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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of	)	
	)	NO. 87654-1
RUSSELL McNEIL,	)	PETITIONER'S STATEMENT
	)	OF ADDITIONAL AUTHORITIES
	)	
Petitioner.	)	

Pursuant to RAP 10.8, Petitioner respectfully submits the following additional authorities in support of his Petition on the following issues.

ISSUE: Retroactivity of Miller on collateral review:

State v. Ragland, 836 N.W.2d 107, 115-16 (Iowa, 8/26/2013) (Miller is retroactive, requires resentencing for 17-year-old convicted in 1986 of murder).

*Colgan, Beth A., Alleyne v. United States, Age as an Element, and the Retroactivity of Miller v. Alabama*, 61 U.C.L.A. L. REV. DISC. 262 (2013).

ISSUE: Whether the possibility of clemency is equivalent to parole:<sup>1</sup>

Solem v. Helm, 463 U.S. 277, 300-01, 103 S. Ct. 3001, 3015,

<sup>1</sup> See Respondent's Supplemental Brief at 14 & n.15.



77 L. Ed. 2d 637 (1983) (distinguishing the constitutional impact of parole eligibility and the possibility of commutation because "[p]arole is a regular part of the rehabilitative process," but a "[c]ommutation, on the other hand, is an *ad hoc* exercise of executive clemency").

ISSUE: Whether consecutive sentences of "near life-expectancy" satisfies Miller:<sup>2</sup>

State v. Ragland, 836 N.W.2d 107, 115-16 (Iowa, 8/26/2013) (Governor's commutation of sentence to life with possibility of parole after 60 years and no credit for earned time did not solve Miller's Constitutional error, leaving defendant with functional equivalent of life without possibility of parole, violating the 8th Amendment and Iowa Constitution art I, § 17).

ISSUE: Remedy on remand after Miller:

Washington v. State, 103 So.3d 917, 920 (Fla. APP. 2012)<sup>3</sup> (remanding on direct appeal for "resentencing in conformance with" Miller):

A discourse by this Court on other sentencing options is premature. We commend the state's recognition of this fact. The better course calls for this Court to exercise restraint and for the parties to make their case before the trial court, where testimony may be

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<sup>2</sup> See Respondent's Supplemental Brief at 16-17.

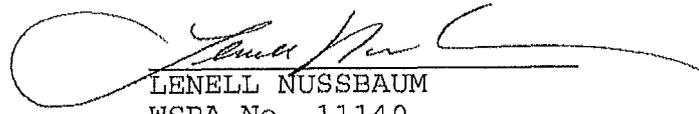
<sup>3</sup> Mis-cited as Washington v. State, 103 So.3d 917, 920 (Fla. 2012) in Brief Amici Curiae WAPA at 10. See: Falcon v. State, 111 So.3d 973, 38 Fla. L. Weekly D 949 (4/30/2013), review granted, (Fla. No. SC13-865, 6/3/2013) (issue of retroactivity and proper remedy pending in Supreme Court).

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taken, evidence presented, and argument made on all material issues to include the potential range of sentencing options.

State v. Huntley, 118 So.3d 95 (La. APP. 3d Cir. 2013)<sup>4</sup>  
(applying Teague analysis, holding Miller not retroactive).

Respectfully submitted this 6<sup>th</sup> day of November, 2013,



LENELL NUSSBAUM  
WSBA No. 11140  
Attorney for Mr. McNeil

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<sup>4</sup> Mis-cited as State v. Huntley, 118 So.3d 95 (La. 2013) in Brief Amici Curiae WAPA at 4.

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DECLARATION OF SERVICE

ALEXANDRA FAST declares:

On this date I cause this document to be filed in the State of Washington Supreme Court; and caused a copy of this document to be served on the following entities via email, addressed as follows:

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I declare under penalty of perjury under the laws of the state of Washington that the above statement is true and correct to the best of my knowledge.

NOV. 6<sup>TH</sup> 2013- SEATTLE, WA  
Date and Place

Alex Fast  
ALEXANDRA FAST

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
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**Subject:** RE: McNeil, Russell 87654-1

Rec'd 11-6-13

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**Subject:** McNeil, Russell 87654-1

Please accept for filing the attached "Petitioner's Statement of Additional Authorities" in regards to the Personal Restraint of Russell McNeil, 87654-1. A certificate of service is attached to the pleading.

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