Supreme Court No. 1027273

No. 38661-9-III

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DANNY DELGADO,

Petitioner/Respondent.

CROSS-PETITION FOR REVIEW and ANSWER TO STATE'S PETITION FOR REVIEW

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I. INTRODUCTION

When Danny Delgado was a child, his father remarried and started a new family. Danny was a doting brother to his younger half-siblings, but his stepmother took advantage of Danny, involving him in incestuous sexual abuse when Danny was just a teenager. This devastated the family and led to the parents' divorce.

In the chaos, Danny's younger half-sister claimed Danny had sexually assaulted her five years earlier. Danny's father and stepmother spearheaded criminal charges against him.

The Court of Appeals correctly reversed and remanded for resentencing because, although the trial court was aware of Danny's youthfulness and history as a victim of family sexual abuse, the court erroneously failed to adequately consider these mitigating factors in sentencing. This Court should deny the State's petition and remand for resentencing.

Danny cross-petitions, because the Court of Appeals ruled Danny must use initials in briefing without conducting

the required constitutional analysis, amounting to an unconstitutional courtroom closure; because the trial court improperly excluded evidence of the stepmother's false report of domestic violence in violation of Danny's right to a fair trial; and for the reasons in Mr. Delgado's pro se Statement of Additional Grounds (SAG).

Accordingly, this Court should reject the State's petition and grant Mr. Delgado's cross-petition.

II. IDENTITY OF PETITIONER/RESPONDENT AND RELIEF SOUGHT

Mr. Delgado answers and opposes the State of Washington's petition for review. Mr. Delgado also seeks review of the Court of Appeals decision affirming his judgment and sentence.

III. ISSUES PRESENTED IN CROSS-PETITION

1. Article I, section 10 requires that "justice in all cases be administered openly." An order to redact a court record is treated as a sealing and may only be entered after a court makes

written findings that compelling privacy or safety concerns outweigh the public interest in open courts. Where Danny was ordered to file an amended brief removing the names of witnesses in the court record, without any analysis under *Ishikawa* and *Allied Newspapers*, did the Court of Appeals violate article I, section 10, and does the Court of Appeals 2012 General Order violate the Washington Constitution? RAP 13.4(b)(1), (3).

2. Article I, section 22 and the Sixth Amendment guarantee the rights to confront witnesses and to present a defense. Courts must permit criminal defendants extra latitude to test credibility. Did the trial court's limitation of cross-examination of the stepmother about her prior false report of domestic violence, which was directly relevant to her credibility, interfere with Danny's constitutional right to a fair trial, and did the Court of Appeals decision conflict with decisions of this Court and with other decisions of the Court of Appeals? RAP 13.4(b)(1), (2).

3. Danny requests this Court review the issues raised in his SAG. Is the Court of Appeals decision regarding the issues raised in the SAG in conflict with decisions of this Court, and with other decisions of the Court of Appeals? RAP 13.4(b)(1), (2).

IV. ANSWER TO STATE'S PETITION

This Court will accept a petition for review only if: 1) the decision of the Court of Appeals conflicts with a decision of the Supreme Court; or 2) the decision of the Court of Appeals conflicts with another decision of the Court of Appeals; or 3) the decision involves a significant question of law under the United States or Washington Constitution; or 4) the petition involves an issue of substantial public interest. RAP 13.4(b).

The State contends the first second, and fourth criteria are met in this case. However, the Court of Appeals' decision faithfully applies precedential authority of both this Court and the Court of Appeals. The State also seems to abandon the fourth prong, agreeing "the issue of how a trial court is to

consider requests by youthful defendants when there are no mitigating factors, other than youth, has been litigated often." Petition for Review at 14. These issues require no further clarification from this Court.

