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NO. 88921-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition Of:

GREGORY O. THOMAS,

Petitioner

PETITIONER'S SUPPLEMENTAL BRIEF

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A. SUPPLEMENTAL ISSUE STATEMENT

1. Must this Court vacate Gregory Thomas' 999-month sentence under Miller v. Alabama for a first degree felony murder conviction at age 15?

2. Must this Court vacate Thomas' sentence because it constitutes cruel punishment under Wash Const. article I, section 14?

3. Must this Court vacate Thomas' sentence because it is illegal?

B. SUPPLEMENTAL STATEMENT OF THE CASE

A King County jury rejected Gregory Thomas' insanity defense, did not reach a verdict of aggravated first degree murder, and found him guilty of the alternative charge of first degree felony murder.¹ The predicate felonies were first degree burglary and first and second degree rape of a 71-year-old woman. State's Response to Personal Restraint Petition, Appendix D1. The jury found the offense was sexually motivated. Id. at D2. Thomas was 15 years old at the time of the offense.

¹ Thomas also pleaded guilty to attempted residential burglary. State's Response, Appendix C1.

The State recommended a 999-month sentence, three times the top of the standard range of 250 months to 333 months. RP (3/3/1996) 2-3. Thomas had an offender score of one. Id. at 2.

Thomas requested a 230-month exceptional sentence, 10 months shy of the mandatory minimum of 20 years. Id. at 16. Defense counsel noted several experts concluded Thomas suffered from a number of psychoses. He maintained Thomas' capacity to appreciate the wrongfulness of his conduct or to conform his conduct to legal requirement was significantly impaired. Id. at 16-17. Counsel also emphasized Thomas suffered "ongoing abuse and neglect and battering" throughout his nurturing years. Id. at 19. Counsel argued a 999-month sentence was a life sentence. Id. at 22-23.

The trial court agreed with the defense that "it would be perhaps appropriate for [Thomas] to be receiving the treatment from psychiatrists that would occur at a hospital[.]" Id. at 27. It also acknowledged Thomas' "life up to this point has been difficult and his experiences have affected him." Id. at 28.

The court nevertheless adopted the State's recommendation. The court found the victim was particularly vulnerable and incapable of resistance due to advanced age. State's Response at E2. The court also

found Thomas committed the crime because of his desire for sexual gratification. Id. at E3. The court concluded those factors were substantial and compelling reasons to depart from the standard range. Id. at 3.

C. ARGUMENT

1. MILLER v. ALABAMA SHOULD APPLY TO THOMAS' CASE.

a. General retroactivity law

"A 'new rule' is one that 'breaks new ground' or 'was not dictated by precedent existing at the time the defendant's conviction became final.'" In re Personal Restraint of Markel, 154 Wn.2d 262, 270, 111 P.3d 249 (quoting Teague v. Lane, 489 U.S. 288, 301, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989)). Miller's rule is new; it was not dictated by precedent when Thomas' conviction became final. See In re Personal Restraint of Haghighi, 178 Wn.2d 435, 444, 309 P.3d 459 (2013) (Winterstein, which held inevitable discovery was incompatible with Wash. Const. article 1, section 7, was new rule because it was not dictated by precedent).

"New constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced." Teague, 489 U.S. at 310. An exception exists for "watershed" procedural rules, which implicate the fairness and accuracy of the criminal proceeding. Markel, 154 Wn.2d at 269.

New substantive rules, in contrast, generally apply retroactively. Schriro v. Summerlin, 542 U.S. 348, 351-52, 124 S. Ct. 2519, 159 L. Ed. 2d 442 (2004). These include decisions that narrow the scope of a criminal statute by interpreting its language and constitutional decisions that place particular conduct or persons covered by the statute beyond the State's power to prohibit. Schriro, 542 U.S. at 351-52; In re Personal Restraint of Gentry, ___ Wn.2d ___, 316 P.3d 1020, 1027 ¶16 (2014) (citing Teague). Such rules must apply retroactively to prevent the possibility the defendant will face punishment that the law cannot impose on him. Schriro, 542 U.S. at 352; see Sawyer v. Smith, 497 U.S. 227, 241, 110 S. Ct. 2822, 111 L. Ed. 2d 193 (1990) (rule is substantive if it "prohibit[s] imposition of a certain type of punishment for a class of defendants because of their status or offense").

The Washington Supreme Court has generally followed the lead of the United States Supreme Court when deciding whether to give retroactive application to newly articulated principles of law. State v. Evans, 154 Wn.2d 438, 444, 114 P.3d 627, cert. denied, 546 U.S. 983 (2005). The Teague rule does not, however, constrain the authority of state courts to give broader effect to new rules of criminal procedure.

Danforth v. Minnesota, 552 U.S. 264, 266, 128 S. Ct. 1029, 169 L. Ed. 2d 859 (2008).

b. The Miller Decision

In Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the Supreme Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Id. at 2460. The Court based the ruling on the Eighth Amendment's "concept of proportionality," which is viewed "less through a historical prism than according to the evolving standards of decency that mark the progress of a maturing society." Id. at 2463 (citations and internal quotation marks omitted).

c. The rule announced in Miller applies to Thomas.

The question arises whether Miller applies to Thomas' case. First, Miller does not categorically ban a sentence of life without parole for a juvenile. Nor did Thomas receive a sentence of life without parole. What Miller bans, however, is not important. Instead, what Miller requires is the key. As the Court plainly declared, a sentencing court must "take into account how children are different, and how those differences counsel

against irrevocably sentencing them to a lifetime in prison." Miller, 132 S. Ct. at 2469.

This is made clear from the Court's reasoning in Miller. Relying on Roper² and Graham,³ the Court recognized that "children are constitutionally different from adults for purposes of sentencing." Miller, 132 S. Ct. at 2464. Children lack maturity and a sense of responsibility. They are more vulnerable to negative influences and pressures and "lack the ability to extricate themselves from horrific, crime-producing settings." Id. And a child's character is not as fully developed as an adult's. This means his actions are less likely to be a sign of intractable criminality. Id.⁴

² Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (invalidating death penalty for juvenile offenders as cruel and unusual).

³ Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (banning sentences of life without parole under Eighth Amendment when imposed on juvenile nonhomicide offenders).

⁴ As the Iowa Supreme Court recently observed, juveniles have long been recognized as different from adults:

For many years, the Supreme Court has recognized the difference between adults and juveniles. For example, in Haley v. Ohio, 332 U.S. 596, 599, 68 S.Ct. 302, 304, 92 L. Ed. 224, 228 (1948) (plurality opinion), four justices emphasized that courts should take "special care" in considering a confession obtained from a juvenile due to the "great instability which the crisis of adolescence produces." The Court took a similar approach in Gallegos v. Colorado, 370 U.S. 49, 54, 82 S. Ct. 1209, 1212-13, 8

"Roper and Graham," the Court observed, "emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Miller, 132 S. Ct. at 2465. Responding to the dissenting justices narrow focus on the difference between homicide and nonhomicide crimes, the Miller Court held, "Graham established one rule (a flat ban) for nonhomicide offenses, while we set out a different one (individualized sentencing) for homicide offenses." Miller, 132 S. Ct. at 2466 n.6.

The sentencing court in Thomas' case did not meaningfully consider his youth. The crux of the court's decision follows:

The analysis of Gregory at the beginning of the trial was that he knew the difference between right and wrong and that he was able to assist his lawyers, understood the function of the courts and therefore had the capacity to stand trial. And there is no question that his life up to this point has been difficult and his experiences have affected him. There's no way to say whether these experiences are out of the norm for a person, that he's the

L. Ed. 2d 325, 329 (1962), where it declared a juvenile "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions." In Bellotti v. Baird, 443 U.S. 622, 635, 99 S. Ct. 3035, 3044, 61 L. Ed. 2d 797, 808 (1979), the Court noted that "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them."

State v. Null, 836 N.W.2d 41, 60 (Iowa 2013).

only person who's lived that kind of a deprived life, I just don't know, it's awful that any human being should ever be maltreated by another human being, but we, from that generalization and wish, we certainly go down hill particularly when we come to this case.

RP (3/3/1996) 28. The court made one reference to Thomas' age:

The only question that the Court is concerned about is the unknown factor of whether age in itself does away with the make-up of an individual so that the sexual factor is never again present. I don't know the answer to that issue. I do know that we see sex crimes committed by 80-year-olds. The acting out of [*sic*] that sexual motivation was so awful in this case that I'm going to follow the prosecutor's recommendation.

RP (3/3/1996) 30.⁵

That recommendation was 999 months -- 83.25 years -- in prison.

RP (3/3/1996) 2. It may not strictly have been life without parole, but the distinction is meaningless. A term of 83 years for a 15-year-old boy effectively means he will die in prison. Washington has no parole board or system that affords Thomas a meaningful opportunity for release.⁶

⁵ The court did not refer to Thomas' youth or to any factors in mitigation in its findings of fact and conclusions of law. State's Response to Personal Restraint Petition (PRP), Appendix E.

⁶ See Graham, 560 U.S. at 75 (2010) ("A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.").

