

75168-9

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Court of Appeals  
Division I  
State of Washington

NO. 75168-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Appellant,

v.

JAI'MAR SCOTT,

Respondent.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
THE HONORABLE RICHARD F. MCDERMOTT

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**BRIEF OF APPELLANT**

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A. INTRODUCTION

Jai'Mar Scott was convicted of murder in the first degree in 1990. His standard range for that crime was 240 to 320 months. The defense recommended that the court impose the low end of the standard range, which was also the mandatory minimum term for that crime. The court instead imposed an exceptional sentence of 900 months, which was affirmed by this Court and the Washington Supreme Court. Because Scott was 17 years old at the time of the crime, he is now able to petition for early release pursuant to RCW 9.94A.730. Recent cases invalidating mandatory life sentences for juveniles are not material to Scott's sentence because the sentencing court had discretion to impose a sentence of only 20 years. Scott's collateral attack of his sentence is untimely, and should have been transferred to this Court for consideration as a personal restraint petition. This Court should dismiss the untimely collateral attack.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in concluding that Scott's motion for resentencing was timely pursuant to RCW 10.73.090 and 10.73.100.

2. The trial court erred in finding that Miller v. Alabama is a significant change in the law material to Scott's sentence.

3. The trial court erred in finding that State v. Ronquillo is a significant change in the law material to Scott's sentence.

4. The trial court erred in not transferring Scott's motion for resentencing to the Court of Appeals for consideration as a personal restraint petition.

C. STATEMENT OF THE CASE

Jai'Mar Scott was convicted by jury verdict in 1990 of premeditated murder in the first degree. CP 20.<sup>1</sup> The facts of the crime are set forth in this Court's decision in State v. Scott, 72 Wn. App. 207, 866 P.2d 1258 (1993), which affirmed the conviction and sentence:

On September 27, 1989, Agnes Jackson, age 78, was murdered in her home located at 8312 Wolcott Avenue South in Seattle. Ms. Jackson, who suffered from Alzheimer's Disease, lived alone.

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<sup>1</sup> At trial and sentencing, Scott was represented by The Honorable Michael Trickey. The State would respectfully request that Judge Trickey recuse himself from consideration of this case. The appearance of fairness doctrine provides that judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including where the judge previously participated personally and substantially in the underlying proceeding. State v. Gentry, 183 Wn.2d 749, 761-62, 356 P.3d 714 (2015).

Police investigation revealed that the murderer did not use force to gain entry into the house. There were signs of violence, including bloodstains and displaced items in Ms. Jackson's living room and in both bedrooms of the home.

Ms. Jackson's body was found by neighbors in the back bedroom. Her face was badly beaten and a telephone cord was bound tightly around her neck. The victim was naked from the waist down and her blouse and sweater were pulled up to the base of her breasts. Stray hairs and two burnt matches were collected from Ms. Jackson's abdomen.

Detective Lima theorized that the murderer used matches as a source of light during the attack. Numerous matchbooks and burnt matches were found throughout the residence. The contents of Ms. Jackson's wallet were strewn about on the living room couch. Her checkbook, which was found on her bed, had been opened.

Latent fingerprints were lifted from different locations within the home. One bloody fingerprint was located in the back bedroom/storage area where the victim was located. This print was found on a wall approximately 5 ½ feet from the floor. Next to this print was a bloody afghan, which had been placed over the window. The afghan normally was kept on the living room couch.

An autopsy by the King County Medical Examiner's Office attributed Ms. Jackson's death to ligature and manual strangulation. Ms. Jackson suffered six fractures to her neck, including a fracture through the neck bone to the back of the cervical spinal column. The autopsy also revealed the following head injuries: three fractures to the right eye and cheekbone, a subdural hemorrhage, a fracture to the base of her skull, and two gaping lacerations to the top of her head. An internal examination disclosed

eight rib fractures. The autopsy also revealed a faint contusion on the mons pubis. Dr. Fitterer testified that all of the injuries looked as though they had occurred prior to the victim's death.

The police concluded that the victim's own cane and a broken and bloody glass candy jar lid were used as weapons in the attack.

