

FILED
SUPREME COURT
STATE OF WASHINGTON
12/28/2017 2:00 PM
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CLERK

SUPREME COURT NO. 94556-0
COURT OF APPEALS NO. 47251-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

BRIAN M. BASSETT,

Respondent.

REVISED SUPPLEMENTAL BRIEF OF PETITIONER

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A. QUESTION PRESENTED

Does the Washington constitution permit a life sentence for a juvenile convicted of multiple counts of aggravated first degree murder?

B. STATEMENT OF THE CASE

In 1996, Brian Bassett was convicted of three counts of aggravated first degree murder for shooting his mother and father to death and drowning his five-year-old brother. CP 134, 141-42. The facts of the crime are detailed in the original Court of Appeals decision affirming his conviction. State v. Bassett, 94 Wn. App. 1017, 1999 WL 100872 (Feb. 26, 1999). The evidence established that Bassett had planned to kill his parents with his friend Nicholas McDonald, that they attempted the murders “several times” before they succeeded, that they took careful precautions against detection, that they killed five-year-old Austin to eliminate him as a witnesses, and that they cleaned up blood and removed the bodies before stealing various items from the home and fleeing to Oregon, where McDonald confessed to police. Id. at *1-2, 1999 WL 100872. See also State v. McDonald, 138 Wn.2d 680, 684, 981 P.2d 443 (1999). The trial court imposed the then-mandatory sentence of life without the possibility of release (“LWOP”). State v. Bassett, 198 Wn. App. 714, 717, 394 P.3d 430 (2017); Former RCW 10.95.030(1) (1994).

In 2012, the Supreme Court of the United States decided Miller v. Alabama, holding that mandatory LWOP sentences for those under age 18 at the time of their crimes violate the Eighth Amendment. 567 U.S. 460, 132 S. Ct. 2455, 2460, 183 L. Ed. 2d 407 (2012). Miller did not categorically bar LWOP in appropriate homicide cases, but required that sentencing courts consider a child's "diminished culpability and heightened capacity for change" before imposing LWOP. Id. at 2469.

In response to Miller, our legislature amended RCW 10.95.030 to provide that those convicted of aggravated first degree murder committed prior to their 16th birthday will be sentenced to a minimum term of 25 years and a maximum term of life. RCW 10.95.030(3)(a)(i). For those who commit aggravated first-degree murder between the ages of 16 and 18 years, the trial court may also set the minimum term at life, "in which case the person will be ineligible for parole or early release." RCW 10.95.030(3)(a)(ii). In setting the minimum term, the court must "take into account mitigating factors that account for the diminished culpability of youth as provided in Miller[,] including, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated." RCW 10.95.030(3)(b). Those

sentenced to LWOP as juveniles before June 1, 2014, would be resentenced consistent with the new provisions. RCW 10.95.035(1).

Bassett was resentenced in 2015; he was 35 years old. Bassett, 198 Wn. App. at 718. The resentencing court¹ explicitly considered the Miller factors, including the immaturity and impulsivity attendant to youth in general, as well as the evidence Bassett produced about his life experience. 1/30/15 RP 83-85.

The court adhered to the original LWOP sentence, finding that the premeditated murders reflected no impulsivity, but rather significant advance planning and efforts to avoid detection. 1/30/15 RP 86-87. Bassett had planned the murders for more than a week and had made at least one other attempt. 1/30/15 RP 86-87. Bassett was never abused or neglected. 1/30/15 RP 87-88. His efforts to reduce his risk of being caught, including using a silencer, cutting the phone lines, hiding the bodies, cleaning blood from the home, and eliminating a witness by drowning his little brother, all demonstrated that Bassett appreciated the risks and consequences of his actions. 1/30/15 RP 89-90. Evidence of Bassett's efforts at rehabilitation, including good behavior, educational pursuits, and marriage to a former cellmate's mother, did not persuade the resentencing court that Bassett had been or could be rehabilitated. 1/30/15

¹ Because the judge who presided over Bassett's trial and original sentencing had retired, a different judge handled Bassett's resentencing.

RP 17, 90-92. The court found that the evidence presented made it “easy to distinguish this case from some of the cases that caused the Supreme Court to make its decisions.” 1/30/15 RP 92.

