Supreme Court No. I02732-0
COA No. 83899-7-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

ERIC KRUEGER,

Appellant.

---

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

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# PROPOSED REDACTED PETITION FOR REVIEW

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## A. INTRODUCTION

*Miller* prohibits sentencing defendants under the age of 18 to life without parole when their crimes reflect the mitigating qualities of youth. This Court's *Monschke* decision extended *Miller's* sentencing protections to people like Eric Krueger, who committed the crime of aggravated murder between the ages of 18 and 21.

Yet *Monschke* left several questions unanswered for lower courts, including whether it extended *Haag*'s prohibition on de facto life sentences, or *Houston-Sconiers*' unfettered sentencing discretion, to *Monschke* class members. In a published opinion, the Court of Appeals held these precedents do not apply to Eric as he was over the age of 18 at the time of the crimes. This Court should take review to provide guidance to lower courts in sentencing *Monschke* class members.

B. IDENTITY OF PETITIONER AND DECISION BELOW

Eric Krueger, the petitioner, asks this Court to review the published opinion of the Court of Appeals in *State v. Krueger*, 540 P.3d 126 (2023).

C. ISSUES PRESENTED FOR REVIEW

1. In *In re the Pers. Restraint of Monschke*, 197 Wn.2d 305, 482 P.3d 276 (2021), this Court held that article I, section 14 prohibits life sentences for youth between the ages of 18 to 21 who commit aggravated murder ("*Monschke* class members"), when the crime reflects the mitigating qualities of youth. In *State v. Haag*, 198 Wn.2d 309, 495 P.3d 241 (2021), this Court held a court imposes a "de facto life sentence" on a youth under the age of 18 if that youth "will have no opportunity to truly reenter society or have any meaningful life outside of prison." *Id.* at 327. Here, the resentencing court found Eric's crime reflected the mitigating qualities of youth, and a life sentence was therefore unconstitutional. Yet the court sentenced Eric to 40 years, which will not make him

eligible for release until he is 60 years old. This Court should take review to clarify if *Haag*'s constitutional prohibition on "de facto life sentences" for youth whose crimes reflect the mitigating qualities of youth extends to *Monschke* class members, and if the 40-year sentence imposed here amounts to a "de facto" life sentence. RAP 13.4(b)(3).

2. In *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017), this Court held that sentencing courts have the constitutional discretion to impose any sentence on youth under the age of 18, including the discretion to waive mandatory firearm enhancements. In *Monschke*, this Court cited *Houston-Sconiers* for the proposition that "mandatory sentences for youthful defendants are unconstitutional." *Monschke*, 197 Wn.2d at 311–12. Here, the resentencing court imposed a five-year firearm enhancement without considering if it had the discretion to waive it. This Court should take review to determine if the absolute sentencing discretion enumerated in

*Houston-Sconiers* applies to *Monschke* class members. RAP 13.4(b)(3).

3. In *State v. Delbosque*, 195 Wn.2d 106, 456 P.3d 806 (2020), this Court held that when a youth has spent significant time in prison prior to resentencing, courts must focus on the degree of rehabilitation that has occurred, as opposed to the facts of the underlying crime. This Court further held that a sentencing court may not disregard mitigation evidence or mischaracterize the conclusions of experts. Here, the resentencing court focused on the evidence of Eric's premeditation and guilt—qualities present in every aggravated murder case—as opposed to Eric's demonstrated rehabilitation. And, contrary to an uncontroverted expert opinion, the sentencing court found it "inconceivable" that Eric could not appreciate the risks and consequences of his actions. Yet the Court of Appeals concluded Eric's resentencing complied with *Delbosque*. This Court should take review as the Court of

Appeals' opinion misapplies *Delbosque*'s directives. RAP 13.4(b)(1), (3).

4. Before the Court of Appeals, Eric argued his resentencing violated due process as the sentencing judge did not disclose that she was employed by the prosecuting attorney's appellate unit at the time of Eric's original appeal. U.S. Const. amend. VI; XIV. He asked for reassignment to a new judge on remand. However, the Court of Appeals refused to review this due process claim on the basis that it was not ordering resentencing on other grounds. This Court should take review to clarify that sentencing by a partial court is structural error that requires remand for resentencing before a new judge. RAP 13.4(b)(3).

C. STATEMENT OF THE CASE

**1. Eric and his friend Robert plan a robbery, but Eric flees the scene at the last minute. Robert shoots and kills two people, and both he and Eric are convicted of aggravated murder.**

[redacted] CP 310.

Ron Greenwood called Eric and asked if he could use Eric's scale to weigh some meth. CP 114. Eric invited Ron over, and Ron used Eric's scale. CP 115, 118. After Ron left, Eric noticed that money he left near was missing. CP 116. He concluded Ron stole his money. CP 116.

Eric took a cab to his friend Robert Anderson's house. CP 118. Eric told Robert that Ron had robbed him, and that Ron had a lot of meth and cash on him. CP 118–19. Eric and Robert decided to rob Ron at gunpoint for his money and drugs. CP 119–20.

