Supreme Court No. 100694-2
Court of Appeals No. 81109-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

ANNA KASPAROVA,
Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

MEMORANDUM OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON IN SUPPORT OF PETITIONER

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I. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The identity and interests of *amicus curiae* are set forth in the motion for leave to file, which is filed contemporaneously with this memorandum.

II. REASONS WHY REVIEW SHOULD BE GRANTED

For purposes of criminal punishment, "children are different." *Miller v. Alabama*, 567 U.S. 460, 481, 132 S. Ct 2455, 183 L. Ed. 2d 407 (2012). A guiding principle of criminal law is proportionality in sentencing: criminal punishment should factor in the culpability of the defendant. No court has held that youthful defendants are not responsible for their crimes. Instead, this Court requires sentencing courts to consider the developmental immaturity of youth, with the understanding that youthful defendants may deserve less punishment than older defendants. That same understanding applies to defendants with intellectual disabilities, a demographic that continually serves as the basis for expanding

constitutional sentencing protections for youth without ever receiving the benefit of those protections. This case presents an opportunity for the Court to ensure equitable application of the law, consistent with science, by applying *In re Monschke*, 197 Wn.2d 305, 482 P.3d 276 (2021), to slightly older youth and ensuring sentencing protections for defendants with intellectual disabilities.

Over the last 20 years, the Court's recognition of the diminished culpability of youthful defendants as well as the crucial need for proportionality in the sentencing of youthful defendants has expanded. Scientific developments in this area unequivocally illustrate that the criminal conduct and choices of youthful defendants are influenced by several developmental factors, including the "inability to assess consequences" and the "recklessness, impulsivity, and heedless risk-taking" that can contribute to an "underdeveloped sense of responsibility" in those individuals. *Miller*, 567 U.S. at 471–72 (citation omitted). These factors mitigate the culpability of youthful individuals

under the long-standing doctrine that individuals who possess reduced decision-making capabilities have reduced culpability.

The existing framework around individualized sentencing for youthful defendants is firmly established upon the brain science of adolescence as well as legal and constitutional principles. The intersection of punishment in relation to youth and intellectual disability is a concept that has served as the basis for the constitutional protections discussed above.

The concept of youth as a "mitigating quality" is rooted in United States Supreme Court cases acknowledging the reduced culpability of people with intellectual disabilities. *In re Monschke*, 197 Wn.2d 305, 316–17, 482 P.3d 276 (2021) (citing *Hall v. Florida*, 572 U.S. 701, 134 S. Ct. 1986, 188 L. Ed. 2d 1007 (2014); *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002)). *Atkins* recognized that people with intellectual disabilities "have diminished capacit[y] to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in

logical reasoning, to control impulses, and to understand the reactions of others." 536 U.S. at 318, 320.

Since *Atkins*, individualized sentencing and youthful defendant caselaw has evolved. But the people addressed in *Atkins*—individuals with intellectual disabilities—have been left behind. The present case is an opportunity for the Washington State Supreme Court to update its jurisprudence on people with intellectual disabilities, bringing it from 2002 to the present day. It should take that opportunity.

III. ISSUES TO BE ADDRESSED BY AMICUS

1. Should this Court accept review to apply the individualized sentencing protections for youthful defendants from *In re Monschke* to include 21-year-olds?

2. Should this Court accept review to apply *In re Monschke*'s individualized sentencing protections to individuals with intellectual disabilities?

IV. STATEMENT OF THE CASE

The defendant, Anna Kasparova, was 21 years old at the time of the crime. According to the record, she has an IQ of 74, making her eligible for a diagnosis of intellectual disability,[1] and the functional intelligence of a middle schooler. Pet. 17, 23.

Generally, sentencing courts have the authority to impose a sentence outside the standard sentence range for an offense if it finds "substantial and compelling reasons justifying an exceptional sentence," including whether the "defendant's capacity to appreciate the wrongfulness of his or her conduct . . . was significantly impaired." RCW 9.94A.535(1)(e). But RCW 9.94A.540(1)(a) dictates that an adult defendant convicted of murder in the first degree "shall be sentenced to a term of total

[1] *Diagnostic and Statistical Manual of Mental Disorders*, Am. Psychiatric Ass'n (5th ed. 2013). *See also* RCW 71A.10.020(5) ("'Developmental disability' means a disability attributable to intellectual disability …which … originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.")

confinement not less than twenty years." This term of confinement "shall not be varied or modified under RCW 9.94A.535." RCW 9.94A.540(1).

Here, the sentencing court concluded that it did not have the discretion to impose a sentence below the statutory mandatory minimum 20-year sentence and the mandatory consecutive 5-year firearm enhancement. The court sentenced Anna to 240 months incarceration for the underlying charge, plus the 60-month firearm enhancement. The Court of Appeals affirmed the sentence. Anna petitioned the Washington State Supreme Court for review of her sentence, among other issues.

