No. 97704-6



IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

DAKOTA MIKALLE COLLINS,

Petitioner.

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# PETITION FOR REVIEW

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Court of Appeals No. 51511-3-II
Appeal from the Superior Court of Pierce County
Superior Court Cause Number 16-1-02182-6
The Honorable Stephanie Arend, Judge

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES



### OTHER AUTHORITIES

## I. IDENTITY OF PETITIONER

The Petitioner is DAKOTA MIKALLE COLLINS, Defendant and Appellant in the case below.

## II. COURT OF APPEALS DECISION

Petitioner seeks review of the unpublished opinion of the Court of Appeals, Division 2, case number 51511-3-II, which was filed on August 27, 2019. (Attached in Appendix) The Court of Appeals affirmed the conviction and sentence entered against Petitioner in the Pierce County Superior Court.

## III. ISSUES PRESENTED FOR REVIEW

1. Where youthfulness and surrounding circumstances of upbringing can diminish a juvenile offender's culpability and can constitute a mitigating factor justifying the imposition of a reduced sentence, did the trial court abuse its discretion when it failed to consider whether sixteen-year-old Dakota Collins' behavior and decision making were a product of his youthful immaturity and traumatic childhood?

2. Where the differences between young offenders and adult offenders can constitute a mitigating factor justifying the imposition of a reduced sentence, did the trial court meaningfully consider youth and its attributes when it failed to address the differences between sixteen-year-old Dakota Collins and adult offenders?

## IV. STATEMENT OF THE CASE

The Pierce County Prosecutor charged sixteen-year-old Dakota Mikalle Collins with one count of first degree felony murder

for allegedly causing the death of Lorenzo Parks during an incident that occurred on the 17th or 18th of May, 2016. (CP 1-2) The State further alleged that the charged incident was committed with a firearm. (CP 1-2)

Dakota took responsibility for his actions and entered a guilty plea to an amended information charging one count of second degree murder while armed with a firearm, one count of attempted first degree robbery, and two counts of first degree unlawful possession of a firearm. (CP 272-74, 276-87; 09/15/17 RP 3-4) When asked to state the factual basis to support the plea, Dakota wrote:

> Between May 17th and 18th, I, Dakota Collins, did intentionally shoot Mr. Lorenzo Parks while my codefendants and I were attempting to take his property by force and while Mr. Parks was resisting the taking of his property. The gun I used to shoot Mr. Parks was a real gun, and Mr. Parks died from the gunshot would. I also should not have been in possession of the firearm because I had previously been convicted of a felony offense and a juvenile which prohibited me from having in my possession a firearm. I also had in my possession a firearm on June 16, 2016 when I was arrested for the offense related to Mr. Parks when my rights to possess a firearm had not been restored to me. All acts occurred in the State of Washington. My shooting of Mr. Parks was my intent to commit Assault 1.

(CP 285) After a lengthy colloquy, the trial court found that the plea

was knowing, voluntary and intelligent, and it accepted Dakota's guilty plea. (09/15/17 RP 6-17)

The prosecutor recommended that Dakota be sentenced to a standard range adult sentence totaling 260 months (21.6 years) of confinement. (10/05/17 RP 60-61) Dakota asked the Court to exercise its discretion and impose an exceptional sentence below the standard range based on Dakota's youth and other related mitigating factors. (10/05/17 RP 62-71)

In its sentencing memorandum, the defense summarized Dakota's difficult childhood and his struggle with behavioral disorders, and his amenability to treatment and rehabilitation:

> According to CPS records, Dakota's biological mother, Venessa White, was serving her time at Echo Glen when she gave birth to Dakota Collins on October 23, 1999. [CP 307] Venessa was 16-years-old….
> While pregnant with Dakota and since age 13, Venessa had been taking controlled substances. "Alcohol, amphetamine, cocaine, marijuana, tobacco, tobacco dipped in formaldehyde." Whatever she could get her hands on. [CP 313]…. Venessa's inadequate parenting skills could not cope with a drug-exposed infant. Youth, poor education, low economic status, being single mother, drug addiction were all a recipe for disaster. On July 3, 2001, the State filed dependency on Dakota and his younger brother.
> Of course the effects of those formative years with a drug addicted child-mother, already began taking its toll on Dakota. At age 3, the social workers noted:

> Dakota has problems with focusing and staying on task, as well as complying with adult requests. This behavior may be age-related or may be due to maternal drug or alcohol use. He is too young for an ADHD assessment and diagnosis, but if this behavior continues, his foster parents will follow through with a medical evaluation to determine what services, if any, are needed.