Eric carried a gun regularly "for safety purposes" and had recently purchased a second gun that he let Robert use. CP 120, 125. From Eric's understanding, they were not planning on using the guns unless Ron "got rowdy or some, you know, if he, if he ended up having a gun on him." CP 154.

High on meth, Robert proposed killing Ron instead of just robbing him. CP 50, 125. [redacted] Another of Eric's friends, who was also present for the conversation, thought Robert's suggestion "was just drug talk. I didn't believe it would actually happen until it was too late, and I don't think Eric did either." CP 311.

Robert and Eric set up a fake buy with Ron as a pretense for the robbery. CP 121. While they waited for Ron, Eric watched Robert take the bullets out of his gun and wipe his prints off of them. CP 124. Eric did not wipe the bullets in the gun he was carrying. CP 125.

Ron and his friend Brady Brown picked up Robert and Eric in a car. CP 123. Ron and Brady sat in the front seat of the car while Robert and Eric sat in the back. CP 128. Eric later explained that Robert "kept looking over at me like, waiting for me to okay it." CP 128. Eric shook his head "no" at Ron. CP 129.

Eric suddenly had a "gut feeling" that he needed "to get outta the car." CP 129. Eric made up an excuse that Robert had forgotten his money and that they needed to go back to Robert's house to retrieve it. CP 128–29. Once at the house, Eric made another excuse and walked away from the car, hopped a fence, and hid behind a tree. CP 131–32.

Ron drove off with Robert and Brady in the car. CP 132. Robert later shot and killed both Ron and Brady. CP 136, 139.

Police quickly zeroed in on Robert and Eric as the culprits. CP 67. Eric, under the influence of drugs, readily admitted illegal conduct to police—including unlawful possession of weapons and drug distribution. CP 115, 133,

163. However, Eric was clearly under the false impression that he could not be held responsible for Ron and Brady's murders because he "wasn't there." CP 140, 158.

Eric was charged and convicted after a joint trial for aggravated first degree murder, two counts of first degree murder, conspiracy to commit first degree robbery, and unlawful possession of a firearm in the first degree. CP 69. He was sentenced to life without the opportunity for parole, plus a sixty month firearm enhancement. CP 73.

**2. Following *Monschke*, Eric is resentenced to 40 years.**

[redacted]

Eric has spent the entire period of his incarceration drug-free. RP 39; [redacted] He has also worked steadily, earning commendations from prison staff for his "natural leadership"

abilities. CP 198, 200, 201. He put his earnings towards restitution for Ron and Brady's families. RP 37.

[redacted] For the past decade, he has remained infraction-free. CP 325.

In 2021, Eric became eligible for resentencing pursuant to this Court's decision in *Monschke*. At his resentencing hearing, Eric presented evidence of his rehabilitation. [redacted]

In light of this evidence, Eric requested a sentence of time served. RP 36, 39. The State, on the other hand,

requested a 40-year sentence, as advocated by Ron and Brady's family members. RP 6–31.

The resentencing court acknowledged Eric had "adverse childhood experiences" that "probably impacted his decision-making at the time," and that he was both "youthful" and "immature." RP 42. Accordingly, the court agreed that "I don't believe that life without parole is the appropriate sentence at this time." RP 43.

However, the court stated it believed Eric had done only the "minimum" while incarcerated, and further placed an emphasis on the underlying facts of the crime, stating: "There was a level of planning here on the part of [Eric] that makes it impossible for this Court to grant the defense's request now for him to be released with no further time served." RP 43. The court found it "inconceivable" that Eric did not anticipate Ron and Brady's murders, "regardless of the youthfulness at the time of the crime." RP 43.

Accordingly, the court imposed the State's requested sentence of 40 years, including a five-year firearm enhancement, asserting this was the "appropriate balancing" and "will allow for release." RP 43–44.

Following appeal, it came to the attention of appellate counsel that the sentencing judge was employed by the prosecuting attorney's appellate unit at the time of Eric's original appeal in the 1990s. 3/13/2023 RP 6–7. However, this information was not disclosed to the parties prior to the resentencing. *Id.* at 11. At a post-sentencing hearing, the judge acknowledged this information should have been disclosed. *Id.* at 12.

The Court of Appeals affirmed Eric's 40–year sentence in a published opinion. In doing so, it held this Court's opinions in *Haag* and *Houston-Sconiers* did not apply to *Monschke* class members. Op. at 6–8, 14–15. It also held the resentencing had complied with this Court's *Delbosque* opinion. *Id.* at 8–13. The Court reasoned that because it was

affirming the sentence, it was not required to assess whether the resentencing judge was impartial. *Id.* at 15.

D. ARGUMENT

**1. Review is warranted to clarify that this Court's juvenile sentencing case law applies to *Monschke* class members.**

a. This Court should accept review to clarify that the constitutional prohibition on "de facto life" sentences applies to *Monschke* class members when their crimes reflect the mitigating qualities of youth.

