FILED
SUPREME COURT
STATE OF WASHINGTON
7/20/2020 8:00 AM
BY SUSAN L. CARLSON
CLERK

SUPREME COURT NO. 97766-6

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

TIMOTHY HAAG,

Defendant.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW

Court of Appeals No. 51409-5-II
Appeal from the Superior Court of Cowlitz County,
Cause No. 94-1-00411-2
The Honorable Michael Evans, Presiding Judge

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TABLE OF CONTENTS

I. IDENTITY OF PETITIONER 1

II. RAP 13.7(d) SUPPLEMENTAL BRIEFING.....1

III. ISSUES PERTAAINING TO SUPPLEMENTAL BRIEFING ...1

IV. FACTS PERTAINING TO SUPPLEMENTAL BREIF 2

1. The *Miller* Re-Sentencing 3
2. Judge Evans.....6

V. ARGUMENT 8

1. The court of appeals erred when it held Haag was not entitled to have the sentencing court meaningfully consider his mitigation and its failure to provide him with a meaningful opportunity for release when it imposed an unconstitutionally cruel 46-year sentence.....9

VI. CONCLUSION 20

TABLE OF AUTHORITIES

Washington Cases

In re Pers. Restraint of Benn,134 Wn.2d 868,
952 P.2d 116 (1998).....10

In re Pers. Restraint of Hagler, 97 Wn.2d 818, 824,
650 P.3d 1103, 650 P.2d 1103 (1982) 10

State v. Bassett, 192 Wn.2d 67,
428 P.3d 343 (2018).....9, 10, 12, 13, 14, 15, 17, 19, 20

State v. *Blair*, 191 Wn.2d 155,
421 P.3d 937 (2018).....12

State v. Delbosque, 6 Wash.App.2d 407,
430 P.3d 1153 (2018)..... 15

State v. Delbosque, 195 Wn. 2d 106, 129,
456 P.3d 806, 819 (2020) 1, 10, 11, 12, 14, 16, 17, 18

State v. Haag, No. 51409-5-II, 2019 WL 4273918
(Wn. Ct. App. Sept. 10, 2019, amended Sept. 17, 2019).....2, 3, 9, 11, 17

State v. Houston-Sconiers,
188 Wn.2d 1, 391 P.3d 409 (2017)..... 2, 10-11, 14

State v. *Lamb*,
175 Wash.2d 121, 285 P.3d 27 (2012).....12

State v. O'Dell, 183 Wn.2d 680,
358 P.3d 359 (2015).....13

State v. *Porter*, 133 Wash.2d 177,
942 P.2d 974 (1997).....12

State v. *Powell*,
126 Wash.2d 244, 893 P.2d 615 (1995).....12

State v. Ramos,
187 Wn.2d 420, 387 P.3d 650.....3, 9, 10, 13, 14, 15, 16, 17, 18

Other State Cases

Casiano v. Commissioner of Corrections, 317 Conn 52,
115 A.3d 1031, 1047 (Conn. 2015) 18

Federal Cases

Graham v. Florida, 560 U.S. 48,
130 S. Ct. 2011..... 14-15

Miller v. Alabama, 567 U.S. 460,
132 S. Ct. 2455..... 4, 8, 9, 12, 13, 14-15

Montgomery v. Louisiana, 136 S. Ct. 718,
193 L. Ed. 2d 599 (2016).....15

Roper v. Simmons, 543 U.S. 551,
125 S. Ct. 1183, 161 L.Ed. 2d 1 (2005) 14-15

United States v. *Briones*, 929 F.3d 1057 (9th Cir. 2019).....15, 16

Constitutions

U.S. CONST. amend. VIII.....20

CONST. art. I § 14.....15, 20

CONST. art. I § 22.....11

Statutes And Court Rules

RCW 10.95.030 .....4, 9, 12

RCW 10.95.030(3)(a)(i).....14

RCW 10.95.030(3)(a)(ii) 17

RCW 10.95.030(3)(b) 12

RCW 10.95.035 .....4, 9, 11

RCW 9.94A.540(3) 14

RCW 9.94A.730 14

RCW 10.95.030 .....4, 9, 12, 14, 17

RCW 10.95.035 11

Other

RAP 13.7.....5

I. IDENTITY OF PETITIONER

Petitioner Timothy Haag submits this supplemental briefing pursuant to RAP 13.7(d).