[CP 341]

With his mother detained for not following through with probation and unable to provide for Dakota and not knowing what the future held, on October 13, 2003, after two years of being in dependency and almost two years in foster care, Venessa finally relinquished her parental rights. Dakota's biological father's parental rights were terminated on October 8, 2003.

[T]he effects of pre-natal drug abuse became evident even before Dakota turned 5 and even before he began attending school. He showed all the symptoms of a drug addicted baby – irritability, agitation, hyperactivity, poor task organization and processing. [CP 352-58] As the studies have predicted, during second grade, Dakota was diagnosed with ADHD. [CP 360-62] It was evident to everyone, especially his adoptive parents and his teachers that Dakota was more emotionally reactive, anxious and depressed, even at that young age. Dakota needed medication and had to be closely monitored.

Ritalin, Adderall and Concerta, however, did not work for Dakota. All through grade school and into junior high and high school, Dakota continued to struggle. He was impulsive, reactive, hyperactive, showed undue aggression, was sensation seeking, he could not behave in school or at home, had clear emotional problems and poor social skills. [CP 363-68] His parents didn't know what to do with him. Multiple times he was suspended from school for misbehavior. [CP 363-68] Multiple times Dakota

sought help from professionals and multiple times he failed. It was clear: not only did he suffer from attention deficit disorder, he also suffered from oppositional defiant disorder (ODD). [CP 361]

… [A]t age 12, Dakota was sent to the Southern Military Academy in Port St. Lucie, Florida. But what should have been a positive, life-changing learning experience for Dakota turned into a nightmare.

Unbeknownst to his adoptive parents, the Military Academy had been investigated by the Department of Children and Families (DCF) for at least 30 allegations of abuse and neglect at the academy since 2000. [CP 371-92] The types of abuses included asphyxiation, beatings, bizarre punishment, bruises/welts, burns, cuts/punctures/bites, excessive corporal punishment, sexual abuse, sexual exploitation, sexual molestation, and inappropriate/excessive restraints. [CP 371-92] Unfortunately for Dakota, his parents did not listen to his cries to bring him home, ignored his repeated complaints of severe physical abuse, did not take seriously his reports of the types of punishment Dakota and others suffered at the hands of Colonel Weierman. It wasn't until [his adoptive mother] had a confrontation with Colonel Weierman she realized how wrong she had been to not believe Dakota, how wrong she had been to ignore his cries for help. She agreed to bring Dakota home, but the damage was done. Dakota returned home even angrier than before.

What he suffered at the hands of Colonel Weierman and the other juveniles at the military school is more fully described in Dr. Gerlock's report. [CP 393-409] Suffice it to say, Dakota returned suffering from post-traumatic stress disorder (PTSD), desperately needing treatment and medication—neither of which he received or attempted to receive. Instead, he took to the streets. He self-medicated on drugs and marijuana. He committed this crime—taking the life of Mr. Parks—high on drugs, with no

> control over his emotions, his thought processes and his reasoning abilities severely compromised. He saw Mr. Parks fighting with his friends/codefendants as he resisted their attempts to rob him. He heard his codefendants yell, "Shoot him! Shoot him!" As the incident unfolded, Dakota's PTSD became triggered, and he snapped. He fired the gun not thinking or considering the consequences of his act. At age 16, he killed Mr. Parks, and Dakota knows he will have to atone for this tragic mistake for the rest of his life.
>
> …After his arrest on June 7, 2016, Dakota was sent to Remann Hall, a juvenile detention facility in Tacoma Washington. There, he received much needed mental health counseling from Catholic Community Services. For the first time since returning from Southern Military Academy, he was able to talk about what happened to him at the Academy. He began attending classes five days a week, Monday through Friday for 1 to 1 ½ hours a day, and as he began understanding his own history, he began to grasp the pain he has caused to his adoptive parents, to the mother who bore him, and especially to the family of Mr. Lorenzo Parks. Through counseling, he began to understand his biological mother, forgive her, and find comfort in her love for him. What began as forced counseling became a source of reflection and reprieve.

