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NO. 95394-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of
TIME RIKAT MEIPPEN,
Petitioner.

**STATE'S RESPONSE TO BRIEF OF
WACDL AS AMICUS CURIAE**

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A. INTRODUCTION

Amicus curiae Washington Association of Criminal Defense Lawyers (“WACDL”) argues that every sentencing statute that results in mandatory imprisonment of any length is unconstitutional if applied to juvenile offenders. The United States Supreme Court has never suggested that the Eighth Amendment requires such a result. Nothing in Miller v. Alabama¹ or any other case from the Court interpreting the Eighth Amendment invalidates mandatory sentencing provisions as to juveniles unless they create the unacceptable risk of an unconstitutional sentence.

In Houston-Sconiers,² this Court applied the Eighth Amendment to conclude that otherwise-mandatory sentencing provisions must be discretionary when a juvenile faces an effective life sentence in adult court. But by amici’s logic, every currently incarcerated juvenile offender sentenced for a weapons enhancement or any other mandatory sentencing provision is entitled to a Miller re-sentencing hearing *regardless* of the length of the sentence actually imposed. The Eighth Amendment does not require as much. The legislature has authority to implement mandatory sentencing provisions as long as they do not deny juveniles a meaningful opportunity for release in their lifetimes.

¹ 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

² 188 Wn.2d 1, 391 P.3d 509 (2017).

Meippen's 19.25-year sentence — only five years of which was mandatory — for shooting a store clerk in the face during a robbery does not merely provide him with the *opportunity* for release. It *assures* his release at age 35. Because the Eighth Amendment is not implicated by Meippen's sentence, Houston-Sconiers is not a significant change in the law that is material to Meippen. His petition does not fall within the exception to the time-bar provided by RCW 10.73.100(6).

B. ARGUMENT

THE EIGHTH AMENDMENT DOES NOT REQUIRE
COMPLETE JUDICIAL DISCRETION FOR ALL JUVENILES
SENTENCED IN ADULT COURT.

According to amici, Houston-Sconiers applied Miller to require complete sentencing discretion as to *all* juvenile offenders sentenced in adult court. But amici's reading of Houston-Sconiers ignores the extreme sentences that the defendants in Houston-Sconiers actually faced, and does not adequately explain how Miller requires discretion in all cases, no matter the length of sentence.

In Montgomery v. Louisiana, the United States Supreme Court said that a meaningful opportunity for release is a constitutionally adequate remedy for a Miller violation on collateral review. ___ U.S. ___, 136 S. Ct. 718, 734, 193 L. Ed. 2d 599 (2016). But if the sentence itself

does not deny the juvenile a meaningful opportunity for release, then there is no constitutional violation to remedy. And Montgomery's explicit approval of an initial life sentence — so long as the juvenile is later given a meaningful opportunity for parole — disposes of Meippen's claim that the Eighth Amendment requires his resentencing merely because the court was required to impose at least five years.

It follows, then, that amici's expansion of the Eighth Amendment to prohibit mandatory sentencing provisions from applying to *any* juvenile offender in adult court is not only unprecedented, but unnecessary to serve constitutional goals. Meippen's mandatory five-year firearm enhancement does not violate the Eighth Amendment's principles of proportionality because while the sentencing court may have been limited in its discretion to some degree, it retained broad discretion to fashion an appropriate sentence, accounting for the juvenile offender's youth and immaturity. The sentencing court had the discretion to grant Meippen an exceptional sentence of zero months on his underlying charges, and impose *only* the five-year firearm enhancement, had Meippen convinced it that his youth and immaturity warranted as much. State v. O'Dell, 183 Wn.2d 680, 689, 358 P.3d 359 (2015).

Neither the five-year mandatory portion of Meippen's sentence, nor the total sentence imposed, is disproportionate to the severity of his

crime. The Eighth Amendment only prohibits the legislature from enacting sentencing provisions that “so undermine Miller’s substantive holding that they create an unacceptable risk of unconstitutional sentencing.” State v. Ramos, 187 Wn.2d 420, 446, 387 P.3d 650 (2017), as amended (Feb. 22, 2017), cert. denied, 138 S. Ct. 467, 199 L. Ed. 2d 355 (2017). A mandatory-minimum sentence of five years for shooting a man in the face during a robbery is not cruel and unusual. See State v. Taylor G., 110 A.3d 338, 346 (Conn. 2015) (rejecting the argument that five and ten-year mandatory-minimum sentences violate the Eighth Amendment for juvenile offenders).