Scott had lived next door to Ms. Jackson for 2 years. His mother, Elizabeth White, took care of Ms. Jackson for \$100 a week. Because of this arrangement, Scott often did chores for Ms. Jackson and had access to the inside of her home.

On September 28, 1989, the police matched one of the latent fingerprints lifted from the victim's home to Scott's fingerprint. Police executed a search warrant of Scott's home and seized two bloody socks, a T-shirt with bloodstains and tennis shoes. Scott's fingerprints were also matched to prints found in various parts of the victim's home. Pubic hairs which were removed from the victim's body and clothing contained the same microscopic characteristics as Scott's hairs. Blood comparison tests confirmed that the blood on Scott's socks and shirt was consistent with the victim's blood and not Scott's. Police also found numerous burnt matches throughout Scott's bedroom and the same brand of matchbook that was found in the victim's home. Finally, a bloody shoe print photographed at the scene was consistent with the size, tread pattern, and wear pattern of tennis shoes belonging to Scott.

Id. at 210-12.

Scott was 17 years old when he committed the murder. CP 20, 29. The juvenile court declined jurisdiction, finding that "the sophistication and maturity of the respondent (juvenile) by

consideration of the investigation as shown of his/her home, environmental situation, emotional attitude and pattern of living is such that he/she should be treated as an adult." CP 50.<sup>2</sup>

At sentencing, the parties agreed that the standard range was 240 to 320 months, with 240 months being the mandatory minimum sentence that could be imposed. CP 86, 100, 109. The State requested an exceptional sentence above the standard range. CP 109-19. The defense requested the low end of the standard range sentence. CP 100. The defense argued that Scott was only 18 years old and "had nothing in his background to indicate that he would commit a crime of this violence." CP 67. The trial court sentenced Scott to an exceptional sentence of 900 months based upon four independent findings: 1) that Scott's conduct constituted deliberate cruelty, 2) that his conduct was an abuse of trust, 3) that the crime involved multiple injuries and 4) that the victim was particularly vulnerable. CP 26-28.

On direct appeal, this Court held that the 900-month sentence imposed was not clearly excessive because "the aggravating factors are both numerous and individually and

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<sup>2</sup> The automatic decline statute for very serious offenses had not yet been enacted when Scott committed his crime.

collectively egregious.” Scott, 72 Wn. App. at 222. The Court of Appeals decision was affirmed by the Washington Supreme Court in State v. Ritchie, et al., 126 Wn.2d 388, 398, 894 P.2d 1308 (1995), which held that the sentencing court had properly relied on “four horrid aggravating factors” in imposing the 900-month sentence.

In 2016, Scott filed a motion for relief from judgment requesting a resentencing. CP 4-7. The State asked the superior court to transfer the motion to this Court for consideration as a personal restraint petition pursuant to CrR 7.8. CP 13-18. The State argued that the motion was untimely. CP 16-18. The court denied the State’s motion and granted the motion for relief from judgment. CP 97-99.

D. ARGUMENT

THE TRIAL COURT ERRED IN GRANTING THE MOTION FOR RELIEF FROM JUDGMENT AS IT IS UNTIMELY AND BARRED BY RCW 10.73.090.

Scott’s motion for resentencing is a collateral attack that is governed by RCW 10.73.090. The collateral attack, filed decades after the conviction became final, is untimely. The claim of error does not fall within any of the exceptions to the time bar set forth in

RCW 10.73.100. As such, pursuant to CrR 7.8(c)(2), the trial court erred in not transferring the untimely motion to this Court for consideration as a personal restraint petition.

CrR 7.8(c)(2) provides that the Superior Court *shall* transfer a motion for relief from judgment filed by a defendant to the Court of Appeals for consideration as a personal restraint petition *unless* the Superior Court determines that the motion is not time-barred by the provisions of RCW 10.73.090. Thus, an untimely collateral attack must be transferred to the Court of Appeals for consideration as a personal restraint petition. State v. Flaherty, 177 Wn.2d 90, 93, 296 P.3d 904 (2013).