Bassett appealed the sentence. The Court of Appeals, Division Two, held that discretionary juvenile LWOP sentences violate the state constitution, and remanded for resentencing. 198 Wn. App. at 744. The court adopted an Iowa court’s “categorical bar” analysis and applied it, rather than state precedent. Id. at 738-44. It concluded, “to the extent that a life without parole or early release sentence may be imposed against a juvenile offender under the Miller-fix statute, RCW 10.95.030(3)(a)(ii), it fails the categorical bar analysis. Therefore, a life without parole or early release sentence is unconstitutional under article I, section 14 of our state constitution.” Id. at 744.

C. ARGUMENT

1. THE EIGHTH AMENDMENT PERMITS LIFE SENTENCES FOR JUVENILES WHOSE CRIMES DO NOT REFLECT TRANSIENT IMMATURITY.

Over the past dozen years, there has been an evolution in Eighth Amendment jurisprudence related to juvenile sentencing. In 2005, the Supreme Court recognized that certain characteristics attendant to youth make juvenile offenders potentially less culpable and more redeemable than adults. Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed.

2d 1 (2005). In general, juveniles are more impetuous, less able to resist negative influences, and more amenable to rehabilitation. Id. at 569-70. In light of these differences, the Court held that the death penalty is unconstitutionally cruel and unusual punishment as applied to juveniles. Id. at 572. While the Court recognized that some juveniles may have sufficient maturity and depravity to justify the death penalty, jurors could not be asked to make determination because “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” Id. at 573.

The Court drew on these principles to hold that the Eighth Amendment also bars sentences of life without parole for juveniles convicted of non-homicide crimes. Graham v. Florida, 560 U.S. 48, 82, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). The Court did not require States to guarantee eventual freedom to juvenile nonhomicide offenders; instead States need only provide them “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” Id. at 75. Significantly, the Court recognized that some juvenile offenders will never obtain release. “Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives.” Id.

In Miller, the Court expanded its holding in Graham to bar *mandatory* LWOP sentences for juvenile homicide offenders because mandatory sentencing schemes prevent the sentencer from taking into account the attributes of youth. 567 U.S. at 474. The Court refused to impose a categorical bar on sentencing a juvenile homicide offender to life in prison without parole, but opined that such sentences should be uncommon. Id. at 479.

Finally, in Montgomery v. Louisiana, the Court held that Miller has both substantive and procedural elements and applies retroactively. ___ U.S. ___, 136 S.Ct. 718, 734, 193 L. Ed. 2d 599 (2016). Montgomery clarified that Miller did not merely require a procedure by which youth could be considered in sentencing, but also required that life sentences not be imposed on juveniles whose crimes reflect transient immaturity. Id. The Court again recognized that in rare cases, a juvenile offender might show “such irretrievable depravity that rehabilitation is impossible and life without parole is justified.” Id. at 733.

In sum, recent Eighth Amendment jurisprudence recognizes that children are different, but does not categorically preclude LWOP sentences for juvenile murderers. Rather, the federal constitution permits courts to impose LWOP on those rare juvenile murderers whose crimes indicate “permanent incorrigibility.” Montgomery, 136 S. Ct. at 734.

2. WASHINGTON'S CONSTITUTION PROVIDES NO GREATER PROTECTION FOR JUVENILES THAN THE EIGHTH AMENDMENT.

In determining that Washington's constitution bars imposition of LWOP sentences on juvenile murderers although the Eighth Amendment permits them, the Bassett court made the conclusory assertion that the "state cruel punishment proscription affords greater protection than its federal counterpart." 198 Wn. App. at 723 (citing State v. Manussier, 129 Wn.2d 652, 674, 921 P.2d 473 (1996)). The whole of Bassett's analysis depends on this premise. It is incorrect.

For decades, this Court has required analysis of the six neutral criteria set forth in State v. Gunwall, 106 Wn.2d 54, 61-63, 720 P.2d 808 (1986), before independently considering an issue under the state constitution. State v. Ladson, 138 Wn.2d 343, 347-48, 979 P.2d 833 (1999). Once this Court has conducted a Gunwall analysis and has determined that a provision of the state constitution independently applies to a *specific* legal issue, it is unnecessary to repeat the analysis in subsequent cases presenting the *same* issue. Ladson, 138 Wn.2d at 348; State v. White, 135 Wn.2d 761, 769, 958 P.2d 982 (1998). However, just because the state constitution is held to provide broader protection in one context does not necessarily mean that it will be found to be broader in all contexts. State v. Martin, 171 Wn.2d 521, 528, 252 P.3d 872 (2011).