II. SUPPLEMENTAL BRIEF

RAP13.7(d) permits additional briefing once review has been accepted and Mr. Haag uses this opportunity to supplement his arguments made below and in his Petition for Review filed October 10, 2019 and Supplemental Brief addressing the *State v. Delbosque*, ___ Wn.2d ___,456 P.3d 806 (2020) decision filed on April 13, 2020.

III. ISSUES PRESENTED FOR SUPPLEMENTAL BRIEFING

1. The court of appeals erred when it held Haag was not entitled to have the sentencing court meaningfully consider his mitigation and its failure to provide him with a meaningful opportunity for release when it imposed an unconstitutionally cruel 46-year sentence.

IV. STATEMENT OF THE CASE

The facts have been recounted multiple times elsewhere and are not repeated here, except as pertinent to the supplement argument pertaining to the sentencing court and Court of Appeals' failure to give meaningful consideration to the uncontroverted mitigating evidence produced at his *Miller* fix sentencing hearing after which the sentencing court imposed an unconstitutionally cruel 46-year sentence.

On August 17, 2018, Timothy Haag filed a brief alleging that the sentencing court erred when it invoked retribution as the basis to override the supported findings of diminished culpability and extensive rehabilitation and sentenced Timothy Haag to a 46-year minimum to life sentence. Haag also argued that state and federal precedent require sentencing judges to meaningfully consider how children are different and how these differences counsel against irrevocably sentencing them to a lifetime in prison. Finally, Haag argued a 46-year sentence was a de facto life sentence that deprives him of the opportunity to reenter society.

The Court of Appeals, in an unpublished opinion, denied his request for relief. *State v. Haag*, No. 51409-5-II, 2019 WL 4273918 (Wn. Ct. App. Sept. 10, 2019, amended Sept. 17, 2019). In this decision, the Court of Appeals mistakenly held that Timothy Haag should have sought review by means of a personal restraint petition. *State v. Haag*, No. 51409-5-II at *4. But that is not all the Court of Appeals got wrong, the Court of Appeals erroneously interpreted the language found in *Houston-Sconiers,* 188 Wn.2d 1, 391 P.3d 409 (2017) giving sentencing courts complete discretion to consider mitigating circumstances associated with youth to mean that a sentencing court has discretion to fail to give mitigating evidence meaningful consideration. *State v. Haag*, No. 51409-5-II at *5.

The Court of Appeals also misinterpreted *Ramos, State v. Ramos,* 187 Wn.2d 420, 453, 387 P.3d 650, *cert. denied*, 138 S. Ct. 467 (2017), to hold that a de facto life sentence is restricted to a sentence that exceeds the average human life span. *State v. Haag*, No. 51409-5-II at *7. Because the Court of Appeals erroneously believed only sentences exceeding the average human life span could be considered de facto life sentences, the Court of Appeals did not consider the reduced life span of an incarcerated youth nor the language in our supreme court decisions regarding the opportunity for a life in society for individuals who committed crimes when they were children.

Mr. Haag timely filed his Petition for Review. October 10, 2019. Subsequently, this court requested additional briefing addressing *State v. Washington v. Christian Delbosque, Supreme Court 96709-1*. April 13, 2020. For a more comprehensive review, please see Brief of Appellant (August 20, 2018), Reply Brief of Appellant (March 4, 2019), Petition for Review (October 10, 2019) and Supplemental Brief addressing the *Delsbosque* decision (April 13, 2020) setting out facts and law relevant to this supplemental briefing and is hereby incorporated herein by reference.