Thomas' aggregate earned early release time may not exceed 15 percent of his sentence. Former RCW 9.94A.150(1) (1992). If he earned the maximum 15 percent, he would be eligible for release after roughly 71 years. Thomas thus may not be released before he is 86 years old. As the Iowa Supreme Court has concluded, this is essentially a life term:

[W]e believe that while a minimum of 52.5 years imprisonment is not technically a life-without-parole sentence, such a lengthy sentence imposed on a juvenile is sufficient to trigger Miller-type protections. Even if lesser sentences than life without parole might be less problematic, we do not regard the juvenile's potential future release in his or her late sixties after a half century of incarceration sufficient to escape the rationales of Graham or Miller. The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a "meaningful opportunity" to demonstrate the "maturity and rehabilitation" required to obtain release and reenter society as required by Graham, 560 U.S. at —, 130 S.Ct. at 2030, 176 L.Ed.2d at 845–46.

State v. Null, 836 N.W.2d 41, 71 (Iowa 2013).

Other States are in accord. See, e.g. State v. Taylor, 287 Neb. 386, 398, ___ N.W.2d ___ (Neb. 2014) (Nebraska's sentence of life was effectively life without parole under Miller because it provided no meaningful opportunity to obtain release); Floyd v. State, 87 So.3d 45, 46 (Fla. App. 2012) ("Even if Appellant received the maximum amount of gain time, the earliest he would be released is at age eighty-five. . . . This situation does not in any way provide Appellant with a meaningful or

realistic opportunity to obtain release, as required by Graham."); People v. Mendez, 188 Cal. App. 4th 47, 63-64, 114 Cal.Rptr.3d 870, 883 (Cal. App. 2010) ("[C]ommon sense dictates that a juvenile who is sentenced at the age of 18 and who is not eligible for parole until after he is expected to die does not have a meaningful, or as the Court also put it, "realistic," opportunity of release."); Davis v. State, 724 So.2d 342, 344 (Miss. 1998) (sixty-year prison term rendered young defendant "[in]eligible for parole before the year 2043, when she will be seventy-six years old," and was "in essence a life sentence without parole.")

To find Thomas' 83-year sentence beyond the scope of Miller would be absurd. For these reasons, Thomas' sentence falls within Miller's ambit.

d. The rule announced in Miller is substantive.

A substantive rule is one that places a category of conduct beyond the reach of the criminal law or prohibits imposition of a certain kind of punishment for a class of defendants because of their status or offense. Sawyer v. Smith, 497 U.S. 227, 241, 110 S. Ct. 2822, 111 L. Ed. 2d 193 (1990); State v. Carney, ___ Wn. App. ___, 314 P.3d 736, 742 (2013). A rule is substantive if it "alters the range of conduct or the class of persons that the law punishes." Schiro, 542 U.S. at 353.

Miller prohibits imposition of a mandatory sentence of life in prison without parole for a class of persons – those under 18 years of age. As such, the rule is substantive. State v. Mantich, 287 Neb. 320, 342, ___ N.W. 2d ___ (Neb. 2014); State v. Ragland, 836 N.W.2d 107, 115 (Iowa 2013); Diatchenko v. Dist. Attorney for Suffolk Dist., 466 Mass. 655, 666, 1 N.E.3d 270 (Mass. 2013); Jones v. Mississippi, 122 So.3d 698, 702 (2013).⁷ See also State v. Simmons, 99 So.3d 28 (La. 2012) (on collateral review, remanding for sentencing hearing in Miller and stating reasons for reconsideration and sentencing on record).

In this respect, Miller resembles Graham, which held the Eighth Amendment prohibition on cruel and unusual punishment bars a sentence of life without parole for a juvenile who did not commit a homicide offense. Similarly, Miller renders unconstitutional a statute requiring mandatory imposition of a life without parole term for a minor who commits aggravated first degree murder.

⁷ Cf., Cara H. Drinan, Graham on the Ground, 87 Wash.L.Rev. 51, 66 (2012) ("Those inmates whose cases are on collateral review are also entitled to challenge their sentence under Graham, as even the narrowest reading of Graham renders a certain type of punishment--life without parole--unconstitutional for a certain class of persons--non-homicide juvenile offenders.").

Furthermore, Miller held the sentencing court must consider youth, individualized factors, and mitigation evidence before imposing a life term for juveniles. 132 S. Ct. at 2475. This is new evidence not previously required by law to be considered. Mantich, 287 Neb. at 341. Miller recognized that when mitigating evidence is considered, a sentence of life imprisonment without parole for a juvenile would be rare. 132 S. Ct. at 2469. "At heart, an implementation of procedural safeguards true to Miller's underlying premises amounts to something close to a de facto substantive holding: children should be sorted from adults and, except when indistinguishable from adults, be spared LWOP." Supreme Court 2011 Term, Leading Cases, 126 Harv.L.Rev. 276, 286 (2012).

In addition, the Supreme Court applied Miller retroactively in the companion case of Jackson v. Hobbs on collateral review from Arkansas. Miller, 132 S. Ct. at 2461-62, 2475. Teague highlights the significance of this act: "[O]nce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated." Teague, 489 U.S. at 300.⁸

⁸ See Diatchenko, 466 Mass. at 666 ("Our conclusion is supported by the fact that in Miller, 132 S. Ct. at 2469, 2475, the Supreme Court retroactively applied the rule that it was announcing in that case to the defendant in the companion case who was before the Court on collateral review."); People v. Williams, 367 Ill.Dec 503, 519, 982 N.E.2d 181, 197

The Court specifically adopted this policy in order to ensure that justice is administered evenhandedly. Id. at 315; see Mantich, 287 N.W.2d at 342 ("Evenhanded administration of justice is carried out only if Mantich, like Jackson, is entitled to the benefit of the new rule announced in Miller); Ragland, 836 N.W.2d at 117 ("It would be terribly unfair to have individuals imprisoned for life without any chance of parole based on the accident of the timing of the trial.")).⁹

As stated by Justice O'Connor, "The clearest instance, of course, in which we can be said to have 'made' a new rule retroactive is where we expressly have held the new rule to be retroactive in a case on collateral review and applied the rule to that case." Tyler v. Cain, 533 U.S. 656, 668, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001) (O'Connor, J., concurring).

This Court should honor Teague's concept of evenhanded justice and apply the holding here.

(Ill. App. 2012) ("It is instructive that the Miller companion case, Jackson v. Hobbs, arising on collateral review, involved a life-without-parole-sentence heretofore final. Notwithstanding its finality, the Supreme Court . . . in effect retroactively applied Miller and vacated Jackson's sentence.

⁹ (quoting Erwin Chemerinsky, Chemerinsky: Juvenile Life-Without-Parole Case Means Courts Must Look at Mandatory Sentences, A.B.A. J. Law News Now 8/8/2012), http://www.abajournal.com/news/article/chemerinsky_juvenile_life-without-parole_case_means_courts_must_look_at_sen/).

- e. A rule can be substantive even though it has procedural features.

A rule should not be considered "procedural" for retroactivity purposes merely because it has procedural features. The Iowa Supreme Court recognized as much when it observed that "[f]rom a broad perspective, Miller does mandate a new procedure. Yet, the procedural rule for a hearing is the result of a substantive change in the law that prohibits mandatory life-without-parole sentencing." Ragland, 836 N.W.2d at 115. Ragland also relied on the following observation by Professor Chemerinsky: "[T]he Miller Court did more than change procedures; it held that the government cannot constitutionally impose a punishment. As a substantive change in the law which puts matters outside the scope of the government's power, the holding should apply retroactively." Ragland, 836 N.W.2d at 117 (quoting Chemerinsky, supra).

The Nebraska Supreme Court concurred:

As other courts have noted, the Miller rule certainly contains a procedural component, because it specifically requires that a sentencer follow a certain process before imposing the sentence of life imprisonment on a juvenile. . . . But at the same time, the Miller rule includes a substantive component. Miller did not simply change what entity considered the same facts. And Miller did not simply announce a rule that was designed to enhance accuracy in sentencing. Instead, Miller held that a sentencer must consider specific, individualized factors before handing down a

sentence of life imprisonment without parole for a juvenile. Effectively, then, Miller required a sentencer of a juvenile to consider new facts, i.e., mitigation evidence, before imposing a life imprisonment sentence with no possibility of parole.

Mantich, 287 Neb. at 339 (footnotes omitted).¹⁰

People v. Luciano¹¹ is in accord:

We agree that, while Miller can be read to announce a procedural rule, namely, the requirement that youth-related mitigation be considered in any sentencing hearing in which a minor would otherwise be subject to a mandatory natural-life sentence, there is a valid and substantive distinction between the pre-Miller sentencing regime and the Miller-mandated broadened range of sentencing options that courts are to consider.

People v. Luciano 370 Ill. Dec. 587, 599, 988 N.E.2d 943, 955 (Ill. App. 2013).

Finally, a federal district court judge wrote, "[I]t is difficult to see how a rule is more procedural and less substantive because it relates to how much punishment is imposed, and not to whether punishment is

¹⁰ The difficulty in drawing a line between a substantive and procedural rule has not been lost on the Supreme Court. In Robinson v. Neil, 409 U.S. 505, 509, 93 S. Ct. 876, 35 L. Ed. 2d 29 (1973), the Court, in finding a rule retroactive, cautioned, "We would not suggest that the distinction that we draw is an ironclad one that will invariably result in the easy classification of cases in one category or the other." See also, State v. Goodman, 92 N.J. 43, 52, 455 A.2d 475, 480 (N.J. 1983) ("It has been long and consistently understood that no bright line separates procedure from substance in all situations. . . . A rule of criminal procedure may, and frequently does, have an impact upon substantive rights.") (citations omitted).