This Court performed a Gunwall analysis in State v. Dodd and concluded that the state constitution was not more protective than the Eighth Amendment. 120 Wn.2d 1, 838 P.2d 86 (1992). The Dodd court considered whether a defendant convicted of a capital offense may waive appellate review under the state constitution, as he may under the federal constitution. Id. at 4, 20. After considering all of the Gunwall criteria, and despite having held the state constitution more protective in other contexts, this Court held, “The Gunwall factors *do not* demand that we interpret Const. art. 1 § 14 more broadly than the Eighth Amendment.”² Id. (emphasis added). This Court has adhered to that conclusion as recently as 2014. In re Cross, 180 Wn.2d 664, 731, 327 P.3d 660 (2014); State v. Yates, 161 Wn.2d 714, 792, 168 P.3d 359 (2007).

A Gunwall analysis does not establish broader protections for juveniles under the state constitution. The Dodd court’s examination of the text and textual differences between the two provisions, state constitutional history, and structural differences between the state and federal constitutions need not be repeated, except to recognize that these factors do not establish that the state constitution was meant to offer

² The Bassett court’s conclusory assertion to the contrary rested on State v. Manussier, 129 Wn.2d 652, 921 P.2d 473 (1996), a decision rendered in the context of, and affirming life sentences under, the Persistent Offender Accountability Act. There, this Court simply cited Fain for the proposition that the state constitution provides greater protection than the Eighth Amendment and performed no Gunwall analysis.

broader protection than its federal counterpart. See State v. Boland, 115 Wn.2d 571, 575-76, 800 P.2d 1112 (1990) (once this Court has examined Gunwall criteria regarding a particular constitutional provision, the first, second, third and fifth factors will generally not vary from case to case).

Preexisting state law pertaining to juvenile sentencing also does not favor independent state constitutional analysis. The Washington Constitution is silent as to juveniles. There was no juvenile court at statehood. State v. Schaaf, 109 Wn.2d 1, 14, 743 P.2d 240 (1987). This Court approved death sentences for juveniles who committed murder. See State v. Maish, 29 Wn.2d 52, 54, 67, 185 P.2d 486 (1947) (death sentence affirmed for 16-year-old murderer tried under the criminal code); State v. Carpenter, 166 Wash. 478, 479, 7 P.2d 573 (1932) (death sentence affirmed for defendant who murdered prior to eighteenth birthday).³

While our legislature established a distinct juvenile justice system, this Court has repeatedly refused to find that juveniles have a constitutional right to be tried under that system. See In re Boot, 130 Wn.2d 553, 571, 925 P.2d 964 (1996) (citing cases). Nothing in Washington's history

³ While the Carpenter court did not state the defendant's age in the opinion, the Washington State Department of Corrections' records indicate that he was 17 years old when he was executed. See Washington Department of Corrections, Persons Executed Since 1904 in Washington State (available at <http://www.doc.wa.gov/docs/publications/reports/100-SR002.pdf> (last visited 5/22/17)).

suggests that the drafters of our constitution intended to provide greater protection to juveniles than afforded by the federal constitution.

Until Bassett, no Washington case had ever found that the state constitution is more protective of juveniles in sentencing matters than the federal constitution. Washington courts have repeatedly rejected constitutional challenges to juvenile LWOP sentences.⁴ This Court has rebuffed the argument that a juvenile cannot constitutionally be tried in adult court or receive an adult sentence. In re Boot, 130 Wn.2d at 570.

Because the Gunwall criteria do not favor independent state constitutional review, the Eighth Amendment governs Bassett's cruel punishment claim. Juvenile LWOP sentences for aggravated murder are allowed by the Eighth Amendment so long as the sentencing court considered the mitigating aspects of youth. The resentencing court expressly considered Bassett's youth, as well as his rehabilitative efforts, and found that Bassett's crime did not reflect transient immaturity but instead cried out for LWOP. That sentence is constitutionally sound.