V. STATEMENT OF THE CASE

When Danny Delgado was 16, he moved in with his father's extended family. Danny was the product of his father's first marriage, and he eventually moved in with his father and stepmother's family in their Kennewick trailer. RP 430, 494, 554. Also living in these small quarters were Danny's younger half-siblings – two brothers and a sister. RP 431, 492-96. At the time, Danny's younger brothers, A.D. and G.D., were approximately nine and ten years old and shared a bunkbed in one of the two bedrooms; Danny slept on the floor of their room. RP 431-33, 492-96. Danny's half-sister, K.D., was approximately six years old and either slept in her parents' room or on the sofa in the living room. RP 431, 492-96, 557.

Danny's father, Robert Delgado, worked construction and was frequently out of town. RP 442. Danny's stepmother, Gabriela Delgado, worked at a local Quality Inn. RP 442-43, 464. Danny helped to look after his younger siblings while his father and stepmother were working, and his siblings enjoyed spending time with him. RP 443. The family recalled Danny being a good big brother, and just playing X-box and the children having a "normal sibling relationship." RP 465, 562.

Danny's parents eventually saved enough to buy a house and moved the whole family there. RP 451. They brought the trailer with them and parked it behind the new house. RP 451, 470. Danny lived in the trailer behind the family home until he turned 18, and then was suddenly kicked out by his father. RP 498. Although Mr. Delgado said he kicked Danny out of the backyard trailer because he was not "respecting the rules," the truth was more complicated. RP 498.

One night when the elder Mr. Delgado was out of town on a trip to California, the three younger children could not

locate their mother, Gabriela. RP 456. Gabriela did not answer her phone and the children were worried; they went into the backyard and peeked into the window of the trailer, only to find their mother lying on Danny's bed with him "in the middle of the night." RP 456-57. The children agreed this was "weird" and immediately called their father, who raced back from California and confronted his wife and Danny. RP 458.

Gabriela initially denied having an inappropriate relationship with Danny, but ultimately confessed to Danny's siblings. RP 472-73. G.D., the oldest son, later testified at trial about his mother's confession:

Q. Okay, and did you talk to your mom when she came in?

A. Yeah.

Q. And did she explain to you why she had been in the trailer?

A. Uh-huh.

Q. And why was that?

A. Because of the relationship she was having with him.

Q. Because of the relationship?

A. (Indicating.)

Q. What do you mean by that?

A. She was having a relationship with him.

Q. Okay, and what kind of relationship was that?

A. I'm not sure what it's called.

Q. Okay.

A. I don't know, but they were doing things. That's all I know.

Q. And how do you know that?

A. 'Cause she told us.

RP 472-73.

Danny's father acknowledged that the incestuous[1] conduct by the stepmother was largely the reason he kicked Danny out of the trailer. RP 506-07. After Mr. Delgado rushed home from his trip, he examined Danny's phone records and discovered numerous calls between Danny and his stepmother. RP 507, 509. "It was a shock to me." RP 507. The elder Mr. Delgado testified that this was the day that he "found out about

[1]Incest includes sexual conduct by a stepparent against a stepchild under age 18. RCW 9A.64.020(1)(a), (b), (3)(b).

[his] problems." RP 506. The parents "tried to ignore everything" but later divorced. RP 482, 508-09.

After Danny moved out of the trailer behind the house, he rented an apartment with his girlfriend and continued to work. RP 749-50, 758, 846. Suddenly in November 2020, when Danny was 22 years old, K.D. – now 11 years old – stated that Danny had sexually assaulted her, starting when she was just six or seven years old. RP 360, 564. K.D. made these accusations to her maternal aunt during a trip to California in November 2020, but when her aunt asked if she had told her parents, K.D. said, "I don't trust my mom." RP 360.

The aunt told K.D.'s mother (Danny's stepmother, Gabriela), who then informed Danny's father when the family returned from the trip. RP 566. The family chose not to report K.D.'s allegations, but only raised the topic at K.D.'s annual well-child checkup two months later. RP 410, 571. K.D.'s pediatrician did not conduct a physical examination, as the claim was several years old; however, the doctor made a

referral to Child Protective Services, which alerted law enforcement. RP 419.