Twenty-year-olds like Eric are "essentially juveniles in all but name at the time of their crimes." *Matter of Monschke*, 197 Wn.2d 305, 312, 482 P.3d 276 (2021) (plurality). Accordingly, pursuant to article I, section 14, "*Miller's* prohibition on mandatory LWOP sentences" extends to youthful defendants under the age of 21. *Id.* at 329 (citing *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012)). *Miller* forbids life without parole for defendants whose crimes reflect the "mitigating qualities of youth." *Miller*, 567 U.S. at 476, 489.

*Miller*'s prohibition applies to both "life sentences and de facto life sentences." *Matter of Ali*, 196 Wn.2d 220, 246, 474 P.3d 507 (2020). In *State v. Haag*, this Court defined a "de facto life sentence" to mean a juvenile defendant "will have no opportunity to truly reenter society or have any meaningful life outside of prison." *State v. Haag*, 198 Wn.2d 309, 327, 495 P.3d 241 (2021) (citation and quotation omitted).

Here, the sentencing court concluded a life sentence was not appropriate for Eric as the crime reflected mitigating qualities of youth. RP 41–44. Yet the court imposed a sentence of 40 years, meaning Eric is expected to be 60 years old when he is released. *Id*. Other state supreme courts have recognized 40 years is a de facto life sentence, including North Carolina, Illinois and Wyoming—as has the United States Sentencing Commission. *See State v. Kelliher*, 873 S.E. 2d 366, 388–89 (N.C. 2022); *People v. Buffer*, 137 N.E. 3d 763, 774 (Ill. 2019); *Bear Cloud v. State*, 334 P.3d 132, 136, 142–43 (Wyo. 2014).

The Court of Appeals affirmed the 40-year sentence, reasoning the constitutional prohibition on de facto life sentences only applied to defendants under the age of 18. Op. at 8. Specifically, the Court of Appeals noted that "[n]o case has extended [*Monschke*] to de facto life sentences," and therefore "there is no prohibition on de facto life sentences for youthful offenders" between the ages of 18 and 21. Op. at 8.

However, as previously explained, *Monschke* extended *Miller*'s protections to youthful defendants up to the age of 21. 197 Wn.2d at 329. And *Miller* applies equally to actual and de facto life sentences. *Ali*, 196 Wn.2d at 246. The Court of Appeals' opinion therefore appears to contravene *Monschke*'s promise of resentencing in accordance with *Miller*'s protections. This Court should accept review to clarify that the constitutional prohibition on on de facto life sentences applies to *Monschke* class members, and also to provide further guidance to sentencing courts on the parameters of a de facto life sentence. RAP 13.4(b)(3).

b. Review is warranted to clarify that courts have *Houston-Sconiers* discretion in sentencing *Monschke* class members.

In *Monschke*, this Court stated that "[m]andatory sentences for youthful defendants are unconstitutional." *Monschke*, 197 Wn.2d at 323. In doing so, this Court cited both *Miller* and *Houston-Sconiers*, the latter of which held courts have the discretion "to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements" based on youth. 188 Wn.2d at 21. In accordance with this language, Division Two of the Court of Appeals held in an unpublished opinion that *Monschke* extended *Houston-Sconiers'* promise of absolute sentencing discretion to courts resentencing defendants aged 18, 19, and 20 convicted of aggravated murder. *See Matter of Boyd*, 25 Wn. App. 2d 1007, 2022 WL 17974658 at *2 (Dec. 28, 2022) (unpublished).

In Eric's case, Division One of the Court of Appeals held just the opposite. Specifically, the Court held "*Houston-*

*Sconier's* [sic] holding is narrow and applies only to juveniles." Op. at 14. The Court further held that "[a]s a 20-year-old, [Eric] was not a juvenile offender facing adult court—he was an adult." Op. at 14. These contravenes this Court's pronouncement that twenty-year-olds like Eric are "essentially juveniles in all but name at the time of their crimes." *Monschke*, 197 Wn.2d at 312.

As the Court of Appeals noted, "*Monschke* does not address firearm enhancement discretion." Op. at 14–15. Nor does it precisely explain how sentencing courts are to exercise their discretion in sentencing *Monschke* class members. As *Boyd* and this case demonstrate, different divisions of the Court of Appeals differ on *Monschke*'s application. Review is therefore warranted to clarify the level of discretion courts may employ in sentencing *Monschke* class members. RAP 13.4(b)(3).

**2. The Court of Appeals' opinion conflicts with this Court's opinion in *Delbosque*, warranting review.**

In *State v. Delbosque*, this Court provided detailed guidance for courts resentencing youthful defendants. 195 Wn.2d 106, 456 P.3d 806 (2020). *Delbosque* provides that when a youthful defendant has spent significant time in prison prior to a resentencing, the court must conduct "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." *Id.* at 122. *Delbosque* further held that a sentencing court may not disregard mitigation evidence or mischaracterize the conclusions drawn by experts. *Id.* at 118–19.