(CP 297-301) Psychologist April Ann Gerlock also testified that Dakota suffered from PTSD, and coupled with the normal underdeveloped functioning of his adolescent brain, Dakota's judgment and ability to consider consequences would have been impaired. (10/05/17 RP 46-47) These conditions would negatively impact how Dakota would respond and react during a stressful event. (10/05/17 RP 47)

The trial judge was unmoved, and adopted the prosecutor's recommendation. (10/05/17 RP 78; CP 416) The court stated:

> [L]ife is about choices and that you have the choice to walk away. And the facts that were described of what happened that night … you had a choice to walk away.
>
> …This [proceeding] isn't about giving programming or providing opportunities for youth. This is about accountability under the law for actions that you took.
>
> … [O]ne of the victim's family members talked about … setting standards for our children. … We have to be telling them: This is wrong. And it's not okay to just slap them on the wrist.
>
> And there's, I think, a very real concern by the family members here of Mr. Parks that that's what this is all about. That … if you commit a violent, horrific act where someone is shot and killed, that we are supposed to, because of your youth, give you a slap on the hand and put you through some rehabilitative programming and expect you to become a contributing member of society.
>
> And while I do agree that rehabilitation should be part of this, punishment is also a part of this. Deterrence is part of this. Protection of the public is part of this. And … this was not your first felony conviction, is my understanding. You were previously convicted of a felony offense as a juvenile, which prevents you from having a firearm in any event. So despite the things that were being done for you or with you, you made very bad choices, and continued to make very bad choices.
>
> … But the facts as they sound to me don't sound like a person who was in fear for their life, and I suspect you wouldn't have pled guilty to the murder in the second degree if in fact what you were doing was protecting yourself or protecting your friends.
>
> … [N]othing miraculous happens on your 18th birthday. You don't suddenly have your brain fully

> developed so that you're now going to make good choices and now going to be able to assess risks and consequences of your behavior differently than you did the day before you turned 18. And I suspect that you actually did have a good appreciation when you had a gun in your hand, a loaded gun in your hand, and took the magazine out and put it back in, that you had an appreciation for the risk associated with that gun and what would happen if you pulled the trigger.
>
> … I do think that *Houston-Sconiers* requires the Court to consider all of the factors, not just the act itself. But it can't -- it's like, okay, how do you consider immaturity or failure to appreciate risks and consequences. You don't consider those in a vacuum. You consider them in the context of what brings us all here today, and that is that you chose to pull the trigger, and a person died as a result.
>
> … And to Mr. Collins, considering all of these factors, including all of the goals of sentencing that I've already touched on, of what is a just punishment, what will be a deterrent, what would it take to rehabilitate you -- which I honestly didn't hear a lot about -- and how do we protect the public, I do think a sentence within the standard sentencing range is appropriate, plus the firearm sentencing enhancement and a period of community custody.

(10/05/17 RP 72-77)

Dakota appealed, arguing that he was denied his due process rights when he was prosecuted in adult court without a decline hearing, and that the trial court failed to meaningfully consider his youth as a mitigating factor at sentencing.

The Court of Appeals rejected these arguments and affirmed

Dakota's conviction and sentence. [1]

## V. ARGUMENT & AUTHORITIES

The issues raised by Dakota Collins' petition should be addressed by this Court because the Court of Appeals' decision conflicts with settled case law of the Court of Appeals, this Court and of the United State's Supreme Court. RAP 13.4(b)(1) and (2).

Under the SRA, a sentencing court must generally sentence a defendant within the standard range. *State v. Graham*, 181 Wn.2d 878, 882, 337 P.3d 319 (2014); RCW 9.94A.505(2)(a)(i). But the "concept of proportionality is central to the Eighth Amendment." *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 2463, 183 L. Ed. 2d 407 (2012).