3. FAIN CONTROLS STATE CRUEL PUNISHMENT ANALYSIS.

⁴ See, e.g., State v. Furman, 122 Wn.2d 440, 458, 858 P.2d 1092 (1993); State v. Massey, 60 Wn. App. 131, 145-46, 803 P.2d 340 (1990), rev. denied, 115 Wn.2d 1021 (1990), cert. denied, 499 U.S. 960 (1991); State v. Stevenson, 55 Wn. App. 725, 737-38, 780 P.2d 873 (1989), rev. denied, 113 Wn.2d 1040 (1990); State v. Forrester, 21 Wn. App. 855, 870-71, 587 P.2d 179 (1978), rev. denied, 92 Wn.2d 1006 (1979).

Even if a Gunwall analysis established the state constitution as more protective in this context, state constitutional evaluation of a cruel punishment claim must proceed under the framework set out in State v. Fain, 94 Wn.2d 387, 617 P.2d 720 (2017). Despite this controlling precedent, Division Two abandoned Fain in favor of the “categorical bar” analysis endorsed by the Supreme Court of Iowa and adopted nowhere else. This Court should overrule Bassett and clarify how to apply Fain in juvenile sentencing contexts.

In Fain, this Court adopted a proportionality analysis to determine whether a habitual offender sentence under former RCW Law090 violated art. I, § 14 of the state constitution. 94 Wn.2d at 396-97. Fain sets out four factors to determine whether a given sentence constitutes 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. Id. (citing Hart v. Coiner, 483 F.2d 136, 140-43 (4th Cir. 1973)); State v. Witherspoon, 180 Wn.2d 875, 887, 329 P.3d 888 (2014).

Since Fain was decided nearly forty years ago, Washington’s appellate courts have adhered to this four-part framework to decide state

cruel punishment claims.⁵ Fain is thus the “controlling Washington case interpreting the applicable provision of the Washington State Constitution” and “requires us to consider four factors in an article I, section 14 challenge[.]” Witherspoon, 180 Wn.2d at 895, 902 (Gordon-McCloud, J., concurring and dissenting) (emphasis added). Indeed, Washington courts have held that the failure to argue the Fain factors precludes consideration of a cruel punishment claim. See State v. Davis, 175 Wn.2d 287, 343, 290 P.3d 43 (2012); In re Pers. Restraint of Haynes, 100 Wn. App. 366, 375-76, 996 P.2d 637 (2000). As recently as February 2016, this Court recognized that Fain constitutes the sole applicable analysis for determining whether punishment violates the state constitution. State v. Ramos, 187 Wn.2d 420, 454 & n.10, 387 P.3d 650 (2017) (declining to engage in independent state constitutional analysis where defendant “does not address” the Fain factors).

The Bassett court acknowledged that “no Washington case has applied the categorical bar analysis” rather than Fain. 198 Wn. App. at 733. The Court of Appeals justified its departure from controlling

⁵ See, e.g., Witherspoon, 180 Wn.2d at 887; State v. Davis, 175 Wn.2d 287, 344, 290 P.3d 43 (2012); Manussier, 129 Wn.2d at 676-77; State v. Hart, 188 Wn. App. 453, 461, 353 P.3d 253 (2015); State v. Whitfield, 132 Wn. App. 878, 900-01, 134 P.3d 1203 (2006); State v. Flores, 114 Wn. App. 218, 223, 56 P.3d 622 (2002); State v. Morin, 100 Wn. App. 25, 29-30, 995 P.2d 113, 116 (2000); In re Haynes, 100 Wn. App. 366, 375-76, 996 P.2d 637, 643 (2000); State v. Ames, 89 Wn. App. 702, 709, 950 P.2d 514, 517 (1998).

precedent on three grounds. First, the court opined that the nature of Bassett's claim supports a categorical analysis because it implicates an entire class of offenders, as in Graham. Second, the court observed that this Court had extended Miller in three recent cases, Ramos, State v. O'Dell, 183 Wn.2d 680, 358 P.2d 359 (2015), and State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017). Third, the court deemed the Fain analysis inadequate to address the special concerns inherent to juvenile sentencing. None of these reasons support discarding this Court's binding precedent.

In Graham, the United States Supreme Court explained that its Eighth Amendment proportionality cases fall within two categories. 560 U.S. at 59. The first category includes those challenging an individual's term-of-years sentence as unconstitutionally excessive in a particular case. This parallels the established Fain framework in Washington. The second approach is a categorical analysis, in which the court considers whether there is a national consensus against a particular sentencing practice, and then exercises its independent judgment to determine whether the punishment violates the constitution in all cases. Id. at 61. In Graham, the Court concluded the categorical approach was appropriate because the challenge to LWOP for juvenile nonhomicide offenders "implicates a

particular type of sentence as it applies to an entire class of offenders who have committed a range of crimes.” Id. at 61.