Here, the sentencing court largely ignored Eric's demonstrated capacity for change over the course of 25 years of incarceration, focusing instead on the circumstances of the underlying crime. RP 42–43. The court also found it "inconceivable" that Eric's youthfulness significantly impacted

his ability to appreciate the risks and consequences of his actions, [redacted] RP 43; [redacted]

The Court of Appeals held the sentencing court's heavy focus on the underlying circumstances of the crime was "well within its discretion," as was its disregard of the expert report. Op. at 10, 12–13. But these holdings contravene *Delbosque*'s clear directives. A sentencing court does not have the authority to exercise discretion in a manner that violates this Court's precedent.

The Court of Appeals also approved the sentencing court's conclusion that Eric "did little more than what was expected of him in prison." Op. at 9. This appears to commend holding *Monschke* class members to an impossibly high standard of *exceptional* rehabilitation. Op. at 11–12. This in turn flips the presumption of *Miller* on its head. Eric did not need to show that he was exceptionally rehabilitated; rather, he only needed to demonstrate he was not the "rare" youthful

offender whose crime reflects "irreparable corruption"—and thus deserving of a life sentence. *Miller*, 567 U.S. at 479 (citation and quotation marks omitted). He did so by demonstrating his capacity for change. *Delbosque*, 195 Wn.2d at 122. Because the Court of Appeals' opinion sanctioned the sentencing court's departure from the clear guidance of *Delbosque*, this Court should take review. RAP 13.4(b)(1), (3).

### 3. The Court of Appeals erred in declining to review Eric's claim that his right to an impartial sentencing was violated.

"Under the state and federal constitutions, a criminal defendant has the right to be tried and sentenced by an impartial court." *State v. Solis-Diaz*, 187 Wn.2d 535, 539, 387 P.3d 703 (2018) (citing U.S. Const. amend VI, XIV; Const. art. I, § 22). "Pursuant to the appearance of fairness doctrine, a judicial proceeding is valid if a reasonable prudent, disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing." *Id.*

"The law requires more than an impartial judge; it requires that the judge also appear to be impartial." *Id.* Accordingly, "[w]here a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating." *Sherman v. State*, 128 Wn.2d 164, 205, 905 P.2d 355 (1995).

Here, the resentencing judge did not disclose her prior employment with the prosecuting attorney's appellate unit while Eric's original appeal was pending. Before the Court of Appeals, Eric argued the judge's failure to disclose this information "tainted" her resentencing decision with the "suspicion of partiality" to the extent that it undermined public trust in the judicial system. *See Sherman*, 128 Wn.2d at 205.

However, the Court of Appeals "decline[d] to reach this issue" on the basis that it otherwise affirmed the sentence imposed. Op. at 15. The Court of Appeals provided no citation to authority. This Court has previously reached the merits of an appearance of fairness claim when otherwise affirming the trial

court's decision. *See State v. Gentry*, 183 Wn.2d 749, 752–53, 356 P.3d 714 (2015). This Court should take review to clarify that sentencing before an impartial court is structural error, and that appellate courts cannot decline to adjudicate such claims on appeal when the sentence is affirmed on other grounds. RAP 13.4(b)(3).

E. CONCLUSION

This Court's decision in *Monschke* provided people like Eric with the promise of resentencing in accordance with *Miller*'s protections. Unfortunately, sentencing courts have little guidance in how to exercise discretion in sentencing *Monschke* class members. This Court should take review to clarify that de facto life sentences are unconstitutional for *Monschke* class members whose crimes reflect the mitigating qualities of youth, and that courts have absolute sentencing discretion in determining an appropriate sentence for these individuals, including the waiver of otherwise mandatory sentences.

In compliance with RAP 18.17(b), counsel certifies that this brief contains 3,461 words (word count by Microsoft Word).

DATED this 16th day of January, 2024.

Respectfully submitted,

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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

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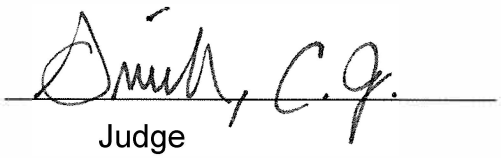
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>ERIC LEE KRUEGER,<br><br>Appellant. | No. 83899-7-I<br><br>ORDER GRANTING<br>MOTION TO PUBLISH |

Respondent State of Washington moved for publication of the opinion filed on October 23, 2023. Appellant Eric Krueger has filed an answer. A panel of the court has reconsidered its prior determination not to publish the opinion for the above entitled matter and has found that it is of precedential value and should be published.

Now, therefore it is hereby

ORDERED that the written opinion, filed on October 23, 2023 shall be published and printed in the Washington Appellate Reports.