1. <u>The *Miller* Re-Sentencing</u>

After spending 24 years in prison, for a crime he committed when he was less than two months past his 17th birthday (CP 47), Timothy Haag

was given hope for a new lease on life in January 2018. As part of the "*Miller* fix" statute passed in 2014, Haag was automatically entitled to a new sentencing hearing where the judge would be obligated to "take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012); RCW 10.95.030, 035.

Haag was no longer the same person he was back in 1994 and proved it daily in prison through his performance in his work and participation in various programs. CP 54-55, 61. At the hearing, two experts spoke at length about the trauma and deep emotional issues that preceded the murder and were unequivocal about his readiness to return to the outside world. RPII 6-91, CP 61-95. Even the judge agreed that Haag "has reached a significant level of rehabilitation" and "has exhibited a stellar track record in prison and has been assessed as a low risk for violently re-offending." RPI 27. The court, even while discounting the uncontroverted expert testimony, found that Haag was "not irretrievably depraved nor irreparably corrupt." RPI 25. Unfortunately, this hope proved false when he was sentenced to an additional 22 years purely for retribution. RPI 25.

At the *Miller* re-sentencing hearing, Haag presented the testimony of Kenneth Pierson, Dorcy Lang, and his mother, along with the expert

testimony of Dr. Ronald Roesch and Dr. Marty Beyer. Both psychologists concluded that, had Haag been assessed in 1994 using the SAVRY (Structured Assessment of Violence Risk in Youth), he would have been given a low risk score. CP 77, 92.

Dr. Marty Beyer detailed in her report how Haag "was traumatized by the combination of losing his father, living in poverty, being picked on for years at school, psychological maltreatment by his stepfather, the sudden loss of his best friend and his fears about the rejection he would experience if his sexual orientation was revealed." CP 62. He functioned younger than his chronological age emotionally, and "His tragic offense was the result of an unexpected explosion of his untreated grief, anger, and shame. His offense was an anomaly." *Id.*

Dr. Ronald Roesch also used the HCR-20 to assess Haag's current risk of violence and recidivism. CP 92. Consistent with the results of the SAVRY, the PREA (Prison Rape Elimination Act) assessment,[1] and the Level of Service Inventory (LSI),[2] Dr. Roesch scored Haag as having a low risk of reoffending. CP 93. Like Dr. Beyer, he concluded that,

> [H]is offense appears to have been a highly impulsive one, made in response to anger toward the victim's family that had been building up for some time. In his adolescent mind, this was a way to take revenge for what he perceived as abusive treatment of his friend Alex, with whom he was

[1] Administered by the prison. CP 89.
[2] Also administered by the prison. CP 89.

> strongly attracted but had never spoken to him about his feelings toward him. He did not consider alternative ways to cope with his feelings, in large part because he was embarrassed about his homosexuality and was unable to disclose it to anyone.

CP 94. He concluded that Haag "has matured and has become a responsible adult" who "does not have any mental health issues or anger problems that would place him at risk for future offending." *Id.*

The prosecution did not introduce any contravening witnesses or evidence, but instead focused on the nature of the crime. RP1 113-22.

2. Judge Evans

At sentencing, the Judge expressed sympathy for the victim's family. RPI 16. he expressed concern that Haag had not had counseling, RPI 22, although he completed anger management in prison, RPI 89, and both experts said that he did not have any anger or mental health issues that that would put him at risk of offending. *Id.* at 62, 94. The Judge expressed concern that the stability prong of the HCR-20 was not administered, *Id.* at 23, although Dr. Roesch, stated that the relationship stability factor is only one of ten factors of the Historical prong of the assessment which is itself only one-third of the entire assessment and it's omission did not affect the doctor's confidence in the result. CP 92-94. Judge Evans also relied on a statement by the victim's brother, Alex Anderson regarding Haag's interest in death. RP1 24. These allegations

were never substantiated or presented in any other context and related to statements allegedly made decades ago when Mr. Haag was a teenager.

