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12/6/2019 11:58 AM
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SUPREME COURT
STATE OF WASHINGTON
1/10/2020
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No. 95578-6

In the
Supreme Court of the State of Washington

In Re the Personal Restraint of:

SAID OMER ALI,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

King County Superior Court No. 08-1-05113-3 SEA

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I. INTRODUCTION

Said Omer Ali (Mr. Ali) filed a personal restraint petition (PRP) in November, 2017, seeking resentencing due to the significant changes in the law marked by the Supreme Court’s decisions in State v. Houston-Sconiers, 188 Wn.2d 1, 18, 391 P.3d 409 (2017), (the “mandatory nature” of the SRA weapon enhancement penalties violates the Eighth Amendment when applied to youths), and State v. O’Dell, 183 Wn.2d 680, 693, 358 P.3d 359 (2015) (youth must be taken into consideration as a factor justifying exceptional sentences downward, even for adults).

In the intervening years since the Petition was filed, multiple decisions touched on issues raised in Mr. Ali’s Petition. One of those decisions declared that the O’Dell decision did not constitute a significant change in the law for purposes of applying RCW 10.73.100(6). See In re Light-Roth, 191 Wn.2d 328, 422 P.3d 444 (2018). As to another case, In re Pers. Restraint Meippen, 193 Wn.2d 310, 440 P.3d 978 (2019), the Court invited the parties in the case *sub judice* to submit supplemental briefs regarding the significance of this decision, which they did. Yet another case held in the interim “[o]ur opinion in [Houston-Sconiers] cannot be read as confined to the firearm enhancement statutes as it went so far as to question any statute that acts to limit consideration of the

mitigating factors of youth during sentencing.” State v. Gilbert, 193 Wash. 2d 169, 175-76, 438 P.3d 133, 136 (2019).

On October 4, 2019, the State filed a Statement of Additional Authority, citing Court of Appeals Division II’s decision in In re Pers. Restraint of Marshall, No. 49302-1-II, 2019 WL 462181 (Sept. 24, 2019), which held that Houston-Sconiers does not apply retroactively because it announced a procedural, not substantive, rule. Then, on November 6, 2019, the Court entered an Order “[t]hat the Petitioner’s personal restraint petition will be set for consideration on the merits”, and listed on the Court docket that discretionary review was granted “as to the issue of applicability and effect of Houston-Sconiers only”. Mr. Ali hereby submits this Supplemental Brief pursuant to RAP 13.7(d).

II. ARGUMENT

A. HOUSTON-SCONIERS ANNOUNCED A NEW SUBSTANTIVE RULE THAT APPLIES RETROACTIVELY AND IS MATERIAL TO MR. ALI’S CASE.

Having apparently glossed over the statement of facts in Houston-Sconiers, the State argues in its Supplemental Brief Re: Meippen (Supp. Br.)¹ that the Houston-Sconiers holding “is limited to sentences that deny

¹ The State took the liberty in its Supplemental Brief Re: Meippen to stray far afield from the Meippen decision, advancing numerous new arguments, including a request for the first time that this Court “disavow” its holding in Houston-Sconiers. In fact, the State’s Supplement Brief re: Meippen spends only four of its 24 pages discussing the Meippen

juveniles a meaningful opportunity for release in their lifetimes.” Supp. Br. at 1. Because Mr. Ali did not receive an effective life sentence, the State argues, Houston-Sconiers is not material to Mr. Ali’s sentence. Supp. Br. at 3-9.

This argument is fatally misinformed because Mr. Ali received a 312-month sentence, *the exact same sentence imposed on one of the Houston-Sconiers defendants.* Houston-Sconiers, 188 Wn.2d at 8. The other defendant received a sentence of 372 months, only five years more than Mr. Ali’s sentence. Id. Given that one of the defendants in Houston-Sconiers received the *exact same sentence* as Mr. Ali, and the other defendant received a sentence of only five years more, the Court must disregard offhand the State’s request that this Court “reject Ali’s overbroad reading of Houston-Sconiers and limit it to effective life sentences.” Supp. Br. at 8. Houston-Sconiers cannot be limited to effective life sentences because it did not address effective life sentences. Mr. Ali’s 26-year sentence is every bit as unconstitutional as the 26- and 31-year sentences struck down in Houston-Sconiers.

decision, clearly exceeding the scope of the Court’s authorized briefing. As such, it is submitted that the State’s Supplemental Brief re: Meippen should be disregarded entirely, or at least with respect to the 20 pages unrelated to Meippen.