Graham does not support the use of categorical analysis in this case. The proportionality approach could not be used in Graham because the sentencing practice at issue was applied to “a range of crimes.” Any comparison between the severity of the penalty and the gravity of the crime would have to include innumerable permutations of offenses and offenders. In contrast, Bassett challenges a practice that applies to only one crime—aggravated first degree murder—and only a subset of offenders—those over 16 and less than 18 at the time of the crime.

This Court’s recent jurisprudence also does not justify abandonment of Fain. The Bassett court argued that this Court expanded Miller in Ramos, O’Dell, and Houston-Sconiers, and that this expansion “compels” application of the categorical bar analysis to Bassett’s challenge. That justification fails because this Court did not expand Miller in Ramos or O’Dell, and articulated no state constitutional basis for expanding Miller in Houston-Sconiers.

In Ramos, this Court considered a de facto LWOP sentence for a juvenile convicted of four homicides. In holding that Miller compels the sentencing court to consider “the specific nature of the crime and the individual’s culpability” before imposing an aggregate sentence

amounting to LWOP, the Court emphasized that Miller itself compelled that result. 187 Wn.2d at 438-39. Thus, this Court did not expand Miller, it merely applied its mandate.

The O'Dell court did not expand Miller either. O'Dell did not even involve a constitutional claim. Rather, the issue was whether the Sentencing Reform Act (SRA) permits a sentencing court to consider an adult defendant's youth as a mitigating factor supporting a departure from the applicable standard sentencing range. 183 Wn.2d at 683. This Court referenced the recency of juvenile brain studies underlying the Supreme Court's reasoning in Roper, Graham, and Miller to conclude that the legislature had not already accounted for an adult offenders' youth in setting the applicable sentencing range. 183 Wn.2d at 691-93. Thus, the Court did not expand Miller's constitutional holding, it merely referenced Miller principles in interpreting the SRA.

Houston-Sconiers also does not compel the use of a categorical analysis over the established Fain framework. While this Court arguably expanded Miller's individualized hearing requirement to any sentence imposed on a juvenile in adult court, 188 Wn.2d at 420, the basis of that expansion is unclear.⁶ This Court indicated the holding was "in

⁶ Houston-Sconiers can be read to comport with Miller by requiring a Miller hearing whenever the operation of mandatory sentencing provisions, such as firearm enhancements, result in a potential de facto life sentence.

accordance with Miller” and specifically disclaimed any reliance on the state constitution. Id. at 420 & n.6.

The Bassett court’s third justification for abandoning this Court’s precedent is that the Fain framework is inadequate to address the special concerns inherent to juvenile sentencing. The court opined that the first Fain factor’s consideration “purely of the crime’s characteristics” is inconsistent with Miller’s requirement that a sentencing court consider youth before imposing a particular penalty, and that the fourth Fain factor’s focus on the punishment meted out for other offenses in the same jurisdiction is inconsistent with Miller because it allows comparison with the punishment for adult offenders who commit the same crimes. 198 Wn. App. at 738. This reasoning is unpersuasive.

First, nothing in Miller precludes consideration of the nature of a juvenile’s crime. Indeed, the whole point of Miller and Montgomery is that courts may not impose juvenile LWOP sentences without first considering whether the offender’s “*crime* reflects unfortunate yet transient immaturity.” Miller, 132 S. Ct. 2469 (emphasis added); Montgomery, 136 S. Ct. at 735. This *necessarily* requires consideration of the nature of the juvenile’s crime. Was the crime encouraged and committed as part of an initiation into a peer group, or to settle a personal grudge? Was the victim hurt as a result of an ill-considered split-second

decision made under stress, or a well-planned and coldly calculated effort to kill and not get caught? These considerations are as appropriate under Miller as they are under Fain.

