

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 97766-6

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TIMOTHY HAAG,

Petitioner.

SUPPLEMENTAL BRIEFING RE: DELBOSQUE

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I. ARGUMENT

Delbosque should not substantially effect this Court's analysis of the Petition for Review. The trial court in Petitioner's case did not sentence him to a *de facto* life sentence, unlike the *Delbosque* case, so the analysis in that case is of limited utility here. If this Court were to find that the trial court's sentence was a *de facto* life sentence, the case would need to be remanded for the trial court to either issue a sentence that was not a *de facto* life sentence, or make the appropriate findings under *Miller* to allow for such a sentence. The trial court in *Delbosque* sentenced the defendant to a *de facto* life sentence, and then made the requisite factual findings pursuant to RCW 10.95.035, the *Miller*-fix statute. *State v. Delbosque*, 456 P.3d 806, 812 (2020). Whether those findings were supported by substantial evidence was one of the three issues addressed in *Delbosque*. *Id.* Since the trial court in this case specifically did not sentence Petitioner to a life sentence, *de facto* or otherwise, the analysis in *Delbosque* would only be applicable to any re-sentencing that might occur, but does not really effect the analysis for the issues raised by the petition for review.

Delbosque case explicitly avoided the question of what constitutes a *de facto* life sentence, thus it does not directly resolve the issue before the court. *Id.* at 815. If this court ultimately finds that the sentence imposed by the trial court was a *de facto* life sentence, *Delbosque* would

serve to guide the trial court in making appropriate findings in a re-sentencing hearing if it were to seek to impose a life or *de facto* life sentence.

Regarding the PRP portion of *Delbosque*'s ruling, the court at this point could apply the more protective standard reserved for direct appeal and if the case was remanded for a re-sentencing, then *Delbosque* would inform the appropriate nature of review of any new sentence.

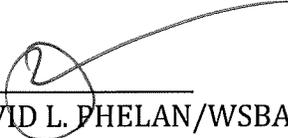
II. CONCLUSION

Delbosque does not have any substantial effect on the analysis of the issue in the Petition for Review.

Respectfully submitted this 13th day of April, 2020 .

RYAN P. JURVAKAINEN
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By:



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CERTIFICATE OF SERVICE

DAVID PHELAN, certifies that opposing counsel was served through the Washington State Appeals Portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on April 13th, 2020.



DAVID PHELAN

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

April 13, 2020 - 2:40 PM

Transmittal Information

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