¹¹ 370 Ill. Dec. 587, 599, 988 N.E.2d 943, 955 (2013).

imposed." United States v. Tayman, 885 F. Supp. 832, 843 n.38 (E.D. Va. 1995).

This Court should recognize the hybrid nature of the rule and find it is more substantive than procedural. It therefore applies retroactively to Thomas' case.

f. Alternatively, Miller announced a watershed rule.

The second Teague exception applies to "watershed" rules of constitutional criminal procedure. Teague, 489 U.S. at 311. To qualify as watershed, the new rule must (1) be necessary to prevent an intolerable risk of an inaccurate conviction and (2) change our understanding of the bedrock procedural elements indispensable to a proceeding's fairness. Whorton v. Bockting, 549 U.S. 406, 418, 127 S. Ct. 1173, 167 L. Ed. 2d 1 (2007); Teague, 489 U.S. at 311.

With sound reasoning, the Illinois Court of Appeals found Miller to be a watershed rule:

We find that Miller not only changed procedures, but also made a substantial change in the law in holding under the eighth amendment that the government cannot constitutionally apply a mandatory sentence of life without parole for homicides committed by juveniles. Life without parole is justified only where the State shows that it is appropriate and fitting regardless of the defendant's age.

Williams, 367 Ill.Dec. at 519, 982 N.E.2d at 197.

Miller prohibits a scheme that mandates a sentence of life without parole for juveniles to avoid the impermissible risk of imposing an disproportionate and therefore inaccurate sentence: "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." 132 S. Ct. at 2469. As the Miller Court noted, "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." 132 S. Ct. at 2469. In Washington, therefore, Miller drastically changes the likelihood of a juvenile convicted of aggravated murder receiving life without parole or its functional equivalent.

Miller also alters the "bedrock procedural elements" of sentencing juveniles for aggravated murder. Washington's current sentencing scheme contains no procedural safeguards since a sentence of life without parole is automatic upon conviction for aggravated murder. Miller replaces that with a system requiring consideration of complex and individualized youth-based factors.

Finally, the Miller ruling affects the "fundamental fairness" of the proceeding, as this case demonstrates. Miller makes it clear the individualized sentencing for juveniles is implicit in the concept of ordered liberty. It would be cruel and unusual to apply the principle only

in "new" cases. As defense counsel noted during the sentencing hearing, there was ample evidence of mitigation. Mental health experts found Thomas suffered from a variety of psychoses. RP (3/3/1996) 16. Counsel also explained: "[W]hat has happened in his life is equally gruesome in a way and horrible that you should begin your existence as an infant and be the subject of abuse and ongoing abuse and neglect and battering throughout your nurturing years." RP (3/3/1996) 19.

It is fundamentally unfair that a defendant such as Thomas must automatically spend the rest of his life in prison for a transgression committed as a child. Thus, this Court should find that the "watershed" exception applies here.

2. WASHINGTON LAW CALLS FOR RETROACTIVE APPLICATION OF MILLER.

- a. This Court should reach the issue based on Washington's collateral review provisions.

Miller necessitates a significant change in the law that materially affects his 999-month sentence. This Court should address this issue under Washington law and hold Miller applies on collateral review.

This Court has recognized that it is not bound by Teague when deciding whether a change in the law applies retroactively under RCW

10.73.100(6).¹² See State v. Evans, 154 Wn.2d 438, 448-49, 114 P.3d 6270 ("There may be a case where our state statute would authorize or require retroactive application of a new rule of law when Teague would not."), cert. denied, 546 U.S. 983 (2005); Markel, 154 Wn.2d at 268 n.1 ("We do not foreclose the possibility that there may be a case where a petitioner would not be entitled to relief under the federal analysis as it exists today, or as it may develop, but where sufficient reason would exist to depart from that analysis.");

This Court must interpret and apply Washington's Constitution and statutes. It cannot, however, rewrite the law. The fixing of punishment is

¹² RCW 10.73.100(6) provides:

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

...

There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

the legislature's job. State v. Nunez, 174 Wn.2d 707, 711, 285 P.3d 21, 23 (2012).

In State v. Furman,¹³ this Court held the rule announced in Thompson v. Oklahoma,¹⁴ which banned the death penalty for offenders age 15 or younger when the crime occurred, rendered RCW 13.40.110 and RCW 10.95 unconstitutional because neither statute set a minimum age for imposition of capital punishment. 122 Wn.2d 457-58. The court invalidated the juvenile appellant's death sentence. Id. at 458.

Similarly, the legislature did not consider how a sentence of life without parole or its functional equivalent should apply to juveniles in adult court. Importantly, it did not mandate consideration of the offender's youth and individual characteristics, as well as mitigation evidence. Therefore, even if Miller allows the possibility of a sentence of life without parole, there is no substantive law in Washington that complies with Miller. For these reasons, Thomas' sentence equivalent to life without parole sentence is illegal and may be considered under RCW 10.73.100.

¹³ 122 Wn.2d 440, 858 P.2d 1092 (1993).

¹⁴ 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988).

- b. Washington courts may correct an illegal sentence at any time.

When a sentencing court exceeds its statutory authority, its action is void. State v. Phelps, 113 Wn. App. 347, 354-55, 57 P.3d 624 (2002). An illegal or erroneous sentences may be challenged for the first time on appeal. Unauthorized conditions of a sentence may be challenged for the first time on appeal. State v. Jones, 118 Wn. App. 199, 204, 76 P.3d 258 (2003); see also State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999) (illegal or

This Court has often corrected illegal sentences based on significant changes in decisional law. Indeed, courts have "both the power and the duty" to correct an erroneous sentence. In re Personal Restraint of Carle, 93 Wn.2d 31, 33-34, 604 P.2d 1293 (1980). Examples abound. See, e.g., In re Personal Restraint of Goodwin, 146 Wn.2d 861, 864-65, 869, 877-78, 50 P.3d 618 (2002) (PRP granted because this Court's later statutory interpretation rendered offender score incorrect because previous juvenile convictions washed out); In re Personal Restraint of Johnson, 131 Wn.2d 558, 563, 933 P.2d 1019 (1997) (nine-year-old sentence corrected to apply new rule this Court declared that changed method of calculating offender score); In re Personal Restraint of Vandervlugt, 120 Wn.2d 427, 432-33, 842 P.2d 950 (1992) (exceptional sentence based on aggravating

factor later invalidated by this Court mandated sentence correction); Carle, 93 Wn.2d at 33-34 (sentence corrected on collateral review because later decision by this Court invalidated weapon enhancement for first degree robbery).

Other courts have used this rationale to reverse illegal sentences including those involving Miller and cruel punishment, on collateral review. See, e.g. State ex rel. Landry v. State, 106 So. 3d 106 (La. 2013) (remanded to trial court to "reconsider the sentence after conducting a new sentencing hearing in accordance with the principles enunciated in Miller v. Alabama"); Randall Book Corp. v. State, 316 Md. 315, 322, 558 A.2d 715, 719 (Md. 1989) ("[A]ppellant's allegation that the aggregate of 116 sentences imposed constitutes cruel and unusual punishment prohibited by the Eighth Amendment is cognizable under a claim of an illegal sentence."); Cannon v. State, 55 Del. 597, 599-600, 196 A.2d 399, 400 (Del. 1963) ("We have little doubt but that a sentence excessive in the sense that it has an entirely unwarranted adverse effect upon a prisoner may be attacked collaterally[.]").

Under Miller, Thomas' irrevocable life equivalent sentence is illegal and can be corrected now. Any interest in finality is minimal since the courts would not need to revisit the convictions but only the sentences.

In fact, determining the appropriate term under Miller would be easier with older cases than with new ones. Rather than attempting to predict a juvenile's potential for rehabilitation, the court could see how the offender has in fact demonstrated his rehabilitation during his many years in prison. As Miller requires, this Court should give sentencing courts the opportunity to do just that.

3. AN IRREVOCABLE LIFE TERM FOR A 15-YEAR-OLD, MENTALLY TROUBLED JUVENILE CONVICTED OF FIRST DEGREE FELONY MURDER IS CRUEL PUNISHMENT.

The Miller Court declined to consider whether the Eighth Amendment, which bans cruel and unusual punishment, erects a constitutional barrier to irrevocable life terms for juveniles. 132 S. Ct. at 2469. But the Supreme Court's consistent holdings foretell recognition that our standards of decency have evolved so that it is never appropriate to impose an irrevocable life term on a juvenile, or a least a 15-year-old child such as Thomas. See Thompson v. Oklahoma, 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988) (Eighth Amendment prohibits execution of juveniles under 16 at time of offense); Roper v. Simmons, 543 U.S. 551, 556, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (prohibiting death penalty for 16- and 17-year-olds); Graham v. Florida, 130 S. Ct. at 2034 (prohibiting life without parole for juveniles convicted of non-

homicide offenses); Miller, 132 S. Ct. at 2475 (prohibiting mandatory life without parole for juvenile homicide offenses). See Emily C. Keller, Constitutional Sentences for Juveniles Convicted of Felony Murder in the Wake of Roper, Graham & J.D.B., 11 Conn. Pub. Int. L.J. 297, 324-25 (2012):

Though not reaching the issue, the Court's opinion, together with Justice Breyer's concurrence [in Miller], lend strong support to the arguments in this Article that a life without parole sentence for a juvenile convicted of felony murder is always unconstitutional.