Accordingly, "[t]he court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence." RCW 9.94A.535(1). The diminished culpability of youth may serve as a mitigating factor. See RCW 9.94A.535(1)(e); *State v. Ronquillo*, 190 Wn. App. 765, 769, 361 P.3d 779 (2015); *Miller v.*

[1] After the Dakota filed his Opening Brief, this Court issued its opinion in *State v. Watkins*, 191 Wn.2d 530, 423 P.3d 830 (2018), which held that automatic decline of juvenile court jurisdiction does not violate procedural or substantive due process.

*Alabama*, *supra.*, *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015).

That is because children are "constitutionally different from adults for purposes of sentencing." *Miller*, 132 S. Ct. at 2464. Children are less blameworthy because they are less capable of making reasoned decisions. *Miller*, 132 S. Ct. at 2464. Scientists have documented their lack of brain development in areas of judgment. *Miller*, 132 S. Ct. at 2464.

These scientific studies "reveal fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure." *O'Dell*, 183 Wn.2d at 692 (footnote citations omitted); see also *Miller*, 132 S. Ct. at 2468 (the hallmark features of youth that diminish a juvenile's blameworthiness under the Eighth Amendment include immaturity, impulsivity, and failure to appreciate risks and consequences).

Thus, a sentencing court must consider a juvenile offender's "youth and attendant characteristics" before determining the penalty, and not simply examine his acts during the incident. *Miller*, 132 S. Ct. at 2471. The judge must "meaningfully consider youth

as a possible mitigating circumstance." *O'Dell*, 183 Wn.2d at 696.

In *State v. Houston-Sconiers*, this Court provided guidance to sentencing courts on how to exercise their discretion in juvenile sentencing:

> [I]n exercising full discretion in juvenile 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." It must also consider factors like the nature of the juvenile's surrounding environment and family circumstances, the extent of the juvenile's participation in the crime, and "the way familial and peer pressures may have affected him [or her]." And it must consider how youth impacted any legal defense, along with any factors suggesting that the child might be successfully rehabilitated.

188 Wn.2d 1, 23, 391 P.3d 409 (2017) (quoting *Miller*, 132 S. Ct. at 2468).

Furthermore, in assessing whether any fact is a valid mitigating factor, the sentencing court's task is to determine whether that fact differentiates the current offense and offender from others in the same category. *O'Dell*, 183 Wn.2d at 690. What makes youthfulness a mitigating factor is the degree to which youth and its characteristics differentiates youthful offenders from older offenders. *O'Dell*, 183 Wn.2d. at 693. It is "misguided" to equate adolescent failings with those of older offenders. *Roper v.*

*Simmons*, 543 U.S. 551, 570, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). Thus, another relevant question is to what degree did Dakota's youth differentiate him and his offense from other adult offenders. Contrary to the Court of Appeals' findings here (Opinion at 6-7), the trial court did not attempt to consider any of these factors.

First, at no point did the court consider how Dakota's maturity, culpability, and decision making abilities (or lack thereof) compared to adult offenders. By failing to do so, the trial court did not give effect to the mandate of the SRA, *Miller* or *O'Dell*.

The trial court also failed to give effect to the Supreme Court's caution, that the hallmark attributes of youth are transient. "The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Roper*, 543 U.S. at 570. The trial court never assessed Dakota's likelihood for rehabilitation that may occur simply from maturation as compared to older adult offenders. Instead, the trial court simply focused on Dakota's past behavior and the consequences of that behavior, and did not consider Dakota's ability to appreciate those consequences or to make

mature decisions about his life when he was just 16 years old.

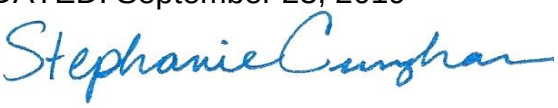
The trial court also repeatedly referred to Dakota's "choices," stating: "life is about choices and … you had a choice to walk away" (10/05/17 RP 72); "you made very bad choices, and continued to make very bad choices" (10/05/17 RP 74); and "you chose to pull the trigger, and a person died as a result" (10/05/17 RP 76). But the court failed to consider that immature judgment and impetuousness—classic traits of youth—may have contributed to Dakota's choices. And the court did not consider how Dakota's youth and traumatic upbringing may have impacted his ability to make good choices.