Further, despite the uncontested and unquestioned reports of actual trauma when he was a child, Judge Evans generically described Haag's young life as a "mixed bag of positive and challenging circumstances, not unlike others" and made a point of rhetorically aging Haag. CP 62, RP1 20. He twice called Haag a "man" at the time of the murder and made repeated references to Haag's weight at the time and the difference in ages between Haag and the victim. RP1 18, 27.

Judge Evans accepted that Haag "has reached a significant level of rehabilitation," "has likely aged out of what is called adolescent-limited delinquency," and "is not irretrievably depraved nor irreparably corrupt." RP1 25. He also noted that "Haag has expressed what I judge to be sincere remorse and sorrow for his actions." RPI 25. His sentence was driven by a focus on "Retribution holds that punishment is a necessary and deserved consequence for one's criminal act. Under the retributive theory, severity of the punishment is calculated by the gravity of the wrong committed." RPI 25.

Although he concluded by listing the factors he had to "weigh," his earlier statements about the rehabilitation of Haag and the retributive nature of sentencing made it clear that the only consideration was how

much more to punish a person who, by all accounts, has been rehabilitated. RPI 27.

The court sentenced Timothy Haag to a minimum sentence of 46 years to life. RP1 27, CP 756-766. With his current sentence, Haag will only be eligible for parole at the age of 63 at which point he'll have lived almost three-quarters of his life in prison. Life expectancy in the prison system makes this sentence another life sentence.

V. TIMOTHY HAAG IS ENTITLED TO A NEW RESENTENCING HEARING TO CORRECT THE SENTENCING COURT AND COURT OF APPEALS' MISAPPLICATION OF THE LAW REGARDING THE NEED TO MEANINGFULLY CONSIDER MITIGATING EVIDENCE AND IMPOSE A CONSITUTIONALLY PERMISSABLE SENTENCE

Mr. Haag is entitled to relief because the imposition of a cruelly harsh 46 year sentence on an individual who demonstrated his crime reflected "unfortunate yet transient immaturity," *Miller*, 567 U.S. at 479-80 is not constitutional. Another consideration supporting remanding this case for resentencing is because he also demonstrated his capacity for change and potential for reform. The 46-year sentence is not justified in light of these findings and amounts to an unconstitutional sentence and the abuse of the trial court's discretion in failing to meaningfully consider the *Miller* sentencing factors that counsel against irrevocably sentencing youthful offenses to a lifetime in prison. Mr. Haag also squarely presents

this court with the question of whether a 46-year minimum sentence is a de facto life sentence that deprives Timothy Haag from having the chance to reenter society. Additionally, the need for guidance to resentencing courts on the application of the *Miller* mitigating factors, the proper application of *State v. Ramos,* 187 Wn.2d 420, 387 P.3d 650 (2017) and *State v. Bassett,* 192 Wn.2d 67, 428 P.3d 343 (2018) all support his request for a new sentencing hearing.

1. The Court Of Appeals Erred When It Held Haag Was Not Entitled To Have The Sentencing Court Meaningfully Consider His Mitigation And Its Failure To Provide Him With A Meaningful Opportunity For Release When It Imposed An Unconstitutionally Cruel 46 Year Minimum Sentence Despite Supported Findings Of Diminished Culpability, Significant Rehabilitation And Sincere Remorse.

The Court of Appeals, in an unpublished opinion, denied Timothy Haag's request for relief. *State v. Haag*, No. 51409-5-II, 2019 WL 4273918, (Wn. Ct. App. Sept. 10, 2019, amended Sept. 17, 2019). In this decision, the Court of Appeals mistakenly held that Timothy Haag should have sought review by means of a personal restraint petition. *State v. Haag*, No. 51409-5-II, 2019 WL 4273918, at *4 (Wn. Ct. App. Sept. 10, 2019). Contrary to this holding, this court recently held that review of sentencing conducted under RCW 10.95.030 and .035 is properly

conducted as a direct appeal. *State v. Delbosque*, 195 Wn. 2d 106, 129, 456 P.3d 806, 819 (2020).