FOR THE COURT:



Judge

FILED
10/23/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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| STATE OF WASHINGTON,<br><br>Respondent,<br>v.<br><br>ERIC LEE KRUGER,<br><br>Appellant. | No. 83899-7-I<br><br>DIVISION ONE<br><br>UNPUBLISHED OPINION |

SMITH, C.J. — In 1998, a jury convicted Eric Lee Krueger, then 20 years old, of first degree aggravated murder, two counts of first degree murder, conspiracy to commit first degree robbery, and first degree unlawful possession of a firearm with firearm enhancements for the three counts of murder, sentencing him to life without possibility of parole. In 2022, following our Supreme Court's decision in In re Pers. Restraint of Monschke,[1] which concluded that a sentence of mandatory life without the possibility of parole was unconstitutional for youthful offenders, Krueger was resentenced to 420 months with a 60 month firearm enhancement, for a total of 40 years. On appeal, Kruger contends the resentencing court erred by, (1) imposing a de facto life sentence, (2) failing to appropriately weigh his rehabilitative efforts, (3) finding that Krueger made minimal rehabilitative efforts and that his youthfulness did not impact his decision-making, and (4) failing to waive the firearm enhancement. He also

[1] 197 Wn.2d 305, 482 P.3d 276 (2021).

seeks a new judge on remand, asserting a violation of the appearance of fairness doctrine. Finding no error, we affirm.

## FACTS

### Background

In January 1997, Eric Krueger bought methamphetamine (meth) from Ronald Greenwood. During the transaction, approximately $140 fell out of Krueger's pocket onto the floor. He picked it up, placed it on the table between them, and then left the room. When he returned, both Greenwood and the money were gone. Krueger became angry, believing Greenwood had stolen the money.

Later that evening, Krueger, still angry, went to Robert Anderson's house seeking help to rob Greenwood. In addition to retrieving the stolen money, Krueger intended to take any cash or drugs that Greenwood might have, and likely his stereo system. The two men spent about an hour discussing robbing Greenwood at gunpoint. Krueger routinely carried a gun and had recently purchased another, which he offered to Anderson. When Anderson suggested killing Greenwood, Krueger did not object.

Following this discussion, Krueger paged Greenwood, asking him to meet to buy meth. Greenwood arrived, accompanied by Brady Brown, about 15 minutes later. Both Krueger and Anderson were armed.

Once in Greenwood's car, Krueger started having second thoughts about the robbery. He lied about having forgotten money for the deal and asked Anderson to go get it. Krueger followed, stating they were waiting on a third

person to bring the money. Once they were both out of the vehicle, Anderson indicated it was time to follow through on their plan. Krueger walked away and hopped a fence. Greenwood and Brown had stayed in the vehicle. Anderson got back in the car, the three men drove away, and Anderson ultimately shot Greenwood and Brown.

Krueger heard the gunshots and went back to find the car empty. He then rejoined Anderson and together they searched the car for drugs before driving it to a nearby motel. At the motel, Krueger and Anderson discovered while watching television that Greenwood had survived the initial shooting. When Krueger and Anderson realized that Greenwood had survived, Krueger lamented that Anderson had not done "the full thing, instead of screwing around" and Anderson suggested that "there's always a way to sneak into the hospital and take care of something." Greenwood later died in the hospital. Krueger, having recognized that he owned the gun that had killed two men, tossed the gun case into some bushes at the motel. Over the next few days, he retrieved the gun, buried it in his backyard, dug it up, and sold it.

Krueger provided this timeline in an interview with the Snohomish County Sheriff's Office four days after the shooting. He further told a detective that he had watched Anderson wipe the bullets with a towel before putting them in the gun. Krueger explained that Anderson was "making sure, just in case he used [the gun]" that there would be no fingerprints on the shells. When asked, Krueger denied wiping off his own bullets but stated he believed someone else had done the same to the bullets in his gun in the days prior to the shooting.

He continued, stating that he had considered killing Greenwood but decided against it. He explained that he had stepped out of the car when he did because he was afraid the situation would escalate and Anderson would shoot someone.

Krueger was charged with and convicted of first degree aggravated murder, two counts of first degree murder, conspiracy to commit first degree robbery, and first degree unlawful possession of a firearm with firearm enhancements for the three counts of murder. In March 1998, he was sentenced to life without the possibility of parole.

Resentencing

In August 2021, the trial court ordered resentencing following our Supreme Court's decision in Monschke, which held life sentences without the possibility of parole unconstitutional for youthful offenders. Krueger was 20 years old at the time of his offense. The resentencing hearing took place in March 2022.

Per Monschke, the resentencing court considered the "mitigating circumstances related to the defendant's youth." Defense counsel sought a 25-year sentence with time served. Defense counsel pointed to Dr. Megan Carter's expert testimony about Krueger's youthfulness and decreased ability to understand risk and consequences and the DOC records as indicative of Krueger's rehabilitative efforts. The State agreed that youth was a mitigating quality but argued that the nature of the crime and Krueger's lack of rehabilitation warranted further time in prison.