The State's materiality argument in fact is nothing more than a request for this Court to "disavow" its two-year-old decision in Houston-Sconiers and its progeny. Supp. Br. at 8. The principle of *stare decisis*, and the procedural impropriety of the State's request appearing for the first time in its Supplemental Brief, mandates denial of the State's request and reaffirmation of Houston-Sconiers.

The State argues further that Houston-Sconiers announced only a new procedural rule, rather than a substantive one, an argument that four Justices of this Court rejected in Justice Wiggins' dissent in Meippen, 193 Wn.2d at 318-29 (Wiggins, J., dissenting), but which Division II of the Court of Appeals accepted in In re Pers. Restraint of Marshall, No. 49302-1-II. The U.S. Supreme Court's decision in Montgomery v. Louisiana, ___ U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), concluding that Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), announced a substantive rule, controls and mandates the same result here.

The State's attempt to distinguish Houston-Sconiers from Miller hinges on a distinction without a difference in terms of the retroactivity analysis, namely, the range of sentences to which the respective holdings apply. Whereas Miller was limited to mandatory life sentences, Houston-Sconiers applies to all mandatory sentences. As elaborated herein, there is

no reasonable reading of the Montgomery decision that could support reaching disparate conclusions on this basis. The difference between the two holdings is one of scope and extent, not of kind. Montgomery controls as to the retroactivity analysis and mandates retroactive application of Houston-Sconiers. See Montgomery, 136 S. Ct. 718.

Additionally, Houston-Sconiers has retroactive application because it announced a new interpretation of the SRA. See In re Pers. Restraint of Johnson, 131 Wash.2d 558, 568, 933 P.2d 1019 (1997) (“Once the Court has determined the meaning of a statute, that is what the statute has meant since its enactment”).

1. Houston-Sconiers is material to Mr. Ali’s PRP because the unconstitutional sentences in Houston-Sconiers are indistinguishable from Mr. Ali’s sentence.

The State’s argument that Houston-Sconiers is not material to Mr. Ali’s case because, as an Eighth Amendment case, it covers only the “harshest sentences” of life and death and does “not apply to lesser sentences,” is a non-starter, as it is premised on a misunderstanding of key facts in the Houston-Sconiers decision. See Supp. Br. at 3 (citing Miller, 567 U.S. 460, 471). The defendants in Houston-Sconiers received sentences of 312 and 372 months, respectively. Houston-Sconiers, 188 Wn.2d at 8. Mr. Ali also received a sentence of 312 months. Given that his sentence was *exactly the same* as one of the defendants in Houston-

Sconiers, Houston-Sconiers cannot be limited to effective life sentences or distinguished from Mr. Ali's case based on the length of the respective sentences at issue.

In Houston-Sconiers, the Court held that a 312-month sentence imposed on a juvenile without meaningful consideration of youth violated the Eighth Amendment due to the "mandatory nature" of RCW 9.94A.533. Id. at 9. Just as the "mandatory nature" of RCW 9.94A.533 rendered the 312-month sentence unconstitutional in Houston-Sconiers, so too does it render Mr. Ali's 312-month sentence unconstitutional. There is simply no basis for distinguishing between the identical sentences at issue in the respective cases, as requested by the State. If there were any doubt as to whether Houston-Sconiers applies to "lesser sentences", that doubt was eliminated entirely when this Court unequivocally established that the Houston-Sconiers holding applies to *all* adult mandatory sentencing regimes imposed on juveniles. See Gilbert, 193 Wash. 2d at 175-76.

Houston-Sconiers is clearly material to Mr. Ali's case. In fact, it is indistinguishable given that the defendants in the respective cases received identical sentences for identical reasons, namely, the sentencing court's belief that it had no discretion to impose an exceptional sentence downward based on the mitigating qualities of youth. The State's contrary

argument asks this Court to overrule Houston-Sconiers and its progeny.