As explained in *Delbosque, supra,* "It is essential to preserve the right to appeal in criminal cases because a PRP does not, and is not meant to, afford the same protections as an appeal. *See In re Pers. Restraint of Hagler,* 97 Wn.2d 818, 824, 650 P.3d 1103, 650 P.2d 1103 (1982). On appeal, the standard of review is more favorable to criminal defendants, *as the State has the burden to prove beyond a reasonable doubt that a constitutional error is harmless*. *Id.* at 825, 650 P.3d 1103. In contrast, a personal restraint petitioner claiming a constitutional violation must establish that they were actually and substantially prejudiced. *In re Pers. Restraint of Benn,* 134 Wn.2d 868, 884-85, 952 P.2d 116 (1998)." *State v. Delbosque*, 195 Wn. 2d at 129 (emphasis added).

These heightened protections of a direct appeal as compared to a PRP are especially significant in the context of juvenile sentencing. Indeed, this court explained, that "[w]hen a juvenile offender is sentenced in adult court, youth matters on a constitutional level." *Ramos,* 187 Wn.2d at 428. Prohibiting juveniles from appealing their *Miller* sentences not only violates their right to appeal, but runs contrary to our cases that bolster protections for juvenile offenders facing lengthy sentences. *E.g., Bassett,* 192 Wn.2d 67; *Ramos,* 187 Wn.2d 420; *Houston-*

Sconiers, 188 Wn.2d 1, 21, 391 P.3d 409 (2017) (holding sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant). … The *Miller*-fix statute requires a full resentencing, and the sentence imposed must be subject to direct appeal. RCW 10.95.035(3) therefore violates the right to appeal in criminal cases guaranteed by Article I, § 22." *State v. Delbosque*, 195 Wn. 2d 106, 130.

In this case, the State cannot establish that the cruel 46 year sentenced imposed on an individual who has demonstrated growth, rehabilitation, and remorse is harmless beyond a reasonable doubt, and thus, this case should be remanded for a new sentencing hearing.

But that is not all the Court of Appeals got wrong, the Court of Appeals erroneously interpreted the language found in *Houston-Sconiers*, 188 Wn.2d 1,21 giving sentencing courts complete discretion to consider mitigating circumstances associated with youth to mean that a sentencing court has discretion to fail to give mitigating evidence meaningful consideration. *State v. Haag*, No. 51409-5-II at *5.

In contrast with the Court of Appeals misapplication of the obligation to consider mitigation, this Court holds that "*Miller* hearings require sentencing courts to *meaningfully* consider "mitigating factors that account for the diminished culpability of youth," including "the youth's

chances of becoming rehabilitated.”” RCW 10.95.030(3)(b). State v. Delbosque, 195 Wn.2d at 120.

While *State v. Bassett*, 192 Wn.2d 67 categorically eliminated life without the possibility of parole sentences for juveniles, it did not address indeterminate sentences under RCW 10.95.030, however, the sentencing court’s discretion in setting a minimum term between 25 years and something less that life, is constrained by the constitution and by the statutory requirement that the “court must take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*, 132 S.Ct.2455 (2012) 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).