RCW 10.73.090 provides that no motion collaterally attacking a judgment and sentence may be filed more than one year after the judgment becomes final, if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.090(1). A judgment becomes final on the date that it is filed with the clerk of the trial court, or the date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction, whichever is later. RCW 10.73.090(3). In the present case, the defendant's conviction

became final on June 5, 1995, when the mandate from his direct appeal was issued by the Washington Supreme Court. CP 56.

An exception to the one-year time limit contained in RCW 10.73.090 exists for errors that render the judgment and sentence "invalid on its face." RCW 10.73.090(1). A judgment is valid on its face unless the judgment evidences an error without further elaboration. In re Pers. Restraint of Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000). "[T]he general rule is that a judgment and sentence is not valid on its face if the trial judge actually exercised authority (statutory or otherwise) it did not have." In re Pers. Restraint of Scott, 173 Wn.2d 911, 917, 271 P.3d 218 (2012). In the present case, there is no error on the face of the judgment and sentence. The sentencing court did not exercise authority it did not have. The judgment and sentence is valid on its face and the exception for errors that render the judgment facially invalid does not apply.

RCW 10.73.100(6) provides an exception to the time bar where there "has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the

legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.” It is this exception to the time bar that is at issue in this appeal.

1. The Trial Court Erred In Finding That Miller v. Alabama Is A Significant Change In The Law Material To Scott's Sentence.

Scott argued below that Miller v. Alabama, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), is a significant change in the law material to his sentence. The lower court cited that case in its ruling granting the motion for relief from judgment, presumably finding that Miller meets the qualifications of RCW 10.73.100(6). The trial court erred in finding that Scott's claim falls within the exception to the time bar provided in RCW 10.73.100(6) based on Miller.

The State does not dispute that Miller v. Alabama is a significant change in the law,<sup>3</sup> but the change is not material to

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<sup>3</sup> The State also does not dispute that Miller v. Alabama announced a substantive rule that applies retroactively. See Montgomery v. Louisiana, \_\_\_ U.S. \_\_\_, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016).

Scott's conviction and sentence. In Miller, the United States Supreme Court held that a sentencing scheme constitutes cruel and unusual punishment if it *mandates* a sentence of life without parole for a juvenile offender. 132 S. Ct. at 2469. However, the Court held that a life without parole sentence may be imposed on a juvenile offender in a homicide case if a lesser sentence is within the court's discretion. Id. See Bell v. Uribe, 748 F.3d 857, 870 (9<sup>th</sup> Cir. 2013), cert. denied, 135 S. Ct. 1545 (2015) (holding that a life without parole sentence imposed on 16-year-old defendant did not violate Miller because the sentencing scheme afforded the court discretion to impose a lower sentence).

Miller is not material to Scott's sentence because a life sentence was not mandated by statute. Scott's standard range was 240 to 320 months, as reflected in the judgment and sentence, and the trial court exercised its discretion in imposing a 900-month sentence, based on the egregious aggravating facts. CP 122-25. The sentencing court was free to consider Scott's youth in deciding whether to impose a standard range sentence. As long as a sentencing court was free to consider youth and impose less than a life sentence, a life sentence imposed on a juvenile offender does not violate the Eighth Amendment. The procedure followed in this

case was constitutional pursuant to Miller. Miller does not constitute a significant change in the law material to Scott's sentence.

Moreover, even if Miller did apply to Scott's case, the recent enactment of RCW 9.94A.730 provides the necessary relief. RCW 9.94A.730 provides that "any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement." Recently, in Montgomery v. Louisiana, the United States Supreme Court held that when a life sentence has been imposed on a juvenile in violation of the rule set forth in Miller v. Alabama, "a State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." \_\_ U.S. \_\_, 136 S. Ct. 718, 736, 193 L. Ed. 2d 599 (2016). Scott is now eligible for release pursuant to RCW 9.94A.730,<sup>4</sup> and thus any arguable Miller violation has been remedied by that procedure. As further interpreted by Montgomery v. Louisiana, Miller v. Alabama does not mandate resentencing.

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<sup>4</sup> Scott petitioned for release in 2015. CP 54. His petition for release was rejected by the Indeterminate Sentence Review Board on April 26, 2016. Scott has been informed that he may petition again in 2019.

2. The Trial Court Erred In Finding That State v. Ronquillo Is A Significant Change In The Law Material To Scott's Sentence.