Meanwhile, Mr. and Ms. Delgado called Danny and asked him to come over to the house for a conversation. RP 510-11. Danny arrived with his wife, their baby, and young stepchildren. Mr. and Ms. Delgado confronted Danny with K.D.'s claims. RP 511, 567-69. The parents reported that there was a great deal of screaming and crying on the part of Danny's stepmother, and that Danny just sat on the couch holding his baby, "crying and crying and crying." RP 511.

Danny asked to speak with his brothers, who were then 14 and 15, and went to the doorway of their room where they were playing video games. RP 474. The brothers claimed that Danny apologized to them, saying he touched "her" but did not rape "her."[2] The brothers hugged Danny before he left. RP 452.

[2] G.D. testified that Danny used K.D.'s name, but A.D. said Danny simply said "her." RP 474, 451-52.

Danny's wife, who was present for the entire evening, heard the family's interactions. RP 723-24. She said Danny denied doing anything improper with his sister and by saying "her," was only apologizing for previously sleeping with his stepmother, Gabriela. RP 724.

Danny was charged with two counts of first degree rape of a child and two counts of first degree child molestation. CP 6-8. As to each count, the State charged the aggravating circumstance of a pattern of sexual abuse. RCW 9.94A.535(3)(g).[3]

Danny pled not guilty to all counts and began trial in October 2021. Danny introduced evidence of his stepmother's dishonesty and motive to lie, including involving him in illegal

[3] Count 1 (rape of a child) and Count 3 (child molestation) alleged conduct between May 17, 2015 and March 6, 2016 – before Danny turned 18. CP 6-8.

Count 2 (rape of a child) and Count 4 (child molestation) allege conduct between March 7, 2016 and May 17, 2019 – after Danny's 18th birthday. CP 6-8.

incestuous abuse. RP 472-73, 484-83, 506-08. But when Danny attempted to introduce his stepmother's false report of a domestic violence incident involving Danny's father, the court excluded the evidence. RP 395-97, 403.

The jury found Danny guilty of all charges and found the aggravator as to Counts 1 and 3. CP 54-57; CP 58; CP 60.

Danny asked the court to consider the mitigating factors of youth, as well as the incestuous sexual abuse to which he had been a victim as a minor. RP 973. The court did not meaningfully consider the evidence of mitigation, instead, imposing the high end of the standard range, sentencing Danny to 318 months to life. CP 80-82.

Danny appealed. On December 12, 2023, the Court of Appeals reversed and remanded for resentencing, finding there was "no indication that the court considered Delgado's environment and family circumstances." Slip op. at 23 (unpublished portion of opinion). The Court similarly found the

trial court failed to consider how Danny's youth impacted his legal defense or whether he was amenable to rehabilitation, finding the court abused its discretion. *Id.* The Court denied Danny's other issues on appeal. The Court held the use of initials for child witnesses and its own 2012 General Order do not constitute a closure, and the lack of an *Ishikawa* analysis does not violate article I, section 10 or this Court's open courts jurisprudence. Slip op. at 5-6 (published portion). The Court denied a motion for reconsideration on January 11, 2024.

Danny seeks this Court's review. RAP 13.4(b)(1), (2). He also asks this Court to reject the State's petition for review because the Court of Appeals correctly held the trial court failed to adequately consider evidence of mitigation.

VI. ARGUMENT

1. This Court should grant review because the published portion of the Court of Appeals opinion misunderstands the constitutional requirement of a case-by-case analysis wherever sealing is requested.

Article I, section 10 requires that "justice in all cases shall be administered openly." As this Court held:

> Our open courts jurisprudence has always stressed the importance of transparency and access to court records. That is why we generally place the burden on the party who moves to seal court records and why a court may order a sealing only in the most unusual of circumstances.

Hundtofte v. Encarnacion, 181 Wn.2d 1, 11, 330 P.3d 168 (2014). The published portion of the Court of Appeals opinion is inconsistent with Washington's open courts jurisprudence. Slip op. at 5-6.

Here, when Danny filed an appellate brief containing names of minor witnesses, the Court of Appeals found he violated Division Three's 2012 General Order requiring the use of initials or pseudonyms for child victims or witnesses. *Id.* at 3.