This court will reverse a sentencing court’s decision only if it finds “ ‘a clear abuse of discretion or misapplication of the law.’ ” *State* v. *Blair*, 191 Wn.2d 155, 159, 421 P.3d 937 (2018) (quoting *State* v. *Porter*, 133 Wn.2d 177, 181, 942 P.2d 974 (1997)). A trial court abuses its discretion when “its decision ‘is manifestly unreasonable or based upon untenable grounds.’ ” *State* v. *Lamb*, 175 Wn.2d 121, 127, 285 P.3d 27 (2012) (quoting *State* v. *Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995)). *State v. Delbosque*, 195 Wn. 2d 106, 115–

16. As well, this court properly constrains sentencing court's discretion based on the constitution. *Bassett* 192 Wn.2d at 91. Accordingly, the trial court abused its discretion and the appellate court likewise erred in finding the trial court had unfettered discretion to discount mitigation evidence when, in fact, the promise of *Miller* and *Bassett* require just the opposite, the court must give great weight to mitigation in order to fashion a constitutional sentence that is not cruelly long.[3]

This court has consistently applied the *Miller* principle that "children are different." *Miller*, 567 U.S. at 481. In *O'Dell,* this court used the psychological and neurological studies discussed in *Miller, Roper,* and *Graham* to hold that age may well mitigate a defendant's culpability, even if the defendant is slightly older than 18. *State v. O'Dell*, 183 Wn.2d 680, 691-96, 358 P.3d 359 (2015). In *Ramos,* this court noted that *Miller*'s reasoning applies not only to literal juvenile life without parole sentences but also to de facto juvenile life without parole sentences. 187 Wn.2d at 438. This court has also applied *Miller*'s reasoning to hold that "sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any

[3] In reviewing the 4th Gunwall factor the *Bassett* court found it was "instructive to look at how **our jurisprudence on juvenile sentencing has evolved to ensure greater protection for children**. 192 Wn.2d at 81.

juvenile defendant" and "*must have discretion to impose any sentence below the otherwise applicable SRA range* and/or sentence enhancements." *State v. Houston-Sconiers,* 188 Wn.2d at 21 (emphasis added).

Our legislature has also demonstrated its "ongoing concern for juvenile justice issues." *Ramos,* 187 Wn.2d at 446, (citing RCW 9.94A.540(3) (eliminating mandatory minimum sentences for juvenile offenders tried as adults), .730 (expanding parole eligibility for juvenile offenders tried as adults)).

After *Miller,* the legislature did away with life without parole sentences for children age 15 and under. RCW 10.95.030(3)(a)(i). Thus, we see that established bodies of state law, both statutory and case-based, recognize that children warrant special protections in sentencing. *Bassett*, 192 Wn. 2d 67, 81.

Taking these factors into account requires more than lip service, the sentencing court must implement the central tenets of *Graham*, *Roper*, *Miller* and *Montgomery* and its progeny, that children are "less deserving of the most severe punishments and their traits are less likely to be evidence of irretrievable depravity. *Delbosque,* 6 Wn. App. 2d at 419 (internal quotation marks omitted) (quoting *Miller,* 567 U.S. at 471, 132

S.Ct. 2455). When the court failed to implement the directive of the statute to meaningfully consider the mitigating factors, the court abused its discretion and this court's extra protections given to juveniles under Art. 1, § 14 of the Wash. Const. *See, also Bassett*, 192 Wn.2d at 73; *Graham v. Florida,* 560 US 48, 82, 130 S. Ct. 2011, 176 L.Ed, 2d 825 (2010);); *Miller v. Alabama,* 567 U.S. 460,132 S.Ct 2455, 183 L.Ed2d 407 (2012); *Montgomery v. Louisiana*, __ U.S. __, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016); *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L.Ed. 2d 1 (2005).

Consequently, the trial court's and the Court of Appeals' misapplication of governing law resulted in upholding a cruel sentence imposed on an individual whom the trial court acknowledged was both less culpable due to youth and largely rehabilitated since the commission of the crime. Such a sentence is inconsistent with art. 1, §14, Wash. Const.; *State v. Bassett,* 192 Wn.2d 67 (2018); *Miller v. Alabama,* 567 U.S. 460 (2012); and *United States v. Briones,* 929 F.3d 1957, 1067 (9th Cir. 2019 (need to reorient the sentencing analysis to a forward looking assessment of defendant's capacity for change ... rather than a backward focused review of the defendant's criminal history.)