The trial court "did not meaningfully consider youth as a possible mitigating circumstance" and therefore failed to properly exercise its discretion at sentencing. *O'Dell*, 183 Wn.2d at 696-97. Dakota's case should be remanded for a new sentencing hearing. *O'Dell*, 183 Wn.2d at 697.

## VI. CONCLUSION

This Court should accept review, and remand this matter for a new sentencing hearing to permit the court to meaningfully consider Dakota's youthfulness, surrounding environment and family circumstances as a mitigating factor.

DATED: September 23, 2019



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**CERTIFICATE OF MAILING**

I certify that on 09/23/2019, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Dakota Mikalle Collins #402786, Washington State Penitentiary, 1313 N 13th Ave., Walla Walla, WA 99362.

STEPHANIE C. CUNNINGHAM, WSBA #26436

# APPENDIX

Court of Appeals Opinion in State v. Dakota Collins, No. 51511=3=II

Filed
Washington State
Court of Appeals
Division Two

August 27, 2019

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>DAKOTA MIKALLE COLLINS,<br><br>Appellant. | No. 51511-3-II<br><br>UNPUBLISHED OPINION |

GLASGOW, J. — Dakota M. Collins and some friends were attempting to rob Lorenzo Parks when Collins shot Parks in 2016. Collins was 16 years old at the time. Collins was charged with second degree murder with a firearm enhancement, attempted first degree robbery, and two counts of second degree unlawful possession of a firearm. The juvenile court automatically declined jurisdiction. Collins pleaded guilty to these charges.

Collins appeals, arguing that the automatic decline of juvenile court jurisdiction violated due process and that the superior court failed to consider his youth as a mitigating factor when sentencing him. Collins also appeals the imposition of certain legal financial obligations.

We affirm Collins's convictions and sentence. We reverse the imposition of the criminal filing fee, the DNA collection fee, and the interest accrual provision. We remand to the trial court to address these obligations.

## FACTS

In 2017, Collins was charged as an adult under the statute establishing automatic decline of juvenile court jurisdiction for serious violent offenses committed when the offender is 16 or 17 years old. Former RCW 13.04.030(1)(v) (2009). Collins pleaded guilty. He admitted that he intentionally shot the victim while he and his co-defendants were attempting to take the victim's property. Under the terms of the guilty plea, the State agreed to recommend a standard range sentence of 200 months plus the 60 month firearm enhancement for the second degree murder, while Collins could argue for a lower sentence, as low as 66 months.

Collins filed a sentencing memorandum arguing for an exceptional mitigated sentence of 96 months. Collins argued that his youth, combined with the circumstances of his upbringing, warranted an exceptional mitigated sentence below the standard range. Collins also relied on his diagnoses for attention deficit hyperactivity disorder and oppositional defiant disorder, likely related to his biological mother's drug use during pregnancy. In addition, Collins was suffering from post-traumatic stress disorder due to abuse he endured at a military academy that he attended for a period of time. Collins also had a history of abusing drugs and alcohol in the time preceding the shooting. Collins submitted an expert's report detailing the impact of these conditions and his youth on his judgment and ability to control impulses. In total, Collins

provided the superior court with over 100 pages of argument and documentation supporting his request for an exceptional mitigated sentence.

Prior to the sentencing hearing the superior court reviewed all of the materials Collins had submitted. Both the State and Collins made extensive arguments regarding how Collins's youth should impact the sentence imposed. The superior court also allowed Collins to present testimony from the expert regarding the effects of youth and post-traumatic stress on Collins's judgment and behavior at the time of the crime.