After considering Krueger's youth and balancing it against his involvement in the planning and understanding of the risks of the crime, the court agreed with the State and followed its recommendation. The court resentenced Krueger to 420 months with an additional 60 months for the firearm enhancement, for a total of 40 years. Krueger appeals.

ANALYSIS

Krueger raises five issues on appeal, including whether his sentence is a de facto life sentence, whether the appropriate consideration was given to rehabilitative factors, whether certain factual findings are supported by substantial evidence, whether the court should have waived his firearm enhancements, and whether the court violated the appearance of fairness doctrine. We address each in turn.

Standard of Review

"We will reverse a sentencing court's decision only if we find 'a clear abuse of discretion or misapplication of the law.' " State v. Delbosque, 195 Wn.2d 106, 116, 456 P.3d 806 (2020) (internal quotation marks omitted) (quoting State v. Blair, 191 Wn.2d 155, 159, 421 P.3d 937 (2018)). A court abuses its discretion when " 'its decision is manifestly unreasonable or based upon untenable grounds.' " Delbosque, 195 Wn.2d at 116 (internal quotation marks omitted) (quoting State v. Lamb, 175 Wn.2d 121, 127, 285 P.3d 27 (2012)). " 'The untenable grounds basis applies if the factual findings are unsupported by the record.' " Delbosque, 195 Wn.2d at 116 (internal quotation marks omitted) (quoting Lamb, 175 Wn.2d at 127).

De Facto Life Sentence

Krueger contends that the court erred in imposing a de facto life sentence, asserting that Monschke extended the prohibition against sentencing juveniles to de facto life sentences to youthful offenders as well. We disagree.

Sentencing standards for juveniles are different than those of adults because "the Eighth Amendment to the United States Constitution compels us to recognize that children are different." State v. Houston-Sconiers, 188 Wn.2d 1, 18, 391 P.3d 409 (2017). Thus, mandatory life imprisonment without parole for defendants under the age of 18 at the time of their crimes violates the Eighth Amendment. Miller v. Alabama, 567 U.S. 460, 465, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). This prohibition also " 'appl[ies] to juvenile homicide offenders facing de facto-life without parole sentences, not just 'literal' life without parole sentences.' " State v. Haag, 198 Wn.2d 309, 320, 495 P.3d 241 (2021) (alteration in original) (quoting State v. Ramos, 187 Wn.2d 420, 437, 387 P.3d 650 (2017)). But there is no bright-line test for what constitutes a de facto life sentence. See, e.g., Haag, 198 Wn.2d at 327 (holding that a 46 year sentence constituted a de facto life sentence based on the defendant's specific circumstances); In re Pers. Restraint of Hinton, 1 Wn.3d 317, 360, 525 P.3d 156 (2023) (McCloud, J., concurring in dissent) (holding that a 37-year sentence was not a de facto life sentence); State v. Anderson, 200 Wn.2d 266, 280, 516 P.3d 1213 (2022) (holding that a de facto life sentence may be appropriate if the crime is not mitigated by youth). Whether a sentence is a de facto life sentence is a

fact-specific inquiry closely tied to interpreting what constitutes a "meaningful life outside of prison." Haag, 198 Wn.2d at 327.

As with juveniles, there are sentencing limitations for youthful offenders. Whereas juvenile offenders are "any individual who is under the chronological age of 18 years," what constitutes a "youthful" offender is not statutorily codified and subject to interpretation. RCW 13.40.020(17) (defining "juvenile" offender); Monschke, 197 Wn.2d at 312 n.8 (noting that "youthful" offenders can be between 17 and 25 years old). For youthful offenders facing a mandatory life sentence without the possibility of parole, a court must exercise the same discretion in sentencing an 18-, 19-, and 20-year-old as when sentencing a 17-year-old. Monschke, 197 Wn.2d at 329. Washington courts, however, have repeatedly declined to extend Monschke's ruling to other fact scenarios. See, e.g., In re Pers. Restraint of Williams, 18 Wn. App. 2d 707, 716, 493 P.3d 779 (2021) (holding the Supreme Court limited Monschke to the aggravated first degree murder statute); State v. Nevarez, 24 Wn. App. 2d 56, 62, 519 P.3d 252 (2022) (holding that Monschke was inapplicable because the defendant did not receive a mandatory life without parole sentence); State v. Meza, 22 Wn. App. 2d 514, 545, 512 P.3d 608 (2022) (holding that Monschke did not categorically extend leniency based on the mitigating factors of youth).

Here, Krueger was 20 years old at the time he committed his crime, making him a youthful offender rather than a juvenile offender. Therefore, we do not need to reach whether the prohibition on de facto life sentences for juveniles applies or whether Krueger's sentence was a de facto life sentence at all.