Ramos was decided before Timothy Haag was resentenced however, both the trial court and the Court of Appeals failed to properly

apply the guidance contained in the opinion. *State v. Ramos*, 187 Wn.2d 420, 387 P.3d 650 (as amended (Feb. 22, 2017). The value and necessity of fairly applying the precedent is evident. *Ramos* requires sentencing courts to meaningfully consider how juveniles are different from adults and instructed courts that they "must do far more than simply recite the differences between juveniles and adults and make conclusory statements that the offender has not shown an exceptional downward sentence is justified." *Ramos.* 187 Wn.2d at 443. Instead, the court must "receive and consider relevant mitigation evidence bearing on the circumstances of the offense and the culpability of the offender, including both expert and lay testimony as appropriate." *State v. Delbosque*, 456 P.3d at 814–15.

Here, the uncontroverted evidence of change and maturity produced by Haag was impermissibly discounted by the court in its focus on the crime and the role of retribution. As discussed in *Delbosque,* courts continue to reassess their review of *Miller* hearings. "**In clarifying what is required in a *Miller* hearing, the Ninth Circuit declared that sentencing courts "must reorient the sentencing analysis to a forward-looking assessment of the defendant's capacity for change or propensity for incorrigibility, rather than a backward-focused review of the defendant's criminal history."** *United States* v. *Briones,* 929 F.3d 1057, 1066, 1067 (9th Cir. 2019). **"The key question is whether the**

defendant is capable of change. If subsequent events effectively show that the defendant *has* changed or *is* capable of changing, LWOP is not an option." *Id.* at 1067 (citation omitted, emphasis added). *State v. Delbosque*, 456 P.3d at 815. These observations are highly relevant considering the uncontroverted evidence Mr. Haag presented at his *Miller* sentencing hearing and pertinent to his request that he be resentenced by a court that fairly applies these precepts. Mr. Haag presented lay and expert evidence of not only his capacity for change but his actual rehabilitation, growth and maturity.

The Court of Appeals also misinterpreted *Ramos*, 187 Wn.2d at 434, to hold that a de facto life sentence is restricted to a sentence that exceeds the average human life span. *State v. Haag*, No. 51409-5-II at *7.

Recently, this court specifically addressed the fallacy of such an interpretation, *State v. Delbosque*, 195 Wn.2d at 121, and, thus, the Court of Appeal's failure to address the 46-year sentence because by its reckoning it would not exceed an average life is erroneous.

Bassett held that RCW 10.95.030(3)(a)(ii) is unconstitutional to the extent that it allows any juvenile to be sentenced to life without parole. *Bassett*, 192 Wn.2d at 91, 428 P.3d 343. Consequently, every judge conducting a *Miller* sentencing in Washington *must* set a minimum term that is less than life. In *Ramos*, this court stated that a "standard range

consecutive sentencing may, and in this case did, result in a total prison term exceeding the average human life-span—that is, a de facto life sentence." *Ramos,* 187 Wn.2d at 434. However, as this court explained in D*elbosque, "*we did not define "de facto life sentence" as a "total prison term exceeding the average human life-span." *Id.* Rather, this court explained, "It is undisputed that Ramos' 85-year aggregate sentence is a de facto life sentence, so the question of precisely how long a potential sentence must be in order to trigger *Miller's* requirements is not before us." *State v. Delbosque*, 195 Wn. 2d 106, 121–22, (citing *Ramos,*187 Wn.2d at 439 n.6).

