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Court of Appeals  
Division III  
State of Washington  
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NO. 36281-7-III

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

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STATE OF WASHINGTON,

Respondent,

v.

RICHARD VASQUEZ, JR.,  
Appellant.

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

Yakima County Cause No. 14-1-01397-9

The Honorable Gayle M. Harthcock, Judge

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SUPPLEMENTAL BRIEF OF APPELLANT

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## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

Mr. Vasquez filed his Opening Appellate Brief on 04/09/19, arguing, *inter alia*, that his sentence of life without the possibility of parole (LWOP) must be reversed because it was based, in part, on a “strike” offense that occurred when he was only sixteen-years-old. *See* Appellant’s Opening Brief.

On 02/27/19, this Court stayed the consideration of Mr. Vasquez’s appeal (on the state’s motion), pending the outcome of *State v. Moretti* in the Washington Supreme Court (case no 95263-9). *See* Commissioner’s Ruling (06/27/19).

On 08/15/19, the Supreme Court issued its decision in *Moretti*. *State v. Moretti*, 193 Wn.2d 809, 446 P.3d 609 (2019). The *Moretti* court held that an LWOP sentence is not categorically barred under Wash. Const. art. I, § 14 if it is based, in part, on a “strike” offense committed when the offender was over the age of eighteen but a “young adult.” *Id.* at 818-19.

This Court lifted the stay on Mr. Vasquez’s case on 11/26/19 and issued an order permitting Mr. Vasquez to file a supplemental brief addressing the applicability of the *Moretti* decision to his case. *See* Clerk’s Ruling (11/26/19).

## ARGUMENT

**THE SUPREME COURT’S DECISION IN *MORETTI* IS INAPPOSITE TO THE QUESTION OF WHETHER MR. VASQUEZ’S CONVICTION FROM WHEN HE WAS A JUVENILE CAN CONSTITUTIONALLY CONTRIBUTE TO HIS SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE. *MORETTI* ADDRESSES ONLY “STRIKE” OFFENSES COMMITTED AFTER AN OFFENDER HAS REACHED LEGAL ADULTHOOD.**

“Children are different” under the Eighth Amendment and art. I, § 14. *Miller v. Alabama*, 567 U.S. 460, 481, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *State v. Houston-Sconiers*, 188 Wn.2d 1, 18, 391 P.3d 409 (2017); U.S. Const. Amend. VIII; art. I, § 14.

Likely for this reason, a juvenile court conviction can never qualify as a “strike” offense under the Persistent Offender Accountability Act (POAA). *See* RCW 9.94A.030(38)(a)(ii); RCW 9.94A.030(35).

Recent Eighth Amendment and art. I, § 14 jurisprudence treats all juveniles the same, regardless of whether they are tried and convicted in juvenile court or adult court. *See State v. Houston-Sconiers*, 188 Wn.2d 1, 19-20, 391 P.3d 409 (2017) (*citing Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 2461-62, 183 L.Ed.2d 407 (2012); *Graham v. Florida*, 560 U.S. 48, 53, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), *as modified* (July 6, 2010); *Roper v. Simmons*, 543 U.S. 551, 557, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)).

Even so, a conviction imposed upon a juvenile in adult court can still qualify as a “strike” under Washington’s POAA. RCW 9.94A.030(38)(a)(ii); RCW 9.94A.030(35).

Mr. Vasquez’s Opening Brief explains at length why this Court should read art. I, § 14 to pose a categorical bar to the practice of imposing a sentence of life without the possibility of parole (LWOP) based, in part, on a conviction entered upon a juvenile in adult court. *See* Appellant’s Opening Brief.

The Supreme Court’s recent decision in *Moretti* is inapposite to the analysis in Mr. Vasquez’s case. The *Moretti* court decided only that a conviction imposed on a young *adult* can constitutionally contribute to an LWOP sentence. *Moretti*, 193 Wn.2d 809.

Indeed, the *Moretti* court explicitly declined to comment on whether the constitution would permit an LWOP sentence in a case like Mr. Vasquez’s:

We express no opinion on whether it is constitutional to apply the POAA to an offender who committed a strike offense as a juvenile and was convicted in adult court.

*Id.* at 821 n. 5.

The *Moretti* court relied heavily on the fact that the appellants in that case had provided any information about whether offenses committed by young adults qualify as “strikes” in other states. *Id.* at 821. Rather, the

petitioners pointed only to evidence that other states “overwhelmingly prohibit the use of *juvenile* offenses to drastically enhance later sentences under recidivist schemes.” *Id.* (emphasis in original).

Because the petitioners in *Moretti* were not juveniles at the time of their predicate offenses, the Court found that authority unavailing. *Id.* But Mr. Vasquez *was* a juvenile – just sixteen-years-old -- at the time of his first predicate offense. CP 14-22; Ex. SE-CC. As a result, the three-step “categorical bar” analysis in Mr. Vasquez’s case is drastically different from that in *Moretti*.

Evolving jurisprudence has provided greater protections under the Eighth Amendment and art. I, § 14 to young adults than was previously afforded. *See e.g. State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) (holding that a sentencing court must consider a young adult’s youthfulness during sentencing).

But those safeguards are still not nearly as strong as the protection afforded to juveniles. *See e.g. Roper*, 543 U.S. 551 (creating a categorical bar against capital punishment for crimes committed by juveniles); *Graham*, 560 U.S. 48 (creating a categorical bar against LWOP sentences for juveniles for non-murder offenses); *Miller*, 567 U.S. 460 (creating a categorical bar against mandatory LWOP sentences for juveniles for any offense); *Houston-Sconiers*, 188 Wn.2d 1 (holding that courts sentencing

juveniles must have the discretion to impose *any* sentence below the standard range); *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018) (creating a categorical bar against any LWOP sentence for juveniles, mandatory or not).

*Moretti* dealt with young adults, not juveniles. The Supreme Court's recent decision in that case does not affect the analysis in Mr. Vasquez's case. Mr. Vasquez's LWOP sentence must be vacated and his case must be remanded for sentencing within the standard range.

### **CONCLUSION**

The Supreme Court's recent decision in *Moretti* is inapposite to the art. I, § 14 issue raised in Mr. Vasquez's case.

Respectfully submitted on December 11, 2019,



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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

Richard Vasquez, Jr./DOC#290756  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Yakima County Prosecuting Attorney  
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I filed the Appellant's Supplemental Brief electronically with the Court of Appeals, Division III, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on December 11, 2019.



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**LAW OFFICE OF SKYLAR BRETT**

**December 11, 2019 - 7:06 PM**

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