Although Krueger proceeds as if Monschke's ruling extends to de facto life sentences for youthful offenders, our Supreme Court was careful to detail the specific circumstances where the mitigating factors of youth apply. Monschke, 197 Wn.2d at 329. No case has extended those circumstances to include de facto life sentences and Krueger provides no authority for that proposition. Krueger is a youthful offender and given that there is no prohibition on de facto life sentences for youthful offenders, the court did not err in sentencing him to 40 years in prison simply because he insists it would amount to a de facto life sentence.

Appropriate Weight of Rehabilitation Evidence

Krueger asserts that the sentencing court erred by focusing more on the facts of Krueger's crime than on his rehabilitation efforts. He contends that the court failed to meaningfully consider his rehabilitation and that his job performance, participation in educational programming, and prison record should have impacted the resentencing court's decision more. We disagree. After considering all the evidence before it, the court appropriately considered and weighed Krueger's rehabilitative actions during sentencing.

At resentencing, the court must conduct "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." Delbosque, 195 Wn.2d at 122. But the court is not prohibited from considering the defendant's criminal history at all. Delbosque, 195 Wn.2d at 122. We review a resentencing decision for abuse of discretion. Delbosque, 195 Wn.2d at 116.

Here, the resentencing court specifically recognized its duty to consider Krueger's rehabilitative actions. The court stated:

> [T]his Court is now faced with the decision and the responsibility to meaningfully consider both the mitigating qualities of youth at the time of the commission of this offense given the defendant's age of just shy of 21 and, additionally, consider the defendant's rehabilitation during the last 25 years of incarceration.

Having considered the whole record, the court determined that Krueger made little effort to rehabilitate himself. In reaching this conclusion, the court considered Krueger's DOC record, the letters written in support from fellow inmates, Krueger's psychological evaluation, and listened to Krueger's own testimony. Krueger's DOC record shows that the few classes he took in his 25 years in prison could have been completed in the span of one year and that he did not seek out any further education. It does not show Kruger involved in any mentorship. And Krueger's testimony, stating "I never thought it would have went that far. I mean, I tried to figure it out for years, and I couldn't really come up with nothing, because I can't speak for someone else," displayed his reluctance to take accountability for his own role in the crime. Dr. Carter's psychological evaluation focused on Krueger's immaturity at the time of his crime, but this does not contradict the court's determination that Krueger did little more than what was expected of him in prison and has not shown much growth.

The court also appropriately looked to the facts of the crime in making its determination. For instance, in an interview with the sheriff's office, Kruger stated that he had considered killing Greenwood himself, "just to make it an easier job." He also acknowledged that robbing Greenwood was his idea, that he

provided Anderson with the gun, and that he had watched as Anderson wiped the bullets for fingerprints. The court reasoned that these facts indicated a planned robbery, despite Krueger's assertions that he never intended for anyone to get hurt. After balancing Krueger's adverse childhood experiences, his youth and immaturity, and his rehabilitative efforts against his role in the planning and execution of the original offense, the court concluded that it would not be appropriate to impose a 25 year sentence.

The court's ruling is well within its discretion as a sentencing court. The fact that the defendant disagrees with the conclusion does not mean that the court did not consider all of the evidence. We conclude that the court appropriately considered Krueger's rehabilitation over the facts of his underlying offense.

Challenged Factual Findings

Krueger challenges two of the court's factual findings on appeal, (1) that he engaged in the "minimum things that a person would do while incarcerated," and (2) that it was "inconceivable" that Krueger's youth limited his ability to appreciate the risks and consequences of his action. Substantial evidence supports both findings.

" 'We review findings of fact for substantial evidence,' which 'exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.' " Haag, 198 Wn.2d at 317 (internal quotation marks omitted) (quoting Lamb, 123 Wn.2d at 127).

1. Krueger's Rehabilitative Effort

Krueger contends that the resentencing court's finding that he had engaged only in the minimum rehabilitative behavior in prison was unsupported by substantial evidence. We disagree.

Here, Krueger's DOC record, Krueger's psychological evaluation, and Krueger's own testimony support the court's finding that Krueger made minimal efforts toward rehabilitation. As noted, Krueger's DOC record shows that the few classes he took in his 25 years in prison could have been completed in the span of one year. He did not seek out any further education. He did not engage in any substance abuse treatment. And his DOC record does not document any form of mentorship. Krueger testified that his mentorship was not "on the books" and that he'd "done more rehabilitation programs than what they've said," but acknowledged that he had not done as much as others seeking resentencing had. Rather, he spoke to "teaching staff how to do their own jobs." Sufficient evidence exists for a fair-minded, rational person to determine that Krueger had "been engaging in the minimum things that a person would do while incarcerated." The court looking for more than the minimum is not—as Krueger asserts—asking for exceptional rehabilitation.

And beyond the evidence of Krueger's rehabilitative actions in prison, his testimony at the resentencing did little to show that he had accepted responsibility for his actions. Although Krueger apologized to the Greenwood and Brown families, he focused on his "chicken[ing] out" and "trying to fit in with an older crowd that [he] should have never been involved with." He did not

acknowledge his role in organizing the robbery, nor did he take accountability for any of his actions afterwards. Substantial evidence supports the court's finding that Krueger made minimal efforts toward rehabilitation.