The fourth Fain factor requires the court to compare the sentence at issue to “the punishment meted out for other offenses in the same jurisdiction.” Fain, 94 Wn.2d at 397. The Bassett court concluded that this factor conflicts with Miller because “it allows comparison with the punishment for adult offenders who commit the same crimes.” 198 Wn. App. at 738. But, again, the point of Miller is that most juveniles are less culpable than most adults who commit the same crimes and their sentences should so reflect. Thus, it is perfectly appropriate for a sentencing court to consider the sentence an adult would receive in deciding what presumably lesser sentence a less culpable juvenile should receive. Further, if this Court finds it problematic ever to compare a juvenile’s sentence to that imposed on an adult offender, it may easily modify Fain’s application in juvenile cruel punishment claims to confine such comparison to sentences imposed on other juvenile offenders.

The other two Fain factors can also be easily tailored to address juvenile sentencing concerns. The second factor requires the court to consider the legislative purpose behind the statute. That factor could be interpreted to require courts to consider the purpose of the Miller-fix

statute, as well as the criminal statute that was violated. Likewise, the third Fain factor, which requires courts to consider the sentence the particular defendant would receive in other jurisdictions, could be interpreted to require consideration of the sentence that a juvenile sentenced in adult court would face if sentenced in juvenile court.

In sum, the Bassett court erred by abandoning the Fain framework. This Court should reverse.

4. DIVISION TWO'S CATEGORICAL ANALYSIS
ENCROACHES ON BOTH THE AUTHORITY OF THE
SENTENCING COURT AND THE PUNISHMENT-
FIXING ROLE OF THE LEGISLATURE.

In addition to improperly abandoning this Court's binding precedent, the Bassett court subverted the constitutional authority of a duly-elected legislature to fix punishments for criminal offenses and encroached on the discretion of the sentencing court to determine the appropriate sentence for a given offender and offense within the legislature's guidelines.

"This court has consistently held that the fixing of legal punishments for criminal offenses is a legislative function." State v. Ammons, 105 Wn.2d 175, 180, 713 P.2d 719 (1986). The power of the legislature in this respect is "plenary and subject only to constitutional provisions against excessive fines and cruel and inhuman punishment."

Id. (quoting State v. Mulcare, 189 Wash. 625, 66 P.3d 360 (1937)). It is “the function of the legislature and not of the judiciary to alter the sentencing process.” Id.

To comport with Miller and ensure that no juvenile is sentenced to LWOP in violation of the Eighth Amendment, our legislature enacted RCW 10.95.035 and amended RCW 10.95.030(3)(a)(ii) and (b). The legislature directed sentencing courts to consider “mitigating factors that account for the diminished culpability of youth as provided in Miller ... including, but not limited to, the age of the individual, the youth’s childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth’s chances of becoming rehabilitated.” RCW 10.95.030(3)(b).

The legislature could have responded to Miller by forbidding LWOP, as some other states have, but opted not to do so. This is exactly the sort of policy decision the legislature is entrusted to make, and our legislature’s decision to allow trial courts to impose juvenile LWOP in rare cases keeps Washington in line with the federal government and the majority of other states. The Bassett court is “merely substituting [its] notion of justice for that of duly elected legislative bodies or the United States Supreme Court.” Gunwall, 106 Wn.2d at 63. This Court must reject Bassett to preserve the constitutional separation of powers.

The Bassett court heavily relied on the Iowa Supreme Court's decision in State v. Sweet, 879 N.W.2d 811 (2016) for both the analytical framework it applied and for its conclusion that Miller fails to provide useful guidance for sentencing courts. It is worth noting that Sweet has not been widely adopted. The decision has been cited by courts outside of Iowa only six times,⁷ including twice in this state (Bassett and Ramos). No other state court has embraced the Sweet court's reasoning to invalidate statutes permitting juvenile LWOP sentences.

D. CONCLUSION

For the reasons expressed above, the State respectfully requests this Court reverse the Court of Appeals.

DATED this 28th day of December, 2017.

Respectfully submitted,

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⁷ See People v. Hyatt, 316 Mich. App. 368, 435 (2016) (affirming LWOP for 17-year-old convicted of first degree felony murder and other crimes; quoting Sweet's recitation of argument in amicus brief); State v. Williams-Bey, 167 Conn. App. 744, 775-76 & n.23 (2016) (holding that parole hearings cure Miller error despite Iowa court requiring resentencing); Commonwealth v. Batts, 163 A.3d 410 (Pa. 2017) (citing Sweet in support of decision to adopt a presumption against LWOP for juvenile offenders).

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