The Court failed to conduct a hearing or enter findings "that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." GR 15(c)(2); *Hundtofte*, 181 Wn.2d at 6.

A case-by-case finding as to the need for sealing is required under article I, section 10 and *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). Danny briefed this issue in the Court of Appeals and in this Court, where he argued a court cannot seal or redact documents unless the court first considers the *Ishikawa* factors and finds sealing is required. 97 Wn.2d at 37.[4]

The Court of Appeals' opinion holding the use of initials does not constitute a court closure is inconsistent with *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d

[4] This Court has found that redaction is a form of sealing. *Doe G. v. Dep't of Corrs.,* 190 Wn.2d 185, 202, 410 P.3d 1156 (2018).

205, 209, 848 P.2d 1258 (1993). Slip op. at 5-6. There, this Court held that while the State may assert a general desire to protect the identities of sexual assault victims or young witnesses, this is not a sufficient basis to seal or alter court records. *Id*. at 211. The published portion of the Court of Appeals opinion fails to address this precedent.

The Court of Appeals opinion attempts to draw parallels with *State v. Mansour*, and to imply the use of initials in court filings does not implicate the constitution, as in *Allied Daily News.* Slip op. at 5-6 (citing *Mansour*, 14 Wn. App. 2d 323, 332, 470 P.3d 543 (2020)).

But this was not the holding of *Mansour*. Unlike Mr. Delgado's case, *Mansour* did not involve a court or party's effort to require redaction/sealing of an already filed document. In *Mansour*, the court simply recognized that a court's choice to use initials in *jury instructions* in place of a victim's name was not a redaction and thus did not implicate article I, section 10. 14 Wn. App. 2d at 332. *Mansour* recognized the limits of

its holding and carefully avoided the issue in this case. *Id*.

Division One explained its reasoning in *Mansour*: "*Hundtofte* is distinguishable because it involved a motion to alter an *existing* court record by *replacing* the defendants' full names with their initials. Here, by contrast, Mansour challenges the use of . . . initials in the first instance." *Mansour*, 14 Wn. App. 2d at 333 (emphasis in original, citations omitted). Like *Hundtofte* and unlike *Mansour*, this case involved altering existing court records and replacing names with initials. This Court, and the Court of Appeals, are bound by *Hundtofte*'s holding, which found this practice violates the constitution's open court's provision.

Division Three's General Order does not comply with *Ishikawa*, and thus it violates article I, section 10. This Court determined that sealing issues and the bounds of a court's authority to infringe on the constitutional right to open courts present precisely the sort of issues that merit review. *See, e.g.*, *In re the Welfare of O.C.*, 27 Wn. App. 2d 671, 533 P.3d 159,

164 (2023), *superseded by* 529 P.3d 19 (granting discretionary review of orders unsealing juvenile court records); *John Does 1, 2, 4, & 5 v. Sueoka, et al.*, 2 Wn.3d 1001, 537 P.3d 1001 (2023) (granting review of opinion limiting broad disclosure of public records under the Public Records Act).

Because the Court of Appeals' opinion does not adequately address the 2012 General Order's violation of article I, section 10, this Court should grant review of the published portion of the opinion. RAP 13.4(b)(1), (3).

2. This Court should grant review because the trial court violated the constitutional right to present a defense when it excluded evidence relevant to the credibility of a critical State's witness.

This Court should grant review because the trial court improperly limited cross-examination of the stepmother – the State witness who spearheaded the prosecution of Danny, and the same family member responsible for victimizing Danny.

a. Article I, section 22 and the Sixth Amendment guarantee the rights to present a defense and to confront adverse witnesses.

Article I, section 22 and the Sixth Amendment guarantee the rights to present a defense and to confront adverse witnesses. Const. art. I, § 22; U.S. Const. amend. VI; *State v. Orn*, 197 Wn.2d 343, 347, 482 P.3d 913 (2021).