This Court need not and should not wait for that ruling. Indeed, 12 years before Roper, this Court held Washington does not permit execution of juvenile offenders. See Furman, 122 Wn.2d at 448 ("The statutes therefore cannot be construed to authorize imposition of the death penalty for crimes committed by juveniles.").

Article 1, section 14 of the Washington Constitution bars "cruel punishment." The state framers considered and rejected the language of the Eighth Amendment, which prohibits punishment that is not only cruel, but unusual as well. State v. Fain, 94 Wn.2d 387, 393, 617 P.2d 720 (1980) (citing The Journal of the Washington State Constitutional Convention: 1889 501-02 (B. Rosenow ed. 1962)).

This Court has long held that article 1, section 14 provides greater protection than its federal counterpart. State v. Thorne, 129 Wn.2d 736, 772, 921 P.2d 514 (1996); abrogated on other grounds, In re Personal Restraint of Eastmond, 173 Wn.2d 632, 636, 272 P.3d 188 (2012); Fain, 94 Wn.2d at 393. A Gunwall analysis is therefore not necessary. State v. Roberts, 142 Wn.2d 471, 506 n.11, 14 P.3d 713 (2000).

This court applies four factors in considering claims of cruel punishment: "(1) the nature of the offense, (2) the legislative purpose behind the statute, (3) the punishment the defendant would have received in other jurisdictions for the same offense, and (4) the punishment meted out for other offenses in the same jurisdiction." State v. Korum, 157 Wn.2d 614, 640, 141 P.3d 13 (2006) (citing Fain, 94 Wn.2d at 397). They will be addressed in seriatum.

a. Nature of the crime

A defendant can be convicted of first degree felony murder, Thomas's crime, without intending to kill the victim. In re Personal Restraint of Richey, 162 Wn.2d 865, 869, 175 P.3d 585 (2008). Furthermore, a defendant need only *attempt* to commit the predicate felonies of robbery, rape, burglary, arson or kidnapping. RCW 9A.32.030(1)(c).

And like any crime, first degree felony murder committed by a 15-year-old boy is different than the same crime committed by an adult. Juveniles are immature, impetuous, and unaware of risks and consequences. Miller, 132 S. Ct. at 2468. "[I]ncorrigibility is inconsistent with youth." Graham, 560 U.S. at 73 (quoting Workman v. Commonwealth, 429 S.W.2d 374, 378 (Ky. 1968)).

b. The Legislative Purpose

The Sentencing Reform Act was crafted to foster several important interests, including promotion of respect for the law by providing just punishment, protection of the public, the need for rehabilitation, and the need to make frugal use of State resources. RCW 9.94A.010; State v. Pascal, 108 Wn.2d 125, 137, 736 P.2d 1065 (1987).

An irrevocable life term for a 15-year-old, mentally troubled offender with an offender score of one¹⁵ does not promote the above interests. It is unlikely such a rare and extreme sentence will serve as a deterrent or promote respect for the law. Thomas' sentence is not just, even for such a disturbing crime.

¹⁵ RP (3/3/1996) 2.

The sentencing court destroyed any incentive to participate in treatment by virtually ensuring Thomas would die in prison. A reasonable person in Thomas' shoes would have no interest in rehabilitating himself.

Finally, Thomas' lengthy sentence hardly makes frugal use of the State's resources. Locking him up for so long is an enormous expenditure of resources.

c. Punishment in Other Jurisdictions

This issue is addressed in Miller, 132 S. Ct. at 2470-73. The Court rejected the notion that life without parole for juveniles or in this case, its equivalent, was widely accepted simply because it is a theoretical possibility in 29 jurisdictions. In most of these jurisdictions, as in Washington, the penalty becomes possible only through the combination of declining juvenile jurisdiction and applying the penalties set out in the statutes pertaining to adults. Under those circumstances, it is "impossible to say whether a legislature had endorsed a given penalty for children (or would do so if presented with the choice)." Id. at 2472.

d. Punishment in Washington for Other Offenses

For adult offenders, perhaps, a life without parole sentence is reasonable for first degree felony murder. For 15-year-old offenders, the better comparison is to the sentence they could face if prosecuted in the

juvenile system. Even for the most serious crimes, incarceration can last only until the offender turns 21. RCW 13.40.0357. In view of the current consideration of a juvenile offender's impetuosity, diminished appreciation of risk, and impulsiveness, the Fain factors lead to the conclusion that Article I, section 14 prohibits life without parole equivalents for juveniles.

4. THOMAS SUFFERED PREJUDICE.

As contended above, the sentencing court barely mentioned significant mitigation evidence and did not at all consider Thomas' youth. Miller mandates consideration of such factors before a court imposes an irrevocable life sentence for juveniles.

Miller itself supports remand for resentencing. See 132 S. Ct. at 2461-62, 2475 (remanding for resentencing in Jackson v. Hobbs); Jones, 122 So. 3d at 703 n.5 (noting that after Supreme Court remanded, Arkansas Supreme Court remanded Jackson's case to trial court for resentencing). See, Williams, 982 N.E.2d at 196 ("Defendant can show prejudice if the Supreme Court's decision in Miller applies retroactively to his case.")

Furthermore, this Court held imposition of an illegal sentence is a fundamental defect. In re Personal Restraint of Carrier, 173 Wn.2d 791, 818, 272 P.3d 209 (2012). Continuing, this Court emphasized that "to

allow Carrier to remain wrongly subject to a life sentence would constitute a complete miscarriage of justice. Carrier has met his burden of showing prejudice." Id.

This Court should conclude Thomas has established prejudice and remand the case to superior court consistent with Miller and Jackson.

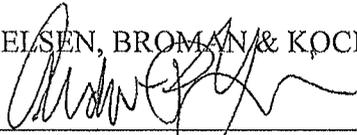
D. CONCLUSION

For the foregoing reasons, this Court should vacate Thomas' sentence and remand for resentencing after considering Thomas' youth and all mitigating circumstances.

DATED this 7 day of March, 2013.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



ANDREW P. ZINNER
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Attorneys for Petitioner

APPENDIX

Sentencing Hearing, 3/3/1996

SBNRP

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SUPERIOR COURT, STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,)	VERBATIM REPORT OF
)	PROCEEDINGS
Plaintiff,)	
)	Cause No. 95-1-02081-6
-vs-)	COA No. 38324-8-I
)	
GREGORY O. THOMAS,)	
)	
Defendant.)	SENTENCING

TRANSCRIPT

of the proceedings had in the above-entitled cause before the HONORABLE MARY W. BRUCKER, Superior Court Judge, on the 3rd day of March, 1996, reported by Joyce G. Stockman, Registered Professional Reporter.

APPEARANCES:

FOR THE PLAINTIFF:

KRISTIN RICHARDSON
JOHN BELATTI
JOSEPH PENDERGAST
Deputy Prosecuting Attorneys

FOR THE DEFENDANT:

ERIC LINDELL
JAMES CONROY
Attorneys at Law

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NIELSEN & ACOSTA

COPY

1 March 1, 1996

2 MS. RICHARDSON: Good afternoon, Your Honor,
3 we're back on the record on 95-1-02081-6, State v Gregory
4 Thomas, I'm Kris Richardson with J.P. Pendergast and John
5 Belatti for the State. The defendant is present with his
6 lawyers, Eric Lindell and Jim Conroy.

7 The defendant was convicted of murder in the first
8 degree with a finding of sexual motivation and pleaded
9 guilty to attempted residential burglary in Counts II and
10 III respectively. The standard range on murder in the first
11 degree with an offender's score of one and seriousness level
12 of 14 is 250 to 333 months with a maximum term of 20 years
13 to life. The offender's score on attempted residential
14 burglary again being a one, seriousness level of two, the
15 range is 4.5 to 9 months with a maximum term of 5 years.
16 The State's recommendation on Count II is for 999 months,
17 and on Count III, 9 months, to run concurrently.

18 We're asking that for the maximum term on both
19 counts the defendant have no contact with witnesses, and in
20 Count III, with the victim. We're asking that he pay
21 restitution in an amount to be set at a later date, pay
22 court costs, victim penalty assessment, recoupment, be on
23 community placement upon release, submit to HIV testing, DNA
24 testing, that he register as a sex offender upon his
25 release.

1 And, of course, this is a request by the State on
2 Count II for an exceptional sentence of three times the top
3 of the standard range. Without repeating what is in my
4 brief, just quickly, I'll summarize, Your Honor, the State's
5 position in this case, and the Court heard the testimony in
6 this rather egregious murder one felony murder. In this
7 case, the victim, Ruth Lamere, was 71 years old, the fact of
8 advanced age as a matter of law are grounds enough for this
9 Court to impose an exceptional sentence.

10 Under the case law of State v George and State v
11 Handley and in my brief, I noted cases that essentially
12 mirror the facts of this case with some distinctioning
13 between them. However, the courts have consistently said
14 elderly victims, and those include victims anywhere from 70
15 on up constitute elderly victims, and as a matter of law,
16 that can be used to justify an imposition of sentence.