And while both the *Ramos* and the *Delbosque* courts intentionally imposed sentences they believed to be de facto life sentences, neither case presented the question to this Court of what is a life sentence and what hope for some life outside of a prison is afforded a defendant who committed their crime while still a child. "The United States Supreme Court viewed the concept of "life" in *Miller* and *Graham* more broadly than biological survival; it implicitly endorsed the notion that an individual is effectively incarcerated for "life" if he will have no opportunity to truly reenter society or have any meaningful life outside of prison." *Casiano v. Commissioner of Corrections,* 317 Conn 52, 115 A.3d 1031, 1047 (Conn. 2015).

Because the Court of Appeals erroneously believed only sentences exceeding the average human life span could be considered de facto life sentences, the court of appeals did not consider the reduced life span of an incarcerated youth nor the language in our supreme court decisions regarding the opportunity for a life in society for individuals who committed crimes when they were children. This failure to accurately apply the law by the Court of Appeals to Mr. Haag's request for resentencing requires his case be remanded for a new sentencing hearing at which the sentencing court gives meaningful consideration to Timothy Haag's mitigation and impose a sentence that gives effect to United States Supreme Court and Washington State Supreme Court jurisprudence that children are not to be sentenced to cruelly harsh sentences. Haag presented argument and studies demonstrating that such a sentence is a life sentence when imposed on a juvenile offender and that this sentence is cruel and disproportionate, requiring a remand. *See,* Brief of Appellant Section 4, Issue 1 (d) (August 20, 2018), Haag Petition for Review Section V, Issue 3 (October 10, 2019), *See also, State v. Bassett,* 192 Wn.2d 67.

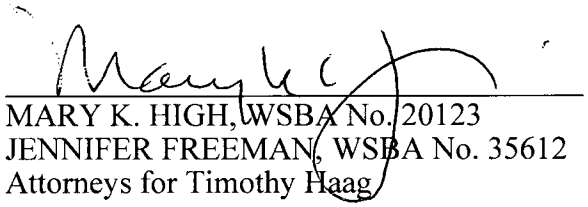
To be a constitutionally permissible sentence, Timothy Haag is entitled to a sentence that permits him to have a life in society. Life, as defined by our courts is not merely a release to a hospice or geriatric living facility. Haag presented argument and studies demonstrating that a 46-year

sentence is a life sentence when imposed on a juvenile offender and that this sentence is cruel and disproportionate, requiring a remand. *See, State v. Bassett,* 192 Wn.2d 67. Accordingly, Haag is entitled to a meaningful opportunity for release based on his maturity and rehabilitation.

VI. CONCLUSION

The sentencing court abused its discretion and the Court of Appeals likewise erred in finding the sentencing court has unfettered discretion to discount mitigation evidence when, in fact, the promise of *Miller* requires just the opposite, the court must give great weight to mitigation in order to fashion a constitutional sentence that is not cruelly long and provides a meaningful opportunity for release and a life in society

RESPECTFULLY SUBMITTED this 17th day of July 2020.



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CERTIFICATE OF SERVICE

The undersigned certifies that on this day correct copies of this petition for review were delivered electronically to the following:

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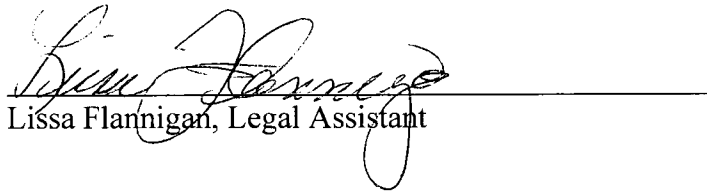
The undersigned certifies that on this day correct copies of this petition for review were delivered by U.S. mail to the following:

Timothy Haag, DOC #731136
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

This statement is certified to be true and correct under penalty of perjury of the laws of the state of Washington.

Dated this 17th day of July 20202 at Tacoma, Washington.



Lissa Flannigan, Legal Assistant

PIERCE COUNTY ASSIGNED COUNSEL

July 17, 2020 - 5:17 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97766-6
Appellate Court Case Title:	State of Washington v. Timothy E. Haag
Superior Court Case Number:	94-1-00411-2

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