The superior court entered an extensive ruling regarding Collins's sentence. Throughout the ruling the superior court made it clear that it recognized its discretion to impose an exceptional mitigated sentence based on Collins's youth:

> And there's, I think, a very real concern by the family members here of Mr. Parks that that's what this is all about. That the [*State v.*] *Houston-Sconiers*'s [188 Wn.2d 1, 391 P.3d 409 (2017)] decision means that if you commit a violent, horrific act where someone is shot and killed, that we are supposed to, because of your youth, give you a slap on the hand and put you through some rehabilitative programming and expect you to become a contributing member of society.
>
> And while I do agree that rehabilitation should be part of this, punishment is also a part of this. Deterrence is part of this. . . . Protection of the public is a part of this. And this was not – and just reading the statement in paragraph 11 of your plea, this was not your first felony conviction, is my understanding. You were previously convicted of a felony offense as a juvenile, which prevents you from having a firearm in any event. So despite the things that were being done for you or with you, you made very bad choices, and continued to make very bad choices.
>
> . . . .
>
> I agree with [defense counsel] that I don't think the *Houston-Sconiers* or the line of cases leading up to it supports the idea that if the State amends the charges or recommends something below the high end of the range, that that's taking into consideration youth and age and all those things that [*Houston-Sconiers*] talks about. But I do think that the Court isn't going to ignore that, because clearly I would have expected that that's part of what was taken into consideration by the

> State. *But I believe that the Court shouldn't defer to the State and assume that they did that, but do its own assessment of that*.
>
> I do think there's a significant difference factually between *Houston-Sconiers* and this case, as well as the punishment. And there, I do think it was a situation where, thankfully, no one was killed, but it was a piling-on of consecutive sentencing enhancements that I think that even the judge in that case felt duty-bound to follow, and yet it was at a very extreme sentence. That's not this case.
>
> . . . .
>
> And I want you to know that *I appreciate the materials that* [*defense counsel*] *has put forward, and that has given me – that I've given a great deal of thought to that.*
>
> . . . .
>
> *I do think that Houston-Sconiers requires the Court to consider all of the factors, not just the act itself.* But it can't – it's like, okay, how do you consider immaturity or failure to appreciate risks and consequences. You don't consider those in a vacuum. You consider them in the context of what brings us all here today, and that is that you chose to pull the trigger, and a person died as a result.
>
> . . . .
>
> And to Mr. Collins, *considering all of these factors*, including all of the goals of sentencing that I've already touched on, of what is a just punishment, what will be a deterrent, what would it take to rehabilitate you – which I honestly didn't hear a lot about – and how do we protect the public, I do think a sentence within the standard sentencing range is appropriate, plus the firearm sentencing enhancement and a period of community custody.

Verbatim Report of Proceedings (Vol. 1) (Oct. 5, 2017) at 71-77 (emphasis added). The superior court denied Collins's request for an exceptional mitigated sentence and imposed the State's recommended, standard range sentence of 260 months for the second degree murder, including the firearm enhancement. The sentences for the rest of the convictions would be served concurrently, so the total term of confinement was 260 months. The superior court also imposed a $500 crime victim assessment, a $100 DNA database fee, and a $200 criminal filing fee.

Collins appeals his conviction and sentence.

ANALYSIS

A. Juvenile Court Jurisdiction

Collins argues that the automatic decline of juvenile court jurisdiction violated his right to due process. Recently, in *State v. Watkins*, 191 Wn.2d 530, 423 P.3d 830 (2018), our Supreme Court held that automatic decline of juvenile court jurisdiction does not violate procedural or substantive due process. Therefore, Collins's argument fails.

Former RCW 13.04.030(1)(v) (2009), which applied at the time Collins committed his crime, provided that juvenile courts must automatically decline jurisdiction over juveniles who have committed certain offenses when they were 16 or 17 years old.[1] In *Watkins*, the appellant challenged the constitutionality of former RCW 13.04.030 on due process grounds arguing that due process requires that all juveniles receive an individualized hearing before the juvenile court may decline jurisdiction. *Watkins*, 191 Wn.2d at 537. Our Supreme Court held that "automatic decline comports with procedural due process." *Id.* at 542. Juveniles have no constitutional right to be tried in juvenile court. *Id.* at 541. And automatic decline of juvenile court jurisdiction does not violate substantive due process because "adult courts have discretion to consider the mitigating qualities of youth and sentence below the standard range in accordance with a defendant's culpability." *Id.* at 542-43. Finally, recent developments in United States Supreme Court and Washington Supreme Court jurisprudence regarding sentencing for juveniles and youthful offenders did not undermine this holding. *Id.* at 543-46.