In granting the motion for relief from judgment to allow resentencing, the court also cited State v. Ronquillo, 190 Wn. App. 765, 775, 361 P.3d 779 (2015), presumably finding that Ronquillo is a significant change in law pursuant to RCW 10.73.100(6). Like Miller, Ronquillo is not a significant change in the law material to Scott's sentence.

Ronquillo has multiple holdings, but none of them are material to Scott's sentence. First, this Court held in Ronquillo that the holding of Miller applies not only to a sentence of life without parole, but to a "de facto life sentence" that would keep a juvenile incarcerated until his late 60s. Id. at 775. The State does not dispute that the sentence imposed here is a *de facto* life sentence pursuant to Ronquillo. However, as explained above, the sentence was not mandated by statute, but chosen by the trial court in its discretion after considering all the circumstances of the crime, including Scott's age. In contrast, in Ronquillo's case the sentencing court imposed the bottom of the standard range for each count, resulting in a sentence of 615 months. Id. at 769, 774. Because the Ronquillo sentencing court believed it was imposing

the lowest sentence authorized by law, it was a mandatory *de facto* life sentence. In this case, the sentencing court knew it could impose a sentence of 20 years and chose not to do so. As such, neither Miller nor Ronquillo's extension of Miller apply to this case to render Scott's sentence unconstitutional.

Second, Ronquillo held that Miller applies to aggregate sentences imposed for multiple crimes. Id. at 777. This holding has no application in Scott's case, as his sentence was imposed for a single crime: premeditated murder.

Third, Ronquillo held that RCW 9.94A.730 does not fix a Miller error. This holding was subsequently overruled by Montgomery v. Louisiana, as explained supra, and is no longer valid.

Finally, Ronquillo held that upon remand the sentencing court should consider the defendant's age in exercising its discretion whether to impose an exceptional sentence below the standard range. 190 Wn. App. at 781. Ronquillo had requested an exceptional sentence below the standard range based upon his youth, and the trial court refused to impose it. Id. at 780. This Court directed the trial court to reconsider that basis for an

exceptional sentence in light of State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015).

Scott did not request an exceptional sentence below the standard range. CP 100. And indeed, the sentencing court had no discretion to impose an exceptional sentence below the standard range. Scott was convicted of murder in the first degree. RCW 9.94A.540(a) (which was RCW 9.94A.120(4) at the time of Scott's crime) mandates imposition of a minimum term of 20 years for the crime of murder in the first degree.<sup>5</sup> Scott's standard range was 240 to 320 months. CP 109, 121. The sentencing court could not impose a sentence of less than 20 years, and thus could not have imposed a sentence below the standard range. See State v. Miller, 110 Wn.2d 528, 756 P.2d 122 (1988), overruled on other grounds in State v. Barber, 170 Wn.2d 854, 248 P.3d 494 (2011) (holding that defendant was misadvised that the court could impose an exceptional sentence below 20 years for murder in the first degree). See also State v. Graham, 181 Wn.2d 878, 884, 337 P.3d 319 (2014) (stating "exceptional sentences downward are not available for persistent offenders, offenses with mandatory minimums, or

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<sup>5</sup> Former RCW 9.94A.120(4) stated: "An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years."

some sex offenses." ). An exceptional sentence below the standard range was not legally available because of the mandatory minimum. As such, the trial court did not commit the error identified in O'Dell and Ronquillo and neither of those cases are a significant change in the law material to Scott's sentence.

This motion for relief from judgment is untimely and should have been transferred to this Court for consideration as a personal restraint petition. For the reasons argued above, this Court should direct the trial court to vacate its order granting the motion, convert the motion to a personal restraint petition, and dismiss the petition.

E. CONCLUSION

Scott's motion for relief from judgment should be converted to a personal restraint petition and dismissed as untimely.

DATED this 5th day of July, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Jeffrey Ellis, the attorney for the respondent, at jeffreyerwinellis@gmail.com, containing a copy of the Brief of Appellant, in State v. Jaimar Eli Scott, Cause No. 75168-9, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 5 day of July, 2016.



Name:  
Done in Seattle, Washington