17 In Hawkins specifically, the murder of a
18 75-year-old man, the Court of Appeals found that the
19 defendant, knowing the victim's age and that he lived alone,
20 as we have in this case, and his age itself made it more
21 likely that this victim would be burglarized and severely
22 injured. In fact, that's even magnified in this case
23 because Ruth Lamere was a widow, she lived alone and likely
24 to be burglarized and savagely killed as she was in this
25 case.

1 The Scott decision, which came down late last
2 year, I believe that it's actually headlined under Ritchie
3 in the case citations at 126 Wn 2d 388, dealt with a murder
4 that our office prosecuted a couple of years ago involving a
5 70-year-old woman, the killer was a 17-year-old neighbor.
6 There was evidence in that case of robbery and at least an
7 attempt at sexual assault. The defendant was convicted of
8 felony murder on theories of attempted rape and robbery.

9 The Supreme Court found in that case, and one of
10 the reasons it will probably be forever more cited, that the
11 trial court doesn't have to delineate the reasons for the
12 number of months that it is imposing. But Scott is
13 significant in another way, and that is that the exceptional
14 sentence imposed in that case of 900 months was deemed to be
15 not excessive. In fact, the Court, if one reads the case,
16 basically eliminated that argument with a couple of
17 sentences.

18 They said it was within the trial court's
19 discretion there was a vulnerable victim in that case. And
20 in that case, the defendant had a lower standard range than
21 our defendant has. What we are asking for is, in many ways,
22 a similar number. That case involved 900 months with a
23 lower standard range, we're asking for 999.

24 Within the vulnerability statute is a request that
25 the Court find that the defendant violated Mrs. Lamere's

1 zone of privacy, that being her bedroom inside her home.
2 And again, this is one of those factors that's not
3 delineated in the statute but that the case law has
4 developed through the courts, including the Supreme Court as
5 recently as three years ago when they found that there was
6 invasion of privacy by invading the bedroom that a resident
7 at a treatment center was using temporarily.

8 In Falling, the Court said a rape is an invasion
9 of privacy and in Lough, the Court found that rape in the
10 living room was an invasion of privacy. There is something
11 to be said and some reason why the courts give particular
12 notice to that, and that is because the home is the
13 sanctuary that a person should be able to go into without
14 fear of being bludgeoned and violated.

15 Finally, this conviction on Count II involves a
16 finding of sexual motivation. The sexual motivation in and
17 of itself is grounds for an exceptional sentence under the
18 statute, that's one of the new amendments from 1990 to the
19 SRA by the legislature. As a matter of law, an exceptional
20 sentence is reasonable using sexual motivation as an
21 aggravating factor. As the Supreme Court stated in State v
22 Halstein, a defendant who commits a crime such as burglary
23 for the purpose of sexual gratification is more culpable
24 than a defendant who commits the same crime without that
25 motivation.

1 The over-arching policy to protect from offenders
2 who are making a a connection between criminal acts and
3 sexual objectives, there can be no doubt in this case that's
4 precisely what Mr. Thomas was doing through the testimony of
5 the experts and through the evidence that was presented at
6 trial, we know that the over-arching desire that Mr. Thomas
7 had was sexual curiosity.

8 The Court will recall testimony regarding the fact
9 that he had an erection almost as soon as he hit Mrs.
10 Lamere, that he tried to masturbate himself to climax when
11 he was unable to penetrate her. He went into that house, he
12 told the people at Western, to rape and kill.

13 Mr. Thomas's dangerousness as one who seeks sexual
14 gratification is something that the sexual motivation
15 aggravating factor takes into account, assuming if one
16 cannot reach the factor of future dangerousness because the
17 terms of it can't be met, and it's significant, I hope, to
18 the Court, we are not asking for an exceptional on that
19 ground.

20 I'd like to respond briefly to the letters sent on
21 behalf of the defendant, all of them appear to urge the
22 Court to have some sort of treatment given to Mr. Thomas.
23 There's certainly no doubt that Mr. Thomas is a disturbed
24 individual, only a disturbed person would commit a crime
25 like this against a woman like Ruth Lamere.

1 I would note that the legislature clearly
2 considers rehabilitation to be one of the factors in the
3 SRA. However, the SRA is also designed for retribution for
4 punishment and deterrence and those, too, are important
5 factors. There is no alternative sentence for mental care
6 in this case. The best that one can hope for, for Mr.
7 Thomas's sake, is that he is housed in a section of the
8 prison that will allow him to receive the medication that he
9 needs.

10 I would like to speak briefly about the relatives
11 and friends of Ruth Lamere, some of whom are present today,
12 there are a couple who are not present who have asked me to
13 let the Court know why. The first is Mr. and Mrs.
14 Telgenhoff who, the Court may recall as witnesses in this
15 case, they were next door neighbors, and Mr. Telgenhoff was
16 there with Mr. Hutchins in finding Mrs. Lamere's body.

17 Mr. Telgenhoff wrote a letter to the Court, and
18 I'm sure the Court has it along with everything else, he is
19 not able to be here today, he is the chairman of an activity
20 at his church that is going on today that he couldn't get
21 out of. He said that he wanted to reiterate what he said in
22 the letter, that Mr. Thomas is a threat to people and needs
23 to be sentenced to the highest sentence possible.

24 Finally, I'd like to reiterate a couple of things
25 that were stated by the sisters of Mrs. Lamere.

1 Specifically, he have Evelyn Youngman and Joan Clawson, Miss
2 Clawson especially was close to her sister, they talked on a
3 daily basis. Miss Clawson and her husband, the last time
4 sentencing was continued, were devastated to the point they
5 could not speak on the phone. They have notified me through
6 their advocate that they would not be present today, they
7 have left the city to try to deal with the grief that they
8 have been unable to resolve. But they wanted the Court to
9 know that their thoughts are with the Court as it makes its
10 decision.

11 I would note that Evelyn Youngman told the Court
12 that Mr. Thomas, in taking her life, he also took a piece of
13 our lives as well and left a sad, empty place in our
14 hearts. He managed to spoil many more things in our lives
15 than he would ever imagine. Surely he cannot be allowed to
16 destroy so many lives again. I pray the Court will deal him
17 just punishment so he could never harm anyone again.

18 And speaking for Mrs. Clawson who cannot be here
19 today because of her own emotional state, this terrible
20 crime by Thomas has totally changed my life as well as my
21 family's. He stole from us a loving and dear lady who was a
22 friend to all and an enemy to none. We loved Ruth very much
23 and miss her terribly, the ache in my heart never ceases.
24 May he receive the full penalty, 99 years with no parole,
25 never again to threaten, murder, rape, burglarize anyone

1 ever again.

2 Your Honor, if ever a case cried out for an
3 exceptional sentence, this one is it, and that's why we're
4 asking for it. There are two people that would like to
5 very, very briefly address the Court, and the first is
6 Detective O'Keefe of the Seattle Police Department.

7 DETECTIVE O'KEEFE: I'll be brief. I have been a
8 police officer for 22 years and during that time I've met
9 some very dangerous individuals, Mr. Thomas ranks right at
10 the top of that list. He's had a very hard life and a bad
11 life, that's regrettable but the damage is done. I think if
12 you do not give him the maximum sentence you can give him,
13 if he does get out, he'll kill again, that's my firm
14 belief. Thank you, Your Honor.

15 MS. RICHARDSON: The second is Diana Navickey of
16 the Department of Corrections who wrote the presentence
17 report in this case.

18 MR. CONROY: I would object to the Court's
19 listening to anything Miss Navickey has to say. I have a
20 motion prepared to the Court I'd like you to hear before
21 Miss Navickey has an opportunity to address the Court, the
22 presentence report, that was contrary to the Court's orders.
23 And then I was moving to strike anything that the Department
24 has to offer by way of sentencing recommendation before the
25 Court today because I believe it is inappropriate, if the

1 Court would like to hear that before she attempts to address
2 the Court, I'd like to be heard.

3 THE COURT: I think that should be resolved
4 because I think --

5 MR. CONROY: I believe the Court, it has a copy
6 of the motion to strike the DOC recommendation. As the
7 Court will recall, once the verdict was returned, the jury
8 having been polled and excused, we made a specific request
9 that Mr. Thomas not be interviewed by the Department of
10 Corrections. After the fact, which was on the 14th, I
11 believe, on Friday the 17th, because I was concerned about
12 how that message would be conveyed to the Department as
13 such, I went to the sentencing coordinator on the 12th floor
14 and said, is there any indication on the order he is not to
15 be interviewed? Well, no, he wasn't aware. That was
16 specifically ordered by the Court, and I would like it to be
17 obviously contained within the order for the presentence
18 report, so she wrote right on it defendant's request that he
19 not be interviewed by anybody from the Department of
20 Corrections, and it was on the face of the order itself that
21 went to the Department of Corrections. As I understand it,
22 Miss Navickey's going to maintain she wasn't aware of that
23 particular order.

24 First, it's not our duty to make the State's
25 agents as such aware of that, or second, I did make an

1 attempt to do so by going to the sentencing coordinator's
2 office and making certain that that particular language was
3 contained within the orders that went to them, which it was,
4 which I have attached to our motion, declaration motion to
5 strike the recommendation of sentencing.

6 Regardless, Miss Navickey and the Department went
7 over there and interviewed Mr. Thomas again, and it sounds
8 very reminiscent of other testimony we have heard in the --
9 other testimony from other experts from Western State and
10 differs in little respect. But for the fact it was part of
11 the Court's order, he is entitled to the right to remain
12 silent and/or the assistance of counsel.