"The primary and most important component" of the Confrontation Clause "is the right to conduct a meaningful cross-examination of adverse witnesses." *State v. Darden*, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested." *Davis v. Alaska*, 415 U.S. 308, 316, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974). Because limiting a defendant's cross-examination calls into question the integrity of the fact-finding process, "the right to confront must be zealously guarded." *Darden*, 145 Wn.2d at 620.

Courts must construe the rules of evidence in tandem with this imperative. *State v. McSorley*, 128 Wn. App. 598,

612-13, 116 P.3d 431 (2005); ER 608(b)(specific instances of conduct may be probative of truthfulness or untruthfulness).

"It is well established that a criminal defendant is given extra latitude in cross-examination to show motive or credibility, especially when the particular prosecution witness is essential to the State's case." *McSorley*, 128 Wn. App. at 612-13; *State v. York*, 28 Wn. App. 33, 36, 621 P.2d 784 (1980). Because of the constitutional rights at stake in a criminal trial, the court may not exclude relevant evidence unless "the State can show a compelling interest to exclude prejudicial or inflammatory evidence." *Darden*, 145 Wn.2d at 621. In other words, "if relevant, the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial." *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010).

In *McSorley*, the court prohibited the defendant from cross-examining the alleged victim about prior incidents where he had lied. 128 Wn. App. at 602. The Court reversed, holding

that as long as the prior incidents were "not too remote in time," they were relevant to credibility and could not be excluded. *Id*. at 613-14 (noting ER 608(b) must be read with Confrontation Clause in mind).

In *York*, the court excluded cross-examination on the topic of a witness's previous firing. 28 Wn. App. at 34. The Court reversed under ER 608(b) and the Confrontation Clause because "[c]redibility was not … collateral; it was the very essence of the defense." Id. at 36.

b. The trial court violated Danny's constitutional rights by excluding evidence of his stepmother's prior fabricated criminal complaint.

As in *McSorley* and *York*, the trial court erred and violated Danny's constitutional rights by refusing to allow him to cross-examine a key prosecution witness about her prior false statements. The court prohibited Danny from cross-examining his stepmother about having Danny's father falsely arrested and prosecuted for domestic violence offense in – shortly before the conduct alleged by K.D. Danny argued this

information was relevant to the stepmother's credibility and motive for testifying against Danny, since the domestic violence case had been dismissed. RP 395-96.

Ms. Delgado's statements about the alleged domestic violence put her credibility into question, in light of the father's acquittal. RP 28-29, 395-96. Ms. Delgado was the prosecution witness who chose to support her daughter over her stepson when these sexual assault allegations arose. Evidence pertinent to Ms. Delgado's credibility and motive to lie about Danny were critical to the defense.

The State argued Ms. Delgado's prior (false) allegations occurred "a long time ago" and should not be admitted at trial. RP 395-96. However, the domestic violence case initiated by Ms. Delgado began in 2014 – only a year before the sexual assault claims that K.D. belatedly accused Danny of. CP 6-8. The State also argued the father's acquittal did not necessarily signify Ms. Delgado's claims were false. RP 396. The court agreed and erroneously excluded this evidence. RP 403.

The Court of Appeals upheld the trial court's exclusion of this evidence, stating it was "not relevant or probative," and "used to attack the credibility of a witness, not present a defense." Slip op. at 13 (citing *State v. Lee,* 188 Wn.2d 473, 490, 396 P.3d 316 (2017)).

Yet the Court of Appeals repeats the trial court's flawed analysis, finding the stepmother's previous unproved allegation of domestic violence had less relevance because it was remote in time. Slip op. at 14. But the evidence showed the stepmother's allegation was just one year before the first incident that K.D. alleged occurred. CP 6-8.

In this one-witness case with five-years delayed reporting, Danny was not permitted to fully cross-examine the prosecution witness who was his accuser's strongest advocate against him. Further, this was the same woman who took advantage of Danny as a teen and lured him into an illegal, abusive sexual liaison. RP 458, 472-73, 480-81, 506-07.

This Court should grant review of this portion of the Court of Appeals decision, because it is in conflict with this Court's decisions and with its own published decisions. RAP 13.4(b)(1), (2).

