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Division III
State of Washington
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No. 37141-7-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

Chelan County Superior Court
Cause No. 94-1-00444-2

State of Washington, Respondent

v.

Michael Lauderdale, Appellant

BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES

1. Under the Sentencing Reform Act, did the sentencing court abuse its discretion when it sentenced Mr. Lauderdale to life without parole for aggravated murder committed by an adult when this was the only sentence the court could impose?
2. Was Mr. Lauderdale provided effective assistance of counsel when his attorney correctly concluded that, pursuant to the Sentencing Reform Act, Mr. Lauderdale could not ask for a different/mitigated sentence for aggravated murder committed by an adult?

II. STATEMENT OF THE CASE

On September 17, 1994, at the age of 19, Lauderdale brutally murdered Jeremy Wood by beating him with a bat and driving over him with a car. CP 35-50.

On January 19, 1995, a jury found him guilty of aggravated first degree murder (first degree murder aggravated by being committed in the course of, in furtherance of, or in immediate flight from the crime of rape in the first degree) as well as felony first degree murder. CP 30, 85, 115. In the original judgment and sentence entered February 7, 1995, the trial court sentenced Lauderdale to life without parole for the aggravated murder; the court did not sentence Lauderdale for the count of felony murder although it was included in the judgment. CP 30-33. On September 24,

1996, the Court of Appeals affirmed Lauderdale's conviction for aggravated murder, concluding that "Considering the entire record, the evidence supports the conviction." *State v. Lauderdale*, 14716-9-III (1996).

On January 25, 2019, Lauderdale filed a CrR 7.8 motion for a resentencing and alleged, inter alia, that his Double Jeopardy right had been violated due to the judgment and sentence including two counts of murder (when only one murder had occurred). CP 2-17. The State ultimately conceded that there was a Double Jeopardy violation in the original Judgment and Sentence; however, because this second count of murder did not affect the substantive sentence in any way, the State argued that the mistake was ministerial in nature and that an order amending the Judgment and Sentence removing all references to the second count of murder would cure the error. CP 83, 109-11. Because the error was ministerial, the State moved the court to order that: (1) Lauderdale had no right to be present at the resentencing; (2) Lauderdale could not argue for a different sentence; and (3) Lauderdale could not make an allocution or present other evidence. CP 109-11. The sentencing court denied the first and third motions but granted the State's motion prohibiting Lauderdale from asking for an alternative sentence; Lauderdale (through counsel) agreed that he could legally not ask for an alternative sentence. RP 19-28.

At the resentencing on September 19, 2019, the court conducted a full resentencing, including allowing representatives of the victim to speak as well as allowing Lauderdale an allocution. RP 32-49. After hearing from all the parties, the court resentenced Lauderdale to life without parole, noting that it had no discretion to sentence him to anything else. RP 27-28, CP 115-120.

III. ARGUMENT

THE ONLY SENTENCE FOR AGGRAVATED MURDER COMMITTED BY AN ADULT IS LIFE WITHOUT PAROLE.

Lauderdale raises the following errors in his opening brief as well as in his statement of additional grounds: (1) that the court abused its discretion by concluding it did not have discretion to consider other sentences; (2) that Lauderdale was provided ineffective assistance of counsel because his attorney did not argue for an alternative sentence; (3) that the court abused its discretion by not considering Lauderdale's youth as a mitigating factor; (4) that the court was not a neutral fact finder; (5) that the State "invited error" by telling the court there was only one available sentence for an adult convicted of aggravated murder; and (6) that Lauderdale should be allowed to argue for an exceptional sentence via RCW 9.94A.535(1)(e) as interpreted by *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015). All of these issues are now addressed through the State's

singular argument that the only sentence available for Lauderdale was/is life without the possibility of parole.

A. For the crime of aggravated first degree murder committed by an adult, RCW 10.95.030 only authorizes two sentences: life without parole or death.

Except as provided in subsections (2) and (3) of this section, **any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole.** A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

RCW 10.95.030(1) (emphasis added). Neither subsections (2) or (3) of RCW 10.95.030(1) are applicable to Lauderdale, so “life imprisonment without possibility of release or parole” was and is the only available sentence. RCW 10.95.030(3) only applies to persons who committed the crime prior to turning eighteen. RCW 10.95.030(2) only applies where “the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency,” in which case the sentence is (was) death; however, in 2018, the Washington Supreme Court held that the death penalty was

unconstitutional, making life without the possibility of parole the only available sentence for an adult convicted of aggravated murder. *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018).

Pursuant to RCW 10.95.030(1), there is no standard range for the crime of aggravated murder and the sentencing court has no discretion.