V. ARGUMENT

A. The Court should explicitly apply the "individualized sentencing" protections from *In re Monschke* to include 21-year-olds.

Like the Eighth Amendment's bar against cruel and unusual punishment, article I, section 14 of the Washington Constitution protects against cruel punishment. *In re Monschke*, 197 Wn.2d at 311. In the context of sentencing,

article I, section 14 provides greater protection than the Eighth Amendment. *Id.* It "requires courts to exercise 'complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant,' even when faced with mandatory statutory language." *Id.* (quoting *State v. Houston-Sconiers*, 188 Wn.2d 1, 21, 391 P.3d 409 (2017)).

The transformation of the constitutional landscape regarding youthful defendants in the criminal legal system has been substantial over the course of the last two decades, culminating in an overarching body of caselaw clearly holding that the imposition of harsh criminal sentences on youthful defendants violates their Eighth Amendment rights against cruel and unusual punishment. *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), which barred the death penalty for youthful defendants, *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), which prohibited the imposition of a life without the possibility of parole ("LWOP") sentence on a youthful defendant, and *Miller*,

567 U.S. 460 (2012), which invalidated statutes that required LWOP sentences for youthful defendants convicted of murder, collectively represent the acceptance of scientific developments that have determined "age may well mitigate a defendant's culpability, even if that defendant is over the age of 18." *State v. O'Dell*, 183 Wn.2d 680, 695, 358 P.3d 359 (2015).

As this Court noted in *In re Monschke*, "there is definitely an affirmative trend among states to carve out rehabilitative space for 'young' or 'youthful' defendants as old as their mid-20s", citing to a host of state statutes expanding the class of youthful defendants to include individuals in their 20s, including Washington D.C., where youth is defined as 24 and below; South Carolina, which defines youth as under 25; and Vermont, which allows defendants 22 and under to be classified as a youthful defendant, among others. 197 Wn.2d at 312 n.8. As states across the nation are expanding the constitutional protections afforded to youthful defendants, New Jersey has led this reformative charge with the enactment of a 2021 statute

requiring courts to consider youthfulness as 26 and below and to take a defendant's age into consideration as a mitigating factor at time of sentencing. N.J. Rev. Stat. § 2C:44-1 (2021). Senator Shirley Turner, a primary sponsor of this bill, remarked following its historic passage: "All too often people make mistakes in their youth which follow them for the rest of their lives . . . **.** By allowing judges to consider the age of defendants, up to age 26, we can help to ensure the sentencing of children and young adults takes into account their level of maturity when they committed the crime, so can be given a second chance to turn their lives around."[2]

This Court has acknowledged and accepted "that developments in neuroscience have rendered a bright line at age 18 arbitrary and that defendants age [20] and younger should receive the benefit of the same constitutional protections that

[2] *Governor Murphy Signs Sentencing Reform Legislation*, N.J. gov. (Oct. 19, 2020), https://www.nj.gov/governor/news/news/562020/20201019d.shtml.

this court and the United States Supreme Court have recognized for juveniles." *In re Monschke*, 197 Wn.2d at 308, 313. The decision of this Court in *In re Monschke* to apply the class of youthful defendants to include 19 and 20-year-olds relied heavily on the extensive scientific developments regarding brain development of youth, particularly within the context of criminal culpability, information that was not in existence at the time of the passage of the Sentencing Reform Act of 1981. The fact that the legislature "did not have the benefit of psychological and neurological studies showing that the parts of the brain involved in behavior control continue to develop well into a person's 20s" was one of the factors that compelled that conclusion. *O'Dell*, 183 Wn.2d at 691–92 (quoting *Miller*, 567 U.S. at 472).

Recognizing that every individual defendant is different and that "not every 20-year-old defendant will deserve leniency on account of youthfulness," "the variability in individual attributes of youthfulness" coupled with the definitive scientific

proof that "biological and psychological development continues into the early twenties, well beyond the age of majority", supports the expansion of the constitutional sentencing protections for youth to include 21-year-olds. *In re Monschke*, 197 Wn.2d at 285 (citation omitted); *see also Miller*, 567 U.S. at 477–80 (requiring consideration of the specific youthful characteristics of each individual defendant); *Houston-Sconiers*, 188 Wn.2d at 23 (requiring consideration at sentencing of defendant's individual youthful characteristics and many other individual factors related to culpability); Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641 (2016)).

In *In re Monschke*, this Court correctly determined that there exists "no meaningful developmental difference . . . between the brain of a 17-year-old and the brain of an 18-year-old," and that an identical argument can and should apply to individuals who are 19 or 20 years old. 197 Wn.2d at 321. This

reasoning was properly applied to ensure protection of the constitutional rights of the youthful defendants in that case. Analogous to the facts in the present case, this same line of logical reasoning should be applied to include 21-year-olds. Declining to do so creates an unjust, arbitrary bright line.