13 Even in the face of an order, this would compel an
14 interviewer or evaluation after the fact, I think State vs
15 Starven and Tinkem are right on point, but we need not reach
16 those issues because this Court ordered that he not be
17 interviewed. It wasn't even opposed by the State at the
18 time this request was made, I just wanted to make certain
19 that it was conveyed to the Department the State made every
20 effort to do.

21 At this juncture, I am moving to strike the
22 recommendation. I'd be moving to strike anything Miss
23 Navickey says today based on interviews she's made of Mr.
24 Thomas. She was at liberty to review the file, she could
25 have done so and made a sentencing recommendation based upon

1 the same. But it appears based on several conversations she
2 had with our client wherein he was not represented by
3 counsel, wherein he was not advised of his right to remain
4 silent that a number of other incriminating statements, if
5 you will, were made by him in the course of the interviews
6 that were conducted and/or which formulate the basis for her
7 recommendation before the Court. And I would respectfully
8 request at this time that the DOC's recommendation in this
9 matter be stricken from the Court's consideration and
10 sentencing. Thank you, Your Honor.

11 MS. RICHARDSON: Your Honor, first of all, the
12 order that Mr. Conroy's talking about was an oral order by
13 the Court, the Court really can't order DOC to do anything.
14 Beyond that, however, the fact that defense counsel, who's
15 the one who has an interest in Mr. Thomas not talking to the
16 presentence writer when he went to the 12th floor, and on
17 the order for presentence investigation report approved of
18 the language that the defendant had requested that DOC not
19 talk to him, there is nothing about the Court ordering it.

20 What Miss Navickey did was talk to the defendant
21 who agreed to talk to her, and it is his right to do that,
22 it's his right to say, no, I don't want to talk to you, he
23 never did that, he was happy to talk to her, he likes to
24 talk to everybody about this crime, he talked to her on
25 three occasions. He was present when that request had been

1 made by his attorneys.

2 I don't see how the defense can object to
3 something like that when it was the defendant's decision to
4 do it, and to ask the Court to strike the DOC recommendation
5 seems a little severe at the least. I think when you look
6 at the PSI, there's nothing that Mr. Thomas said in the PSI
7 that we hadn't already heard in testimony in any event.

8 THE COURT: Well, that's somewhat, what
9 difference does it make is, and I did remember, and this
10 happens often in cases that are going to be appealed, that
11 there is a request that the defendant not be interviewed,
12 and that was made, and I believe I said that would be the
13 case. So, to be perfectly frank with you, when I read the
14 defense brief, I had not read the Department's report and
15 have read the first section of the report in which it
16 outlines the history that the police have given on the facts
17 of the case, I frankly have not read the balance of the
18 analysis of the Department.

19 And in some cases, it would seem that would be a
20 loss, a real loss in the sense that there's a lot of things
21 a trial judge doesn't know about the person before it, in
22 this case, there's not much that is unknown by the trial
23 judge. So it's always -- I appreciate very much the
24 expertise of the Department in its analysis of people, so I
25 guess in that respect, the Court is missing assistance. But

1 I do think that given the posture I understood that he would
2 not be interviewed, that I will stick with that posture in
3 this case, and I don't believe for a minute that the
4 Department thought it was disobeying a court order.

5 MS. RICHARDSON: The Department didn't know about
6 a court order, Your Honor.

7 THE COURT: As you say, it was oral, and I don't
8 think that the writing on that -- I did see what he wrote
9 and it doesn't say a court order, it says he doesn't want
10 'em to, but it's also a little difficult when a person,
11 after the fact, has a lawyer and an interview takes place.
12 So I think out of the abundance of caution, I will grant his
13 motion not to consider, and I haven't.

14 MR. CONROY: Thank you, Your Honor.

15 MS. RICHARDSON: Is the Court striking the
16 recommendation as well as the interview?

17 THE COURT: Well, let's just say it's, umm -- I
18 have received it, I haven't read it, and --

19 MS. RICHARDSON: Is the Court aware of what the
20 Department of Corrections is recommending?

21 THE COURT: No, I just told you I haven't read it.

22 MS. RICHARDSON: I wasn't clear on that.

23 THE COURT: Except for I don't -- unless the
24 defense in their own brief said something, the defense in
25 their brief said that because of information brought out in

1 that interview they tried to get a further evaluation by the
2 defendant by another expert, a psychiatrist, and that they
3 couldn't accomplish that, so, and that that grew out of Ms.
4 Navickey referring to and looking toward a mental health
5 advisor whom she uses.

6 MS. RICHARDSON: I'd like to explain that if I
7 could. Your Honor, there is a new provision that has this
8 gentleman on staff at DOC, and whenever there is in any case
9 a potential mental issue, the case is referred to him. I
10 believe that in defense counsel's brief it implies that
11 somehow the fact that it was sent to this gentleman makes it
12 sound like Mr. Thomas is more crazy than usual, that's not
13 the case. Any time there's a mental issue, it goes to this
14 gentleman for review. We all know that this was a mental
15 defense, obviously it goes to him for review, so I would ask
16 the Court not to put more, I guess, stock in the fact that
17 that was done and is necessary, because that's just
18 something brand new that DOC now has and will be doing in
19 all cases.

20 THE COURT: That's what I know.

21 MR. CONROY: Thank you, Your Honor.

22 MS. RICHARDSON: Your Honor, I have nothing
23 else.

24 MR. CONROY: May it please the Court, very
25 briefly on behalf of Mr. Thomas. As the Court knows,

1 obviously it's within the discretion of the Court to impose
2 an exceptional sentence in either direction. We have made a
3 request for an exceptional sentence below the standard
4 range, but only 10 months short of the standard range to the
5 straight minimum, which is 20 years in prison.

6 We believe that there are statutory mitigating
7 factors that would support such a departure. And that is in
8 particular, 9.94A.390 subsection E wherein it clearly states
9 that the defendant's capacity to appreciate the wrongfulness
10 of his conduct or to conform his conduct to the requirements
11 of the law was significantly impaired, excluding the
12 voluntary use of drugs or alcohol.

13 As I indicated in our brief, I don't believe
14 there can be any argument to the effect that his ability, if
15 you will, to understand at least to a certain degree, right
16 from wrong, or his capacity to do so was not otherwise
17 impaired, I believe all of the State's experts, including
18 Dr. Hale, Dr. Redick and Dr. Marquez, were all in agreement
19 in that respect. They obviously all said that he suffered
20 and continues to suffer, they all said that he suffers from
21 a number of psychosis, they refused to say which ones in
22 particular, they would say not otherwise specified,
23 obviously. Dr. Lindsay was much more particular in his
24 assessment of Gregory's condition than they were willing to
25 be. But without exception, they all said he's a sick young

1 man.

2 Now, what this Court also knows is that
3 unfortunately at the 11th hour in his case, when it became
4 apparent to other professionals that Gregory needed help,
5 the family started to seek help. But unfortunately, as far
6 as this case is concerned, it was too late in time because
7 his disease had progressed to a point wherein it was
8 controlling him, if you will, and it was taking over his
9 judgment, and it exceeded, unfortunately for everyone
10 involved.

11 And I appreciate -- I am not the first to
12 appreciate and will be more than willing to say that the
13 suffering that everybody has endured because of this case, I
14 think likewise it can be said that his family also suffers.
15 His mother is here today, this is the first time she's been
16 able to be present with us, his aunts are here and his
17 sisters, and they have suffered as well, not to the degree
18 the victims in this case, but they have nonetheless
19 suffered. Gregory was a part of their life. Gregory is no
20 longer a part of their life. Gregory is in prison and that
21 is where Gregory will remain into the indefinite future.

22 The question becomes how long we're going to put
23 him in prison, how long are we going to attempt to protect
24 the community, which is basically what the prosecutor's
25 argument is, is to protection, they obviously don't relate

1 to rehabilitation or a frugal utilization of the State's
2 resources, they relate to protection.

3 Now, the State would have the Court be inclined to
4 believe necessarily that something well beyond the standard
5 range in this case is otherwise probative because he's so
6 young. We would, on the other hand, maintain that he was 15
7 when this offense was committed, he's been in prison for
8 over a year already, gregory has just basically begun his
9 life and it is beginning for him in prison, and that is
10 where his life will be, in prison.

11 Now, there are a couple different options
12 available to the Court as far as sentencing are concerned.
13 We would respectfully submit that if the Court's going to
14 consider an exceptional sentence that the mandatory minimum
15 obviously must be observed, and that is 20 years in prison,
16 until he is a great deal older than he is now. At the high
17 end of the range he is looking at approximately 26 years in
18 prison, which would make him approximately 44 years old upon
19 release.

20 I tried to give the Court some materials, although
21 I wasn't able to find the materials I exactly wanted, the
22 recidivism rates and/or studies that have shown positively
23 that recidivism rates dramatically decrease the older a
24 person becomes in prison, they almost fall altogether when
25 they get to 40, pedophilia falls under a different category,

1 but not for violent crimes.

2 Now, the State would like this Court to believe
3 that they know Gregory Thomas, Detective O'Keefe would like
4 this Court to believe that he knows Gregory Thomas, the
5 truth is, they don't know Gregory Thomas at all, Gregory
6 Thomas barely knows Gregory Thomas. Gregory Thomas will
7 speak about anything to anyone and say and do some of the
8 most bizarre things that I have ever seen or heard in my
9 career as such.