B. The cases and statutes cited by Mr. Lauderdale are inapplicable to his case.

Lauderdale argues that the plethora of recent cases dealing with youthfulness as a possible mitigating factor in sentencing applies in his particular case. However, none of these cases are material to Lauderdale's sentence.

First, the seminal U.S. Supreme Court case in this area only applies to juveniles. *State v. Witherspoon*, 180 Wn.2d 875, 890, 329 P.3d 888 (2014) (interpreting *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)). In short, *Miller* held that "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Miller* at 470. As a result of *Miller*, the Washington legislature passed the so-called *Miller*-fix, changing the sentencing schemes for juveniles tried as adults to comply with *Miller*. See RCW 9.94A.730, 10.95.030(3). These statutory fixes for juveniles adequately address the concern raised in *Miller* to the

extent that their availability (to a specific defendant) renders resentencing unnecessary. *See State v. Scott*, 190 Wn.2d 586, 416 P.3d 1182 (2018).

In addition to *Miller*, the other U.S. Supreme Court cases cited by Lauderdale also only apply to juvenile offenders. *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (holding that the Eighth Amendment prohibits imposition of the death penalty on juvenile offenders); *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (life without parole prohibited for juveniles convicted of non-homicide crimes).

Lauderdale also cites Washington state cases that have interpreted the Eighth Amendment as it applies to juvenile sentencing. *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017). However, *Houston-Sconiers* only applies to juveniles sentenced as adults (not adults sentenced as adults). *Id.* at 9 (holding that “sentencing courts must have absolute discretion to depart as far as they want below otherwise applicable SRA ranges and/or sentencing enhancements **when sentencing juveniles in adult court**”) (emphasis added); *In re Pers. Restraint Meippen*, 193 Wn.2d 310, 312, 440 P.3d 978 (2019).

In summary, all the federal and state cases that have found constitutional implications for life without parole sentences have been

limited to crimes committed by juveniles (not crimes committed by adults like Lauderdale).

The second line of cases Lauderdale cites to is based on statutory interpretation rather than constitutional provisions. *O'Dell*, 183 Wn.2d 680. In *O'Dell*, the Washington Supreme Court held that youthfulness may be a mitigating factor under RCW 9.94A.535 that may support an exceptional sentence below the standard range, and this youthfulness factor is not necessarily limited to juveniles but may also include those who recently turned 18: “a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on an offender like O'Dell, who committed his offense just a few days after he turned 18.” *O'Dell* at 695-96; *see also State v. Ha'mim*, 132 Wn.2d 834, 940 P.2d 633 (1997). Because *O'Dell* interpreted the mitigating factors described in RCW 9.94A.535, *O'Dell* is only applicable to sentences under the Sentencing Reform Act (SRA). Sentences for aggravated murder are not governed by the SRA and therefore RCW 9.94A.535 and *O'Dell* are not applicable. RCW 10.95.030; *see also State v. Delobsque*, 195 Wn.2d 106, 123, 456 P.3d 806 (2020) (aggravated murder sentences are not subject to the exceptional sentence provisions of the SRA).

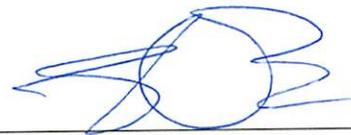
IV. CONCLUSION

As mentioned above, RCW 10.95.030 provides the exclusive sentencing scheme for persons convicted of Aggravated First Degree Murder, to the exclusion of RCW 9.94A.535. Lauderdale received the only sentence available for an adult who commits the crime of aggravated murder: life without parole. All of the cases dealing with the constitutional implications of a life without parole sentence only apply to juveniles. As such, none of the cases cited by Lauderdale are applicable to his situation. The sentencing court had no discretion to consider or impose any other sentence.

Because the sentencing court imposed the only sentence available under the law, all of Lauderdale's claims fail and this Court should affirm the sentence.

DATED this 26 day of May, 2020

Respectfully submitted:



Ryan Valaas, WSBA # 40695
Deputy Prosecuting Attorney

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

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

MICHAEL RANDALL LAUDERDALE,

Defendant/Appellant.

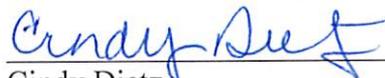
No. 37141-7-III
Chelan Co. Superior Court No. 94-1-00444-2

DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 26th day of May, 2020, I caused the original BRIEF OF RESPONDENT to be filed via electronic transmission with the Court of Appeals, Division III, and a true and correct copy of the same to be served on the following in the manner indicated below:

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Signed at Wenatchee, Washington, this 26th day of May, 2020.



Cindy Dietz
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May 26, 2020 - 4:46 PM

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