**

**v.**

**ROBERT LEE YATES, JR.**

**Defendant/Appellant.**

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APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

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I. ASSIGNMENTS OF ERROR..... 1

    A. The amended indeterminate sentence is unlawful  
    as every count other than I and II ..... 1

    B. Mr. Yates was denied his rights to be present  
    and to allocate ..... 1

II. STATEMENT THE CASE ..... 1

III. ARGUMENT ..... 1

    There Is No Authority to Impose Indeterminate  
    Sentences on All Counts ..... 1

    Mr. Yates Has a Right to be Present and to Allocate ..... 2

IV. CONCLUSION..... 2

## TABLE OF AUTHORITIES

---

### CASES CITED

<i>State v. Yates</i> , 199 Wash. App. 1051, (2017), <i>review denied</i> , 189 Wash. 2d 1037, 407 P.3d 1140 (2018) .....	1
<i>State v. Canfield</i> , 154 Wash. 2d 698, 116 P.3d 391 (2005) .....	2

### OTHER

RCW 9.95.010 .....	1
RCW 9.94A.010 .....	1

## **I. ASSIGNMENTS OF ERROR**

- A. The amended sentence is unlawful.
- B. Mr. Yates was denied his rights to be present and to allocate.

## **II. STATEMENT OF THE CASE**

Robert Yates was convicted of multiple counts of murder. The first two occurred before enactment of the SRA. The remaining counts occurred after. CP 1-3.

This Court reversed Mr. Yates's previous sentence because it imposed determinate, rather than indeterminate terms on the first two counts. *State v. Yates*, 199 Wash. App. 1051 (2017), *review denied*, 189 Wash. 2d 1037, 407 P.3d 1140 (2018) ("this matter is remanded to the superior court with instructions to correct counts I and II of Mr. Yates's judgment and sentence, along with the recitation of the total term of incarceration."). At resentencing the court amended the *Judgment and Sentence* so that it now provides:

IT IS ORDERED that: paragraph 4.5(a) of the Judgment and Sentence entered on October 26, 2000, is hereby corrected to reflect the term of 240 months to life on both Counts 1 and 2, and the actual number of months of total confinement shall reflect an indeterminate sentence of 4,900 months to life.

CP 1-3. At the hearing, Mr. Yates, who sought to allocute, was not present. RP 4-6.

## **III. ARGUMENT**

### **There Is No Authority to Impose Indeterminate Sentences on All Counts**

Indeterminate sentences are required for Counts I and II. RCW 9.95.010.

Determinate sentences are required on the remaining counts. RCW 9.94A.010, *et seq.*

Contrary to the law, the sentencing court imposed a total "indeterminate sentence of

4,900 months to life.” That sentence is illegal. It is not statutorily authorized. The sentencing court did not possess statutory authority to impose indeterminate terms on any count other than I and II. Reversal and remand for resentencing is required.

**Mr. Yates Has a Right to be Present and to Allocute**

The constitutional “right to be heard in person” includes a right to allocution if the defendant requests it. *State v. Canfield*, 154 Wash. 2d 698, 708, 116 P.3d 391, 396 (2005). Through counsel, Mr. Yates requested, but was denied the right to allocate.

Given that Mr. Yates is entitled to be resentenced, he should be permitted to appear in person and be given an opportunity to allocute at that hearing.

**IV. CONCLUSION**

One illegal sentence has been replaced with another. This Court should reverse, remand for resentencing, and direct that Mr. Yates be present and be given an opportunity to allocute.

DATED this 8<sup>th</sup> day of August 2018.

Respectfully Submitted:

/s/ Jeffrey E. Ellis

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