2. Impact of Youthfulness

Krueger similarly contends that the resentencing court finding it "inconceivable" that Kruger's youthfulness significantly impacted his ability to appreciate risks and consequences was unsupported by the record. Krueger points to his psychiatric evaluation, arguing that the resentencing court's conclusion contradicted the only expert evidence. We do not find this argument persuasive.

Krueger relies exclusively on the testimony of Dr. Megan Carter, the psychologist who conducted his forensic mental health evaluation, as evidence of his inability to appreciate risk and consequences at the time of his offense. He asserts that the court "ignored the uncontroverted opinion of an expert" and erred in concluding that he was capable of understanding the risks and consequences associated with the crime. In her evaluation, Dr. Carter stated that she believed Krueger "did not consider the consequences of the initial robbery plan and believed he could simply remove himself from the act to no longer be involved" and that this "indicate[d] youthful thinking and lack of planning or understanding of the situation." The court has discretion in resentencing. There is no requirement that the court agree with an expert witness. The court specifically considered Dr. Carter's evidence. However, the court determined that Krueger's actions were not simply the result of adverse childhood experiences and

immaturity as Dr. Carter opined and that he was not just a young person making a bad choice due to other people. The judge referenced Krueger planning the crime for revenge and the details involved before and after the murders as reasons this was not solely due to youth.

The evidence here supports the court's finding that Krueger understood the risks and consequences of his actions. For example, Krueger provided the gun for the robbery and, despite asserting that he never intended to shoot anyone, he arranged the killing. Almost every admission in Krueger's four-hour interview with the sheriff's office indicates that he understood the risks and consequences of robbing someone at gunpoint. In fact, Krueger explained that he stepped out of the car when he did because he was afraid that Anderson would shoot the men. And once Anderson did just that, Krueger searched Greenwood's car for money and drugs. In addition, when Krueger and Anderson realized, through watching the news in the motel, that Greenwood had survived, Krueger complained that Anderson had not done "the full thing, instead of screwing around." Krueger anticipated violence coming, acknowledging that he understood the risks and consequences of his actions. And even if he did not intend for anyone to be killed, the killing did not deter Krueger from following through with the intended robbery.

Substantial evidence supported the court's finding that Krueger's youth did not significantly impact his ability to appreciate risks and consequences.

Firearm Enhancement

Krueger argues that under Houston-Sconiers, which grants courts discretion when sentencing juveniles to impose any sentence below the otherwise applicable range and enhancements, the resentencing court had discretion to waive the mandatory firearm enhancement. Because Houston-Sconiers does not apply to Krueger as a youthful offender, the resentencing court did not have discretion and appropriately imposed the firearm enhancement.

The Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, requires a mandatory five-year enhancement if the offender or an accomplice was armed with a firearm. RCW 9.94A.533(3)(a). Houston-Sconiers provides that "sentencing courts must have absolute discretion to depart as far as they want below otherwise applicable SRA ranges and/or sentencing enhancements when sentencing juveniles in adult court." 188 Wn.2d at 9.

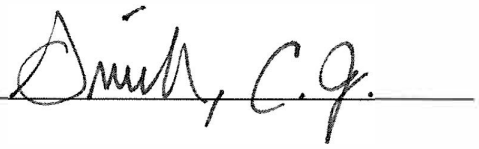
Throughout his briefing, Krueger attempts to extend Monschke to apply juvenile standards to all youthful offenders. Continuing in that vein, Krueger asserts that the resentencing court had discretion as to the firearm enhancement, despite being 20 years old at the time of his offense. But Houston-Sconier's holding is narrow and applies only to juveniles. 188 Wn.2d at 9. As a 20-year-old, Krueger was not a juvenile offender facing adult court—he was an adult. And despite his assertion to the contrary, Monschke does not provide courts with "full discretion to depart from the sentencing guidelines and otherwise mandatory sentencing enhancements" for adults. Monschke does not address firearm

enhancement discretion at all.[2] Per the language of the statute, the court was required to impose the five-year firearm enhancement. There was no discretion to be abuse and the court did not err in imposing the firearm enhancement.

Appearance of Fairness

Finally, Krueger contends that the sentencing judge violated the appearance of fairness doctrine and asks that his case be assigned to a new judge on remand. Because we affirm the resentencing court, we decline to reach this issue.

Affirm.



WE CONCUR:

[2] This court addressed this issue in an unpublished opinion in 2021, specifically declining to extend Monschke to the firearm enhancement discretion of Houston-Sconiers. State v. Kasparova, No. 81109-6-I, slip op. at 40 (Wash. Ct. App. Nov. 15, 2021) (unpublished) https://www.courts.wa.gov/opinions/pdf/811096.pdf.

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Washington Appellate Project

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