As discussed further in Section B. below, this request must be denied.

2. Houston-Sconiers applies retroactively because, like Miller, it announced a new substantive rule of law.

Just as Miller announced a new substantive rule of law in striking down mandatory sentences of life without parole for juvenile offenders, so too did Houston-Sconiers announce a new substantive rule of law in striking down all adult mandatory sentencing regimes for juvenile offenders. The dissent in Meippen declared that the rule in Houston-Sconiers constitutes a “substantive rule of constitutional law” and must therefore be given retroactive application. In re Pers. Restraint Meippen, 193 Wn.2d at 323-26 (Wiggins, J., dissenting) (citing Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989)).

In reaching this conclusion, the dissenters analogized Houston-Sconiers to Miller and concluded “[j]ust as Montgomery considered Miller a substantive change in the law, so too should we hold that Houston-Sconiers is a substantive change of constitutional law.” In re Pers. Restraint Meippen, 193 Wn.2d at 326 (citing Montgomery, ___ U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016); Miller, 567 U.S. at 479-80). Additionally, the Houston-Sconiers decision was explicit that, in reaching its decision, it was applying substantive, not merely procedural, rules, stating Roper and its progeny:

make two *substantive rules of law* clear: first, ‘that a sentencing rule permissible for adults may not be so for children,’ ... rendering certain sentences that are routinely imposed on adults disproportionately too harsh when applied to youth, and second, that the Eighth Amendment requires another protection, besides numerical proportionality, in juvenile sentencings—the exercise of discretion.

Houston-Sconiers, 188 Wn.2d at 19, n.4 (emphasis added). Both of these “substantive rules of law” form the foundation of the Houston-Sconiers holding. As recognized in the Meippen dissent “Houston-Sconiers all but stated that it also announced a substantive rule of constitutional law applicable retroactively on collateral review.” In re Meippen, 193 Wash.2d at 326 (Wiggins, J., dissenting).

The Meippen dissent was correct in concluding that Houston-Sconiers constitutes a substantive rule, and its reasoning should be adopted as the law in Washington. There is no material distinction to be made between the rule announced in Miller and that in Houston-Sconiers that would render Miller retroactive but Houston-Sconiers prospective only. Houston-Sconiers announced a substantive rule of law and as such has retroactive application.

In Montgomery, the U.S. Supreme Court characterized the Miller holding as follows:

The [Miller] Court held that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile’s

special circumstances in light of the principles and purposes of juvenile sentencing.

Montgomery, 136 S. Ct. at 725. The Houston-Sconiers decision is similarly properly characterized as holding that a juvenile convicted of any offense could not be sentenced to any mandatory term of imprisonment absent consideration of the juvenile’s special circumstances in light of the principles and purposes of juvenile sentencing. The substance of the two holdings is indistinguishable for purposes of the Teague analysis.

In proceeding to analyze whether the Miller holding was substantive, Montgomery articulated the difference between procedural and substantive rules as follows:

when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful. Procedural rules, in contrast, are designed to enhance the accuracy of a conviction or sentence by regulating “the manner of determining the defendant’s culpability.” [] Those rules “merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise.”

Montgomery, 136 S. Ct. at 729-30 (internal citations omitted). Applying these definitions to Miller, the Court concluded the holding was substantive, not merely procedural, because, although it contained a procedural component, it

did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; *it established that the penological justifications for life*

without parole collapse in light of “the distinctive attributes of youth.”

Montgomery, 136 S. Ct. at 730 (emphasis added).

The issue thus presented here is whether Houston-Sconiers similarly established that the penological justifications for applying adult mandatory sentencing regimes to juveniles collapse in light of “the distinctive attributes of youth”, or instead merely required a sentencer to consider a juvenile offender’s youth before imposing mandatory sentences. The answer to this question is clear. Houston-Sconiers, like Miller, did more than require a sentencer to consider a juvenile offender’s youth before imposing a mandatory sentence. The Houston-Sconiers decision was expressly premised on the proposition that the penological justifications for imposing adult mandatory sentencing regimes on juveniles collapsed in light of the distinctive attributes of youth. Therefore, Houston-Sconiers announced a substantive, not merely procedural, rule.