10 This case, as the Court knows, is unique in many
11 respects. Obviously it was a gruesome, horrible thing that
12 has happened in this case. But likewise, what has happened
13 in his life is equally gruesome in a way and horrible that
14 you should begin your existence as an infant and be the
15 subject of abuse and ongoing abuse and neglect and battering
16 throughout your nurturing years. There isn't one person in
17 this courtroom, excepting perhaps Lakesha and Princess's
18 sisters who can appreciate the depth and the expanse of the
19 abuse that he has suffered already. At the age of 15 is not
20 when his suffering has begun in prison, it began at the age
21 of one, he has been suffering for 15 years, but he hasn't
22 been able to tell anyone to the degree necessary.

23 Now, as the Court knows, and there was an
24 abundance of proof in this respect, he cried out, he cried
25 out and it was too late. But he told a number of people

1 what he was starting to experience, and what he dreamt about
2 and what it was he saw in his dreams and what it was he saw
3 when he was awake. None of us on this side of the table
4 want to believe necessarily that it happened, but there's
5 proof positive to that effect that he did it, he reached out
6 for help.

7 His aunt saw that he was going over the edge, his
8 sisters saw that he was going over the edge, and the
9 professionals who dealt with him, unfortunately to a very
10 minimal degree in the 11th hour, also recognized the
11 seriousness of the illness that had beset this young man.
12 They immediately wanted him to be on prescription
13 medications, they immediately wanted him to be in Fairfax,
14 this was before any of this happened unfortunately, but it
15 did not come to pass. And Gregory, on the other hand, was
16 already peaking insofar as this sickness was and is
17 concerned.

18 The best approach to take under the circumstances,
19 we would respectfully submit, would be a consideration of
20 the mitigating circumstances only insofar as they perhaps
21 offset to a certain degree, or to the degree necessary, the
22 aggravating circumstances of this horrendous offense because
23 they are equally horrendous, no one here can appreciate
24 where he has been because we have not come from that kind of
25 life.

1 Gregory will have decades within which to remember
2 what has happened in this case, but hopefully, over a period
3 of time, we will be able to adequately address his needs
4 because they weren't done previous to this point in time,
5 unfortunately for everybody involved in this courtroom and
6 everybody who is here today, that is what we need to do.

7 The sentencing option that we would respectfully
8 request the Court to consider would be one that entails
9 prison with treatment at the high end of the range if the
10 Court deems it to be otherwise necessary for purposes of
11 community protection. He could be in prison for the next
12 quarter of a century approximately, and at the age of 45 or
13 so he could be released after having spent time in a
14 36-month sexual deviancy rehabilitation program at Twin
15 Rivers, because they do have those programs, and participate
16 in work release in a continuation of treatment thereafter to
17 ensure community protection that the community needs.

18 At this juncture, all anybody is attempting to do
19 on behalf of the State as such with their recommendation is
20 to ensure community protection, and assuming for the sake of
21 argument that he won't be rehabilitated, not because of what
22 has happened in this case, not because of the gruesome
23 nature of the offense, there's no chance for rehabilitation,
24 he will reoffend again, how could any of us know that?
25 There's only one person, if you will, that knows that and

1 it's certainly no one in this courtroom. He needs help. He
2 has needed help since he was an infant and has never gotten
3 that help. We will now have him in a place where we can
4 give him that help and/or protect the community, and that is
5 what obviously is indicated in this matter.

6 He can be on community placement subsequent to his
7 release and be reincarcerated if, under the circumstances,
8 we are not able to assure the community of its protection in
9 24 or 25 years when he's eligible for release. And after he
10 has served time at Twin Rivers and after he has undergone
11 mandatory therapy and treatment because, without doing so,
12 he would not be eligible for release as such, he would be
13 compelled to do so.

14 And we can only hope, and to the extent possible,
15 pray, that he will take advantage of services that have
16 never been given him previous to this point in time in his
17 life. He had no criminal history before committing this
18 most horrendous offense. He had one theft third diversion
19 in the juvenile system, he had never received treatment, he
20 had never received any type of rehabilitation, never.

21 The State would have us basically give him a life
22 sentence, that is what everyone has said who has submitted a
23 response on behalf of the State and the victims assistance
24 unit, and that would be to give him life because that's what
25 we're talking about, the 999 months, it's a creature of

1 fiction under the circumstances, it's life, we should call
2 it what it is, it's a life sentence.

3 The State does not want -- the State is not
4 concerned about rehabilitation in this case, they want to
5 give him the sentence that a jury of his peers, if you will,
6 refused to give him, it's life. There is no other way of
7 describing it.

8 Are there some aggravating circumstances that
9 could arguably be seized on, are there mitigating
10 circumstances that the Court could seize upon? There
11 arguably are. We would respectfully submit that under the
12 circumstances, that the Court has a number of options
13 available to it, perhaps community protection is more of a
14 concern to the Court with the recommendation made by the
15 defense for 20 years in prison, we can understand.

16 The question then becomes, where it is that we
17 decide after a period of time to release this young man to
18 the community, again because he won't be a young man at that
19 point in time, we are hoping that Gregory will survive at
20 all because in certain circles, I think there are many
21 individuals who might wonder about the prospects for his
22 survival over the next 20 years, or 25 years in prison, and
23 I think that's a real possibility. But assuming for the
24 sake of argument that he is able to survive, when we do
25 release him, do we give him a chance for a life? Do we give

1 him a chance to prove to everyone here necessarily that it
2 was the product of an illness and a sickness that he was
3 never given help for that he can, with rehabilitation, be a
4 productive member of the community? I think many of the
5 people who knew him outside of this offense thought that
6 Gregory was a pretty nice guy, maybe perhaps a little odd or
7 strange as otherwise been described to the Court because he
8 had illnesses, and other people were able to see that in
9 him, but a nice kid. He had no other criminal involvement.
10 Drugs or alcohol were not the rationale for his involvement
11 in this case. He is a sick young man.

12 How long then do we keep him in prison? How long
13 do we protect the community to assure ourselves necessarily
14 that he will be safe for release? Or will we just punish
15 him out of vindictiveness and hatred, which is clearly
16 expressed in many of the letters that were sent to the Court
17 by the family to suggest -- well, the Court has read the
18 letters, and although I understand the anger, umm, and pain
19 of the individuals who wrote those letters to the Court, I
20 sometimes have difficulty understanding how it is that they
21 could reduce themselves in a way to otherwise describe the
22 punishment that they think otherwise befits the
23 circumstances of a young man who none of these people know,
24 who the State's experts did not know, who the State's
25 attorneys do not know, who the State detectives do not know

1 yet, will all claim to know.

2 He needs treatment. We need to keep him there for
3 a period of time obviously to protect the community until he
4 has received suitable treatment and until he has reached an
5 age wherein we can be certain, at least with to a relative
6 degree of safety, that he can and will be rehabilitated
7 because we have the ability to do so within the system.

8 THE COURT: I'm not understanding why there is
9 a -- our system has any -- I don't understand what you want
10 the Court to do, to order.

11 MR. CONROY: Basically we'd ask the Court to send
12 him to the Department of Corrections as such and hope that
13 the Department of Corrections, with the information
14 available to them, would be able then to set up a program
15 that he would enter subsequent to our, or just prior, just
16 prior to his release in the Department of Corrections, and
17 obviously, they have a plethora of information with which
18 they could identify problem areas and/or with which they can
19 decide he obviously needs to go to Twin Rivers, he obviously
20 needs rehabilitation before, in fact, we release him in a
21 quarter of a century.

22 THE COURT: It's not that I can order any kind of
23 mental treatment or --

24 MR. CONROY: No, no, the Court truly does not.

25 THE COURT: You've given me more power than I

1 thought I had.

2 MR. CONROY: Perhaps, but the question then
3 becomes how long we keep him there and to what degree we
4 satisfy the fear and the anger of all of those involved, and
5 we can only hope that someplace within either the standard
6 range or the high end of the range, perhaps the Court
7 otherwise deems it to be necessary, we will have been able
8 to accomplish that task because in failing to do so, I think
9 it epitomizes a lack of the ability within the system to
10 truly address the needs of its own citizens and young men
11 such as this young man who's before the Court today. Thank
12 you, Your Honor.

13 THE COURT: Thank you.

14 And did anyone wish to speak on behalf of the
15 defendant?

16 MR. CONROY: Your Honor, I'd only asked his
17 mother to speak very briefly, she would just hope that he
18 would go to a hospital is the best way she could describe it
19 as such. And the other family members have written to the
20 Court, and I believe have expressed --

21 THE COURT: I've read the letters I received up
22 to right now.

23 MR. CONROY: Thank you, Your Honor.

24 THE COURT: Do you want to introduce her?

25 MR. CONROY: She's at the end of this row in the

1 front row.