[1] The legislature amended RCW 13.04.030 in 2019 in ways not relevant to this case. The *Watkins* court also addressed the version of the statute adopted in 2009.

Our Supreme Court has rejected the argument that automatic decline of juvenile court jurisdiction violates due process. Therefore, we affirm Collins's convictions.

B. Sentencing

Collins also argues that the superior court abused its discretion by refusing to impose a mitigated sentence below the standard range based on Collins's youth and traumatic upbringing. We disagree.

The Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, prohibits appeal of a standard range sentence. RCW 9.94A.585(1). However, a defendant may challenge the procedure by which a standard range sentence is determined, including the rejection of a request for an exceptional mitigated sentence. *State v. Garcia-Martinez*, 88 Wn. App. 322, 329-30, 944 P.2d 1104 (1997). Review in such cases "is limited to circumstances where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range." *Id.* at 330.

A sentencing court has improperly refused to exercise its discretion if it determined that youth is not a factor that can justify an exceptional mitigated sentence. *State v. O'Dell*, 183 Wn.2d 680, 696, 358 P.3d 359 (2015), *review denied*, 189 Wn.2d 1007 (2017). In *Houston-Sconiers*, our Supreme Court held that "[t]rial 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." 188 Wn.2d at 21. However, *Houston-Sconiers* does not *require* the trial court to impose a sentence outside of the standard range if the trial court considers the qualities of youth at sentencing and determines that a standard range sentence is appropriate. *See id.*

Here, the superior court was well aware of its ability and discretion to impose an exceptional mitigated sentence based on Collins's youth. And the superior court considered all of the materials Collins provided, expert testimony presented, as well as the extensive arguments regarding Collins's youth and the *Houston-Sconiers* decision, before determining that the standard range sentence plus the firearm enhancement recommended by the State was appropriate. The superior court did not categorically refuse to exercise its discretion—rather, it exercised discretion and determined that the facts and circumstances did not warrant an exceptional mitigated sentence. Therefore, we affirm Collins's standard range sentence.

C. Legal Financial Obligations

Collins also argues that we should reverse the imposition of certain legal financial obligations and remand to the trial court to apply the 2018 legislative amendments. We agree.

In 2018, the legislature amended several statutes addressing legal financial obligations. LAWS OF 2018, ch. 269. Our Supreme Court has held that these amendments apply prospectively and are applicable to cases, like this one, that are pending on direct review and not final when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). After the 2018 amendments, the relevant statutes prohibit the superior courts from imposing the $200 criminal filing fee on indigent defendants and the $100 DNA collection fee if the offender's DNA has already been collected as the result of a prior conviction. RCW 36.18.020(2)(h); RCW 43.43.7541. The amendments also prohibit the accrual of interest on nonrestitution legal financial obligations. LAWS OF 2018, ch. 269, § 1; *see* RCW 10.82.090.[2]

[2] The crime victim assessment fee is not impacted by a defendant's indigency, RCW 9.94A.760(1), and Collins does not challenge this obligation.

Here, the State concedes that the criminal filing fee, the DNA collection fee, and the accrual of interest on nonrestitution legal financial obligations should be stricken from the judgment and sentence. Therefore, we reverse imposition of these fees and interest on nonrestitution LFOs and remand for the trial court to address them in light of new legislation and *Ramirez*.

In sum, we affirm the convictions and sentence. We reverse the imposition of the criminal filing fee, the DNA collection fee, and the interest accrual provision. We remand to the trial court to address these obligations.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Glasgow, J.

We concur:

Melnick, P.J.

Sutton, J.

## September 23, 2019 - 1:45 PM

## Transmittal Information

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|---|---|
| **Filed with Court:** | Court of Appeals Division II |
| **Appellate Court Case Number:** | 51511-3 |
| **Appellate Court Case Title:** | State of Washington, Respondent v Dakota Mikalle Collins, Appellant |
| **Superior Court Case Number:** | 16-1-02182-6 |

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