The substantive nature of Houston-Sconiers draws further support from considering the penological goals of sentencing in greater detail. In Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), the Court methodically addressed each of the possible penological justifications for imposing life without parole sentences on juvenile offenders. It concluded that retribution did not justify the sentence in light of a youthful offender’s reduced moral culpability. Graham, 130 S.Ct. at

2028. Deterrence was not a sufficient reason due to youthful impetuosity. Id. at 2028-29. Incapacitation was not an adequate policy reason for the sentence because of youthful offenders' greater potential to mature and become rehabilitated. Id. at 2029. The interest of rehabilitation likewise lends no support to the sentence because life without parole does not allow for reentry into society. Id. at 2029-30. For these reasons, mandatory life without parole sentences for non-homicide crimes violate the Eighth Amendment. Id.; see also State v. Bassett, 192 Wn.2d 67, 82, 428 P.3d 343 (2018) (citing Graham and holding that penological justifications of retribution, deterrence, incapacitation, and rehabilitation did not support a life sentence imposed on a juvenile defendant because "children are less criminally culpable than adults."). Miller then extended this reasoning to mandatory life sentences for homicide offenses. Houston-Sconiers expressly references and relies on this analysis, recognizing that Miller and its precursors "found that legitimate penological goals failed to justify the sentences being invalidated as applied to youth." Houston-Sconiers, 188 Wash. 2d at 20 n.4.

The justifications of retribution, deterrence, and incapacitation collapse with precisely equal weight when applied to mandatory adult sentences other than life when imposed on juveniles. The fact that juvenile offenders have reduced culpability that mandates treating them differently

from adults, and the concomitant collapse of penological goals in the face of this reality, is not contingent upon the length of the mandatory adult sentence imposed. Houston-Sconiers stands for the proposition that, due to the distinctive attributes of youth, mandatory imposition of a 26 year sentence on a juvenile offender for a series of robberies, as in Houston-Sconiers and Mr. Ali's case, is every bit as disproportionate and constitutionally impermissible as mandatory imposition of a sentence of life without parole on a juvenile offender for a homicide.

Only one of the four penological goals cited in Graham and Miller even arguably applies with more weight to life sentences than to lesser sentences - that of rehabilitation. While juveniles sentenced to mandatory life without parole have no possibility of returning to society, thus defeating any rehabilitation rationale entirely, Mr. Ali and the defendants in Houston-Sconiers will be able to return to society after spending more than a quarter century in prison for crimes committed as juveniles. However, even though Mr. Ali will someday be released, the penological goal of rehabilitation nonetheless collapses when adult mandatory sentencing regimes are applied to juveniles.

As recognized in Houston-Sconiers, the goal of rehabilitation looks to more than just whether the offender will someday be released. See Houston-Sconiers, 188 Wash.2d at 19 n.4 (“the penological goals of

rehabilitation and incapacitation were incompatible with mandatory, lengthy sentences for juveniles because of their inherent ‘capacity for change.’”) (citing Miller, 132 S.Ct. at 2465). One of the primary reasons the courts have begun to treat young offenders with greater leniency is the recognition that, due to the transitory nature of the characteristics of youth, young offenders have a greater potential for successful rehabilitation. Roper v. Simmons, 543 U.S. 551, 570, 125 S. Ct. 1183, 1195-96 (2005) (“From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”). Because a “greater possibility exists that a minor’s character deficiencies will be reformed”, depriving a court of the ability to consider the fact that, as a juvenile, an offender has an inherently greater capacity to be rehabilitated, cannot be justified. Thus, the penological goal of rehabilitation also collapses when adult mandatory sentencing regimes of less than life are imposed on juvenile offenders.

The main thrust of the holdings in Miller and Houston-Sconiers is that “children are different”, and, as such, mandatory imposition of adult sentences is unconstitutional and likely disproportionate. It is the decreased culpability, and increased capacity for rehabilitation, of youth that drives both decisions. Houston-Sconiers is premised on this decreased

culpability, and concomitant collapse in sentencing justifications, recognizing that “Miller’s holding rests on the insight that youth are generally less culpable at the time of their crimes and culpability is of primary relevance in sentencing.” Houston-Sconiers, 188 Wash.2d at 22 (citing Miller, 132 S.Ct. at 2464).