3. This Court should review Danny's Amended Statement of Additional Grounds.

Danny also requests this Court consider each argument raised in his pro se SAG and grant review. RAP 13.4(b).

4. The Court should deny the State of Washington's Petition for Review.

This Court should reject the State's petition because the State fails to satisfy the criteria of RAP 13.4(b). The State does not show a conflict with other divisions of the Court of Appeals or with decisions of this Court; nor does the State demonstrate this is an issue of substantial public interest. This Court should deny review of the State's petition.

a. The Court of Appeals correctly remanded because the trial court's failure to meaningfully consider Danny's youth and other mitigation evidence constitutes an abuse of discretion requiring resentencing.

In the unpublished portion of its opinion, the Court of Appeals properly remanded for resentencing, finding the trial court abused its discretion when it failed to consider evidence of mitigation as required by this Court's jurisprudence.

At sentencing, "the court must consider mitigating circumstances related to the defendant's youth—including age and its 'hallmark features,' such as the juvenile's 'immaturity, impetuosity, and failure to appreciate risks and consequences.' *State v. Houston-Sconiers*, 188 Wn.2d 1, 24-26, 391 P.3d 409 (2017) (quoting *Miller v. Alabama*, 567 U.S. 460, 477, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)).

A sentencing court is required to do more than simply acknowledge it is "aware of his age at the time of the crimes." *Matter of Domingo-Cornelio*, 196 Wn.2d 255, 268, 474 P.3d

524 (2020). “Silence does not constitute reasoning.” *Id*. (citing *State v. Ramos*, 187 Wn.2d 420, 444, 387 P.3d 650 (2017)).

The Court of Appeals correctly acknowledged that Danny requested an exceptional sentence below the standard range, requesting 60 months to life, arguing the court should consider youth as a mitigating factor, as well as Danny’s victimization by his stepmother. Slip op. at 15-16 . “Trial courts must consider mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements.” *Id.* at 21. A court that fails to follow these procedures abuses its discretion, as the trial court did here.

The Court of Appeals clarified that a sentencing court must meaningfully consider the evidence of youth and “thoroughly explain its reasoning.” Slip op. at 19 (quoting *Ramos*, 187 Wn.2d at 444). The mitigating factors of youth a court must consider include, but are not limited to:

> the juvenile's immaturity, impetuosity, and failure to appreciate risks and consequences—the nature of the juvenile's surrounding environment and family circumstances, the extent of the juvenile's participation in the crime, the way familial and peer pressures may have affected him or her, how youth impacted any legal defense, and any factors suggesting that the juvenile might be successfully rehabilitated.

Slip op. at 20 (quoting *State v. Gilbert*, 193 Wn.2d 169, 176, 438 P.3d 133 (2019)).

In its Petition for Review, the State makes the same argument it made below – that Danny did not provide sufficient evidence of mitigation. State PFR at 9-11. The Court of Appeals already rejected the State's argument when it remanded this matter for resentencing. "Our Supreme Court has held that while the defendant bears the burden of proving that mitigating factors warrant a lower sentence, the failure to do so does not relieve the sentencing court from *following the procedures and providing meaningful consideration* of each factor, even when the evidence is sparse." Slip op. at 20-21

(emphasis added) (citing *State v. Anderson*, 200 Wn.2d 266, 285, 516 P.3d 1213 (2022)).

The Court of Appeals contrasts the sentencing proceedings here with the procedures required by *Houston-Sconiers.* The Court discusses *Anderson,* where the resentencing court conducted "a thorough hearing," discussing its "familiarity with juvenile brain development and then fully addressed how each *Miller* factor applied to the facts of the case. Slip op. at 21 (citing *Anderson*, 200 Wn.2d at 275-77). Even where, as in *Anderson,* the court concluded that defendant was not entitled to a lower sentenced based upon youth, a full analysis was required. *Id.* at 290-91.