2 THE COURT: And could you tell the Court her name
3 and if she wants to stand and tell us --

4 MS. THOMAS: Hi.

5 MR. CONROY: Karen Renee Thomas.

6 THE COURT: Hello, Miss Thomas. I'd be glad to
7 hear from you.

8 MS. THOMAS: I hope that Greg goes to a hospital
9 instead of that place, would ask that you consider that.

10 MR. CONROY: That's fine, thank you.

11 THE COURT: Thank you, Ms. Thomas.

12 MR. CONROY: I believe that's all.

13 THE COURT: Does Greg wish to address the Court?

14 MR. LINDELL: No.

15 MR. CONROY: I don't believe so.

16 THE DEFENDANT: (The defendant shakes head).

17 THE COURT: Well, I have read the letters and
18 I've read the briefs, and I must say I agree with everything
19 that's been said, I agree with Ms. Thomas that it would be
20 perhaps appropriate for him to be receiving the treatment
21 from psychiatrists that would occur at a hospital, that
22 isn't within my power today to order or to mandate. What I
23 know about the Department of Corrections is there are
24 programs within the Department to provide mental health care
25 for persons who qualify, they wouldn't be probably at the

1 same intensity as one would receive in a program for the
2 mentally ill.

3 The analysis of Gregory at the beginning of the
4 trial was that he knew the difference between right and
5 wrong and that he was able to assist his lawyers, understood
6 the function of the courts and therefore had the capacity to
7 stand trial. And there is no question that his life up to
8 this point has been difficult and his experiences have
9 affected him. There's no way to say whether these
10 experiences are out of the norm for a person, that he's the
11 only person who's lived that kind of a deprived life, I just
12 don't know, it's awful that any human being should ever be
13 maltreated by another human being, but we, from that
14 generalization and wish, we certainly go down hill
15 particularly when we come to this case.

16 All the Court can do is deal with the person who
17 is before it and the condition in which he comes to in this
18 state, namely facing the Court on a finding of guilty of
19 murder in the first degree. There's no doubt in my mind
20 that the facts support an exceptional sentence up.

21 The description of the offense as found by the
22 jury was that the victim suffered a cruel death, she was 71
23 years of age, we don't like to think of being 70 years old
24 as being an incompetent or particularly treated different
25 from other citizens, however, she certainly wasn't a

1 20-year-old athlete.

2 She was in her own house, she was particularly
3 vulnerable being the age she was and being in her own
4 house. She realized that she was, uh -- needed some
5 protection in that she had been alerted that there might
6 have been some attempt to invade her privacy and she had
7 taken efforts to protect herself, alerted the neighbors, had
8 taken all the precautions she was able to do, locked her
9 doors, bolted her windows and covered over the broken window
10 which the defendant had broken.

11 She was not out on the street, she had come into
12 her home, and unaware that the defendant was there, that he
13 had been there and that he had been rummaging through her
14 things, and his patience became exhausted finally and he
15 confronted her and killed her with the blows from the hammer
16 which he had taken with him.

17 The jury found that these facts were committed
18 with sexual motivation. The question, of course, then
19 becomes whether or not that part of his make-up will ever
20 change, that the additional count in this case of what has
21 all the similar aspects of this crime gives this Court
22 serious question of whether he is ever safe to be at large.

23 The only question that the Court is concerned
24 about is the unknown factor of whether age in itself does
25 away with the make-up of an individual so that the sexual

1 factor is never again present. I don't know the answer to
2 that issue. I do know that we see sex crimes committed by
3 80-year-olds. The acting out of that sexual motivation was
4 so awful in this case that I'm going to follow the
5 prosecutor's recommendation.

6 In regard to the Count II, the burglary, the
7 attempted burglary will be concurrent with the -- Count III
8 will be concurrent with Count II, and that can be nine
9 months.

10 MS. RICHARDSON: With your bailiff's help, I'd
11 like to set a date for presentation of findings.

12 THE COURT: Yes.

13 And will the defendant then be present at that
14 time so -- we will not sign a judgment and sentence at this
15 time?

16 MS. RICHARDSON: No, my suggestion would be that
17 we sign the judgment and sentence now, he doesn't need to be
18 present for presentation, we don't even need to do it on the
19 record. And what my plan is at that time, hopefully after
20 consultation with defense counsel, we will have come up with
21 findings on the 3.5 and 3.6 as well so -- I have some drafts
22 prepared, but I have not sent them off yet to be reviewed by
23 them.

24 THE BAILIFF: 8:30, the 15th.

25 MR. CONROY: That's fine.

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MS. RICHARDSON: Okay.

With regard to the financial obligations?

THE COURT: He should pay restitution in an amount to be determined at a hearing. He should pay the crime victim's penalty assessment.

MR. LINDELL: We'd ask all other costs be waived, he's 16, in addition, he's got psychiatric problems, it's highly unlikely he will be able to pay.

THE COURT: I know there's an ability to pay money in the institution, but I don't think it'll ever be an amount sufficient to cover restitution and the crime victim's penalty assessment, so I will waive other exceptional -- the mandatory costs. And I will note that the trust fees should be waived and the clerk's trust fees and the court costs -- the interest should be waived.

MS. RICHARDSON: Is the Court imposing the standard conditions regarding DNA?

THE COURT: Yes.

MS. RICHARDSON: Sex offender registration and the HIV testing?

THE COURT: Yes.

THE COURT: Mr. Thomas, I would advise you that you have a right to appeal from the trial and from the imposition of this sentence. You must exercise your right to appeal within 30 days of today or your right to appeal

1 will be forever waived.

2 If you are indigent, the Court will appoint a
3 lawyer to represent you and will reproduce at public expense
4 any materials that are necessary for that appeal.

5 Furthermore, if you have no lawyer to help you, the court
6 clerk will help you file a notice of appeal.

7 You also have one year in which to collaterally
8 attack the judgment and sentence, but after a year, you no
9 longer have that right. You have the right to appeal this
10 sentence also.

11 The sentence is an exceptional sentence and you
12 have the right to appeal, but must file that notice of
13 appeal within 30 days of today. I've signed a notice that I
14 have orally advised you of these rights and will ask that
15 you sign the notice that you've received in writing the
16 advice of rights.

17 MR. LINDELL: I would note on the last page of
18 the judgment and sentence presented to us by Ms. Richardson
19 that credit's been given for 338 days, that's inaccurate, he
20 was held in the adult detention for 338 days but in the
21 juvenile facility for an additional 93, I believe, so --

22 MS. RICHARDSON: Should we have the jail
23 calculate it because I'm afraid -- you know, sometimes they
24 give 'em extra credit for -- let's just have the jail
25 calculate it.

1 MR. LINDELL: Put the note on there it also
2 includes his juvenile time.

3 In relation to his appeal, I have a filled out
4 appeal forms, I'll hand forward to the Court a notice of
5 appeal motion and certification for order of indigency as
6 well as an order of indigency to be signed by the Court.
7 And once we receive a copy of the judgment and sentence in
8 final form, we'll file that.

9 Mr. Thomas, do you want to come here for a
10 second -- oh, take it back? Okay.

11 We've reviewed the judgment and sentence, I
12 believe it accurately reflects the Court's ruling and signed
13 it, both Mr. Conroy and I approved it as to form.

14 Mr. Thomas has affixed his fingerprints to page 4
15 of the judgment and sentence.

16 THE COURT: I have signed the judgment and
17 sentence this matter will be in recess.

18 MR. LINDELL: Thank you, Your Honor.

19 MS. RICHARDSON: Thank you, Your Honor.

20 MR. CONROY: Thank you, Your Honor.

21 MR. BELATTI: Thank you, Your Honor.

22 MR. PENDEGAST: Thank you, Your Honor.

23 (Whereupon, proceedings were concluded.)
24
25

1 STATE OF WASHINGTON)
2 COUNTY OF KING) ss. Reporter's Certificate

3
4 I, Joyce G. Stockman, Registered Professional
5 Reporter in and for the State of Washington;

6 Do hereby certify:

7 That to the best of my ability, the foregoing
8 is a true and correct transcription of my shorthand notes as
9 taken in the cause of STATE of WASHINGTON vs GREGORY O.
10 THOMAS, on the date and place as shown on page 1 hereto;

11 That I am not related to any of the parties
12 to this litigation and have no interest in the outcome of
13 said litigation;

14
15 Dated this 4th day of September, 1996

16
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20
21
22 JOYCE G. STOCKMAN
23 Registered Professional Reporter
24 CSR No. ST-OC-KJ-G-383RP

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of:)

GREGORY THOMAS,)

NO. 88921-0

Petitioner.)
)
)
)
)
)

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 7TH DAY OF MARCH 2014, I CAUSED A TRUE AND CORRECT COPY OF THE SUPPLEMENTAL BRIEF OF PETITIONER TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] GREGORY THOMAS
DOC NO. 743752
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520

SIGNED IN SEATTLE WASHINGTON, THIS 7TH DAY OF MARCH 2014.

x *Patrick Mayovsky*

OFFICE RECEPTIONIST, CLERK

From: Patrick Mayovsky <MayovskyP@nwattorney.net>
Sent: Friday, March 07, 2014 2:51 PM
To: OFFICE RECEPTIONIST, CLERK; King County Prosecutor Appellate Unit General Email
Subject: In re Personal Restraint Petition of Gregory Thomas, No. 88921-0 / Petitioner's Supplemental Brief
Attachments: Gregory Thomas - Petitioner's Supplemental Brief.pdf

Attached for filing today is a petitioner's supplemental brief for the case referenced below.

In re the Personal Restraint Petition of Gregory Thomas

No. 88921-0

Petitioner's Supplemental Brief

Filed By:
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