In both decisions, the Courts did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; they established that the penological justifications for adult mandatory sentencing regimes collapse in light of “the distinctive attributes of youth.” See Montgomery, 136 S. Ct. at 730. This was the dispositive inquiry in Montgomery, and it applies to Houston-Sconiers to the same extent it applied to Miller. Just as Miller and Graham held that the penological justifications for mandatory life sentences collapse when applied to juveniles due to decreased culpability, so too did the Houston-Sconiers decision rest upon the proposition that the penological justifications for adult mandatory sentencing regimes collapse when applied to juveniles due to their decreased culpability. Pursuant to Montgomery, Houston-Sconiers thus announced a substantive rule of law and must be given retroactive application.

Despite these similarities between the holdings with respect to the dispositive inquiry in Montgomery, Division II of the Court of Appeals

reasoned in Marshall, and the State argues here, that Houston-Sconiers, unlike the Supreme Court holding in Miller, does not apply retroactively because the Houston-Sconiers decision “did not prohibit any category of punishment or provide that the State could not impose certain punishment”, and was therefore procedural. Marshall, No. 49302-1-II at pp. 13-14. But the dissenting opinion in Meippen readily disposes of this argument.

As noted in the dissent, Houston-Sconiers parallels the rule in Miller, as both holdings prevent juveniles from facing certain disproportionate sentencing ranges. In re Meippen, 193 Wash.2d at 325 (Wiggins, J., dissenting). Like Miller,² Houston-Sconiers prohibits a certain category of punishment for a class of defendants because of their status or offense because:

Before Houston-Sconiers, every juvenile convicted of certain offenses faced certain sentencing ranges, while after Houston-Sconiers, juveniles no longer necessarily face those ranges now that sentencing courts not only have the discretion to go outside the bounds of the SRA but are required to consider the mitigating qualities of youth.

In re Meippen, 193 Wash.2d at 326 (Wiggins, J., dissenting).

² Miller declared that “Our decision does not categorically bar a penalty for a class of offenders or type of crime”, but “[i]nstead, it mandates only that a sentencer follow a certain process—considering an offender’s youth and attendant characteristics—before imposing a particular penalty.” Miller, 567 U.S. at 483. Despite this language, Montgomery determined that Miller announced a new substantive rule of law.

Just as Miller announced a substantive rule when it struck down mandatory sentences of life without parole, so too did Houston-Sconiers announce a substantive rule when it struck down all mandatory sentences as applied to juveniles. There is no meaningful distinction to be made between Houston-Sconiers and Miller that would render the former procedural and the latter substantive. Holding that Houston-Sconiers announced a substantive rule is mandated by the holding in Montgomery. The Meippen dissent was correct on this point, and its conclusion that Houston-Sconiers announced a substantive rule of law, and thus applies retroactively, should be adopted as the law in Washington.

3. Houston-Sconiers also applies retroactively because it gave a new interpretation to the SRA.

“Once the Court has determined the meaning of a statute, that is what the statute has meant since its enactment.” In re Pers. Restraint of Johnson, 131 Wash.2d at 568. Thus, in Johnson, the Court held that a decision giving a new interpretation to the statute regarding offender score calculation applied retroactively to the petitioner, who was sentenced nine years before the new interpretation was announced.

In its Supplemental Brief, the State characterizes the Houston-Sconiers decision as having “*interpret[ed]* the firearm-enhancement statute as discretionary for juveniles” and giving an “*interpretation* of an otherwise-mandatory enhancement statute as discretionary for juveniles”.

Supp. Br. at 7 (emphasis added). The State has thus conceded Houston-Sconiers announced a new interpretation of RCW 9.94A.533. Pursuant to Johnson, this new interpretation “is what the statute has meant since its enactment.” In re Pers. Restraint of Johnson, 131 Wash.2d at 568. Like the new interpretation of the offender score calculation statute at issue in Johnson, Houston-Sconiers must therefore be given retroactive application, irrespective of the Teague analysis.