The conclusion that the Eighth Amendment is not implicated in Meippen’s case is underscored by this Court’s recent decision in In re Pers. Restraint of Scott, which held that for juvenile offenders serving effective life sentences whose cases are final, the potential for release *after serving 20 years* remedies the failure to conduct a Miller hearing at the time of original sentencing. 190 Wn.2d 586, 416 P.3d 1182 (2018). By finding the “Miller-fix” statute an adequate remedy, Scott necessarily concluded that it is constitutionally permissible to require a juvenile offender to serve 20 years for a serious crime without a Miller hearing. Amici attempts to brush Scott aside by reasoning that it applies *only* to juvenile offenders like Scott, who are statutorily eligible to petition for

release after 20 years. But such an argument begs the question: when a juvenile offender is sentenced to less than 20 years, does the Eighth Amendment compel a remedy at all?

Nor do the mandatory-sentencing provisions at issue in Houston-Sconiers provide a distinction. Having been convicted of first-degree murder, Scott, like the defendants in Houston-Sconiers, faced a mandatory sentencing provision — a mandatory-minimum 20 years. Scott, 190 Wn.2d at 588-89. Nevertheless, this Court determined that Houston-Sconiers did not entitle Scott to relief.

Adopting amici's argument that Houston-Sconiers requires complete discretion in all cases, and that Scott is limited solely to offenders who are eligible for relief under RCW 9.94A.730, would lead to absurd results. Juvenile offenders whose cases are final, and who received sentences of *more* than 20 years, would not be entitled to resentencing per Scott, while all juvenile offenders whose cases are final, but who received sentences of *less* than 20 years, would be resentenced. The Eighth Amendment, which prohibits *excessive* sentences, does not require such an outcome.

This Court's decision in O'Dell does not support amici's argument that the Eighth Amendment requires absolute discretion when sentencing juvenile offenders. O'Dell was not a juvenile, and this Court's decision

was based solely on its interpretation of the Sentencing Reform Act (“SRA”), not the Eighth Amendment. Nonetheless, in O’Dell, this Court reiterated that while “age is not a per se mitigating factor,” an exceptional sentence downward based on diminished culpability due to youth is within the sentencing court’s discretion. 183 Wn.2d at 695-96. This Court later cited to O’Dell in an Eighth Amendment juvenile sentencing case to conclude that the SRA allows for consideration of factors that “directly bear on a juvenile offender’s culpability.” Ramos, 187 Wn.2d at 447-48.

Like the sentencing court in O’Dell, the court in Meippen’s case had the discretion to consider whether Meippen’s youth diminished his culpability, and whether a more lenient sentence was warranted on that basis. And Meippen’s case did not present the situation in Houston-Sconiers, where multiple mandatory-consecutive sentencing enhancements result in potential sentences that implicate the Eighth Amendment’s prohibition against excessive and disproportionate sentences for juveniles.

Nor does amici persuasively argue that State v. Watkins, ___ Wn.2d ___, 423 P.3d 830 (2018), compels absolute sentencing discretion in all juvenile cases in adult court. There, this Court rejected an argument that the automatic-adult-jurisdiction statute violates juveniles’ substantive due process right to be punished in accordance with their culpability. Watkins, 423 P.3d at 838. This Court disagreed that recent Eighth Amendment

cases, including Miller and Houston-Sconiers, undercut State v. Boot,³ which previously upheld the constitutionality of the automatic-adult-jurisdiction statute. In Watkins, this Court noted that Miller was concerned with the conundrum faced by juvenile courts when determining whether to transfer a juvenile to adult court, where a life sentence was mandated. 423 P.3d at 838. Watkins pointed out that courts in Washington do not face this difficult “choice between extremes,” because under Houston-Sconiers, courts have discretion not to follow mandatory sentencing provisions that result in effective life sentences, and can tailor a sentence to the juvenile’s culpability. Watkins, 423 P.3d at 838. Nor does a “choice between extremes” exist in a case like Meippen’s, where the juvenile offender simply does not face a potential life sentence. Watkins does not support amici’s argument that the Eighth Amendment requires absolute discretion every time a juvenile is sentenced in adult court.

C. CONCLUSION

This Court should reject WACDL’s argument that Houston-Sconiers expanded Miller to all juvenile offenders sentenced in adult court

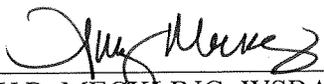
³ 130 Wn.2d 553, 925 P.2d 964 (1996).

regardless of the length of potential sentence. Meippen's sentence of 19.25 years, only five of which was mandatory, does not implicate or violate the Eighth Amendment. It is proportional to the crime Meippen committed and is not an effective life sentence. Houston-Sconiers is not material to Meippen's sentence.⁴ He is not entitled to be resentenced.

DATED this 20th day of October, 2018.

Respectfully submitted,

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⁴ Amicus American Civil Liberties Union of Washington argues that Houston-Sconiers is a "significant change in the law." In so doing, it assumes that Houston-Sconiers applies to *all* juveniles sentenced in adult court. However, it does not address or explain why the Eighth Amendment requires that conclusion.

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