B. The Court should explicitly apply *In re Monschke's* constitutional protections to people with intellectual disabilities.

Executing people with intellectual disabilities is unconstitutional under the Eighth Amendment. *Atkins*, 536 U.S. 304. It is also unconstitutional to impose the death penalty on children in part because "[t]he same conclusions [of *Atkins*] follow from the lesser culpability of the juvenile defendant." *Roper*, 543 U.S. 551 at 569–71.

Protections for youth sentenced as adults continue to increase, all built on the foundation of the *Atkins* case regarding intellectual disability. Rather than ban a punishment outright, subsequent decisions gave sentencing courts the authority to consider lesser punishments, regardless of mandatory sentences

set by the legislature. In *Miller*, the Supreme Court applied *Roper*'s reasoning to prohibit mandatory LWOP for children. *See* 567 U.S. at 474. Relying on *Miller*, this Court held that courts must consider mitigating qualities of youth when imposing adult sentences for crimes committed as children. *Houston-Sconiers*, 188 Wn.2d at 21. Also relying in part on *Miller*, this Court held that the state constitution prohibits sentencing children to LWOP. *State v. Bassett*, 192 Wn.2d 67, 90, 428 P.3d 343 (2018). In *In re Monschke*, this Court applied *Miller*'s holding—prohibiting mandatory sentences of LWOP—to "youthful defendants." 197 Wn.2d at 306.

In re Monschke does not explicitly consider people with intellectual disabilities. But because its reasoning—and the reasoning of the cases it relies on—applies equally to people with intellectual disabilities, the Court should apply *In re Monschke*'s protections to defendants like Anna.

Atkins recognized that people with intellectual disabilities "have diminished capacity[y] to understand and process

information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." 536 U.S. at 318, 320. Accordingly, *Atkins* reasoned, the retributive and deterrent purposes of punishment are reduced when applied to people with intellectual disabilities. *Id.*

Atkins concerned the death penalty. But the youth-sentencing case law makes clear that its reduced-culpability rationale applies equally to other punishment. And where, as here, decades-long prison penalties are at issue, *Houston-Sconiers* counsels that the proper remedy is to require discretion at sentencing, rather than to ban the punishment categorically. *See* 188 Wn.2d at 19. Such discretion accounts for differences among defendants, whose presentation of youth or intellectual disabilities will differ. *See In re Monschke*, 197 Wn.2d at 325 ("[W]e also recognize that every individual is different."). This discretion allows "sentencing courts to determine which

individual defendants merit leniency for these characteristics." *Id.* at 326.

As later cases applied youth-sentencing protections beyond capital punishment, the rationale remained grounded in the reduced culpability of the defendants. That rationale remains applicable to people with intellectual disabilities. For example, people with intellectual disabilities might exhibit any or all of the "hallmark features" of youth cited in *Miller* and *Houston-Sconiers* ("immaturity, impetuosity, and failure to appreciate risks and consequences"). 188 Wn.2d at 22 (quoting *Miller*, 567 U.S. at 477). So too would the factors discussed in *In re Monschke* and *Roper* apply. *See In re Monschke*, 197 Wn.2d at 321 ("*Roper* considered juveniles' lack of maturity and responsibility, their vulnerability to negative influences, and their transitory and developing character[.]"). These reasons were sufficient to apply certain sentencing protections to youth, and those same sentencing protections should be

extended to people with intellectual disabilities.[3] When sentencing a youthful defendant who is also intellectually disabled, the mitigating effects are compounded, magnifying the critical need for individualized determinations at sentencing.

Atkins has been applied in two ways: to cover more people (children) and to cover additional punishments (mandatory sentences). Somehow, people with intellectual disabilities were left behind, even as comparisons to them continue to motivate increased protections for children. *See, e.g.*, *In re Monschke*, 197 Wn.2d at 325 (analogizing to *Hall*, 572 U.S. at 713).

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[3] *Cf. Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Supports*, Am. Ass'n of Intellectual and Developmental Disabilities (12th ed. 2021) (people with intellectual disabilities may have "inadequate response systems, interpersonal competence, social judgment, or decision-making skills . . . [which] are linked to reduced intellectual and adaptive abilities that make it difficult to problem solve and to be flexible in thinking," and these "limitations create a susceptibility to dangers that is shared").

VI. CONCLUSION

For the reasons stated above, *amicus* respectfully request that petitioner's motion for discretionary review be granted.

I hereby certify that this document contains 2,358 words in accordance with RAP 18.17.

RESPECTFULLY SUBMITTED AND DATED this 28th day of April, 2022.

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