B. THE COURT SHOULD APPLY STARE DECISIS AND REJECT THE STATE’S UNTIMELY REQUEST TO OVERTURN HOUSTON-SCONIERS.

In arguing that Mr. Ali’s sentence does not violate the Eighth Amendment and that Houston-Sconiers is not material, the State asks for nothing less than for this Court to “disavow” its two-year-old and months-old decisions in Houston-Sconiers and Gilbert. This request should be denied pursuant to *stare decisis* and on procedural grounds. Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (“The principle of *stare decisis* ‘requires a clear showing that an established rule is incorrect and harmful before it is abandoned.’”) (quoting In re Rights to Waters of Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)). The State makes no argument that Houston-Sconiers is harmful, nor could it in good conscience based on what we now know about juvenile psychology. This alone is fatal to its request to revisit that holding.

The State also falls well short of making a clear showing that the Houston-Sconiers holding is incorrect. Instead, it engages in a deeply flawed analysis. For instance, the State cites Harmelin v. Michigan, 501 U.S. 957, 995, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991), for the proposition that “a sentence which is not otherwise cruel and unusual becomes so simply because it is ‘mandatory’”. Supp. Br. at 5-6. However, in Miller, the Court distinguished Harmelin expressly, stating:

Harmelin had nothing to do with children and did not purport to apply its holding to the sentencing of juvenile offenders. We have by now held on multiple occasions that a sentencing rule permissible for adults may not be so for children.

Miller, 567 U.S. at 481. The Court then went on to strike down as unconstitutional specifically *mandatory* life without parole sentences on juvenile offenders, while stopping short of striking down non-mandatory life without parole sentences. Id. Thus, although a sentence may not be cruel and unusual “simply because it is ‘mandatory’”, the U.S. Supreme Court and this Court have quite clearly held that a sentence may be cruel and unusual when it is both mandatory *and* imposed on a child. Miller, 567 U.S. at 481; Houston-Sconiers, 188 Wn.2d at 23; Gilbert, 193 Wash. 2d at 172.

Furthermore, in striking down the “harshest sentences” as unconstitutional, the U.S. Supreme Court has thus far set only a floor on

this issue, not a ceiling. The issue of whether the holdings in Roper and its progeny can be extended to sentences of less than life or death has not yet been decided by the U.S. Supreme Court. Indeed, Houston-Sconiers recognized as much, stating:

To be sure, the Supreme Court has not applied the rule that children are different and require individualized sentencing consideration of mitigating factors in exactly this situation, i.e., with sentences of 26 and 31 years for Halloween robberies. But we see no way to avoid the Eighth Amendment requirement to treat children differently, with discretion, and with consideration of mitigating factors, in this context.

Houston-Sconiers, 188 Wash.2d at 20.

Therefore, there is no basis for heeding the State's belated request to go against the principle of *stare decisis* and strike down its landmark decision in Houston-Sconiers. Houston-Sconiers firmly puts into practice in Washington the principal that "children are different", and there is no basis in law or science for accepting the State's invitation to backslide into the wrong side of history and sentence children as fully-formed adults:

"We are not impressed by the implicit suggestion that the state of Washington should regress to territorial days and adopt a system where juveniles ... are afforded no special protections." It is more instructive to look at how our jurisprudence on juvenile sentencing has evolved to ensure greater protections for children.

State v. Bassett, 192 Wash. 2d 67, 428 P.3d 343, 349 (2018) (quoting

State v. Schaaf, 109 Wash.2d 1, 14-15, 743 P.2d 240 (1987)). Houston-

Sconiers is not harmful and was rightly decided. *Stare decisis*, and basic morality, dictate that Houston-Sconiers remain in full force and effect.

III. CONCLUSION

As set forth herein, Houston-Sconiers must be given retroactive effect and its holding is material to Mr. Ali's sentence. Accordingly, Mr. Ali again respectfully requests that the Court grant his PRP and remand the matter for further proceedings.

Respectfully submitted this 6th day of December, 2019.

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CERTIFICATE OF SERVICE

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on December 6, 2019 I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

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