Likewise, in *State v. Stewart,* the Court of Appeals held the sentencing court provided "meaningful consideration of the mitigating factors of youth," entering lengthy findings of fact. 27 Wn. App. 2d 441, 450, 532 P.3d 211 (2023). The Court of Appeals distinguished both *Stewart* and *Anderson* from Danny's case.

The Court of Appeals correctly held Danny's decision not to provide information at sentencing "did not relieve the trial court of its obligation." Slip op. at 22. Here, the sentencing court focused on only the nature of the crimes and the impact on the victim. Slip op. at 22 (citing RP 977). Yet in Washington, a sentencing court is required to place more emphasis on mitigation than on retribution. *State v. Haag,* 198 Wn.2d 309, 323, 495 P.3d 241 (2021).

The sentencing court failed to enter findings of fact (unlike the courts in *Anderson* or *Stewart*); nor did the court articulate how the mitigating factors of youth applied. Slip op. at 22. The court failed to analyze how Danny's immaturity, impetuosity, or failure to appreciate risks and consequences contributed to the offense. *Id.* The court likewise failed to consider how Danny's youth impacted his legal defense, or his amenability to rehabilitation. *Id.* at 23.

Finally, as the Court of Appeals found, the court inadequately considered the significant evidence that Danny

was a victim as well. Slip op. at 23. The prosecutor shockingly claims the "alleged affair" between the stepmother and Danny was "alleged only by the defense attorney." State's PFR at 13. To clarify, this was not an "affair," but rather was incestuous sexual abuse committed by an adult against Danny when he was a teenager. RCW 9A.64.020(1)(a), (b), (3)(b).

Moreover, the record contains testimony about this incestuous sexual abuse from at least two of the prosecution's own witnesses during the trial.

Danny's younger brother, G.D., testified at trial that his mother told him that she was "having a relationship" with Danny. RP 472-73. When asked what kind of relationship he meant, G.D. said, "I'm not sure what it's called." *Id.* He further testified, "I don't know, but they were doing things. That's all I know." *Id.* When asked how he knew this, he said of his mother, "'Cause she told us." *Id.* Danny's father also testified about racing back to Benton County from California when he heard about the stepmother's illicit conduct with Danny in the

trailer. RP 506-07. When the elder Mr. Delgado examined his phone bills and found countless calls between his wife and his son, "it was a shock to me." RP 507. Mr. Delgado kicked Danny out of the home the same day. RP 507. This "affair" led to the parents' divorce. RP 482, 508-09. Even K.D., who later made spurious accusations against Danny, said she never confided in her mother, because "I don't trust my mom." RP 360.[5]

b. This Court should deny the State's Petition for Review.

The Court of Appeals correctly determined the sentencing court abused its discretion when it failed to meaningfully consider evidence of youth, as well as evidence of Danny's home environment and family circumstances. That Danny did not provide additional evidence does not excuse the court from stepping through the appropriate analysis and

[5] It follows that K.D. would not trust her mother, since Ms. Delgado had been lying about her incestuous and abusive sexual abuse of K.D.'s brother, Danny.

articulating on the record how the mitigating factors of youth apply under this Court's jurisprudence.

The Court should reject the State's petition for review on the sentencing issue, because the Court of Appeals decision applies established authority and does not raise an issue of significant public interest. The Court of Appeals correctly held the trial court failed to meaningfully consider mitigation evidence and properly remanded for resentencing. The State's petition should be denied. RAP 13.4(b)(1), (2), (4).

VII. CONCLUSION

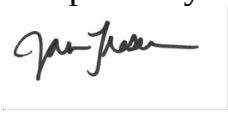
For the reasons above, Danny respectfully requests that this Court grant review, as portions of the Court of Appeals decision are in conflict with decisions of the Court of Appeals and with decisions of this Court. RAP 13.4(b)(1), (2).

This Court should reject the State's petition for review, as the State's petition fails to meet the criteria for review under RAP 13.4(b).

This document is in 14-point font and contains 4,995 words, excluding the exemptions from the word count per RAP 18.17.

DATED this 12th day of February, 2024.

Respectfully submitted,



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