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Supreme Court No. 98873-1

Court of Appeals No. 37349-5-III

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AARON ATA TOLEAFOA,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Aaron Toleafoa, petitioner here and appellant below appeals from the court's resentencing for crimes he committed as a 15-year-old. He asks this Court to accept review of the Court of Appeals decision issued on July 9, 2020, pursuant to RAP 13.3 and RAP 13.4(b)(1),(3)&(4). The opinion is attached.

B. ISSUES PRESENTED FOR REVIEW

1. This Court has ruled it violates the Eighth Amendment and art. I, § 14 to presumptively impose an adult, standard range sentence on a child who has demonstrated his youthful attributes entitle him to a mitigated sentence. The trial court here agreed Aaron, who was 15 years old when he committed his offense, was entitled to a sentence below the standard range based on his lessened culpability due to his youth. But the trial court also presumed the adult standard range was the correct sentencing benchmark, instead of the juvenile sentencing scheme. Did the court's failure to presumptively sentence Aaron commensurate with the culpability of a child impermissibly sentence him as a "miniature adult," contrary to the Eighth Amendment and art. I, § 14? RAP 13.4(b)(3)&(4).

2. This Court's ruling in *Houston-Sconiers*¹ gave limitless discretion to a judge sentencing a child declined to adult court. This broad discretion results in widely disparate sentences that will necessarily be driven by an individual judges' preconceived notions and implicit biases. Should this Court grant review and provide guidance to lower courts in the exercise of this discretion, holding that under the Eighth Amendment and art. I, § 14, when a sentencing court determines the child's conduct at the time of the offense was mitigated by youth, the sentencing court's discretion must begin with the presumptive sentencing ranges established for children under the Juvenile Justice Act (JJA), rather than the standard range sentences established for adult defendants by the Sentencing Reform Act (SRA)? RAP 13.4(b)(3)&(4).

3. Despite *Houston-Sconiers* granting trial courts broad discretion to not impose the SRA's otherwise mandatory sentencing requirements, the parties and court in Aaron's case believed the court's discretion did not extend to the restitution award of over \$200,000 to a for-profit insurance company that

¹ *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017).

was entered at Aaron's prior sentencing hearing, without consideration of whether his youth and indigence merited a reduction. Should this Court grant review to determine whether a child receiving a mitigated sentence is eligible for reduced restitution, consistent with the legislature's directive that in juvenile cases a court may reduce or decline to order restitution to insurance companies? RAP 13.4(b)(1),(3) &(4).

C. STATEMENT OF THE CASE

1. Lost and surrounded by negative influences, Aaron commits a serious crime with a group of kids.

Growing up, Aaron's family knew him to be courteous, soft-spoken, reserved, caring, and easy to get along with. RP 67. CP 67, 88, 90. He was also known to stand up for others, and was a role model for younger family members. CP 67, 88, 93-96.

Aaron is of Samoan descent. RP 66. As a teen he felt unwelcome at school and he left after the ninth grade. CP 70. Aaron struggled with low self-esteem, anger, and hopelessness. CP 69. He was surrounded by negative role models. CP 316; RP 39. At age 15, Aaron was involved in a crime spree with other teens that ended with a near-fatal shooting. Slip. op. at 1.

Aaron entered juvenile detention as a scared, lost 15-year-

old child who had just committed a series of violent offenses. When his mother, Leilani, first saw him in juvenile detention she remembers: “[h]e held me so tight and cried. I thought to myself, he’s just a boy, a young kid, scared, lost and trying to understand how he even got there.” RP 29-30.

Aaron was declined to adult court. He pleaded guilty to an amended information charging five of the State’s original ten counts. CP 10-23; 313-14. Aaron faced a sentencing range of 146-221 months on the most serious charge, attempted second degree murder, in addition to a mandatory 60-month firearm enhancement. CP 314. At his sentencing in 2016, the prosecutor asked for the maximum sentence. CP 314. Aaron asked the court to impose an exceptional sentence downward based on his youth and life circumstances. CP 41. The trial court sentenced him to the standard range sentence of 260 months. CP 314.

2. Aaron transforms himself in juvenile detention.

From the moment Aaron entered detention, he began the process of rehabilitation, healing, and growth. RP 35. He completed his high school degree and met the state graduation standards. CP 141-148. He was a youth mentor and gained work

experience. CP 78.

In 2017, Aaron was selected as one of 10 national young leaders for the 2018 Emerging Leaders Committee. CP 80, 101, 118. The program focuses on building the next generation of national leaders for juvenile justice advocacy. CP 120.

Aaron actively worked on juvenile justice reform. He contributed to Senate Bill 6160, which allows minors to stay in the state juvenile corrections system until they turn 25 years old. CP 110. At the bill's signing, Governor Inslee stated the new legislation aligns with his priorities of "reducing recidivism and promoting equality in the juvenile justice system." CP 111.



CP 57 (Aaron featured on right).

Aaron's family and friends have witnessed Aaron's growth and rehabilitation. CP 85-96. Because of the transformation they have seen in Aaron over the years, he has the support of both friends and family upon release. CP 85-96.

The Green Hill School Superintendent described that Aaron "has grown as a positive leader in both his unit and campus; advocating for himself, youth, and staff." CP 78. He maintained the highest level honor status, "held by only a few young people" and "far exceeded our expectations of any young person here at GHS and he continues to seek out other learning opportunities to continue his personal growth." CP 79.

3. The resentencing court denies Aaron's request for a sentence that would release him at age 25 in the hopes of avoiding the perils of adult prison.

After Aaron was sentenced in 2016, this Court decided *Houston-Sconiers*, which requires the court to consider the mitigating qualities of youth at sentencing. CP 4. Aaron's case was remanded for the sentencing court to consider whether the required mitigating factors of youth articulated in *Houston-*

Sconiers justified an exceptional sentence downward.² CP 40-45.

Judge Orlando resentenced Aaron in 2018. CP 312. At Aaron's resentencing, the trial court heard about his leadership and achievements. Vazaskia Crockrell, the director of the Office of Juvenile Justice and a representative from the Washington State Partnership Council on Juvenile Justice, described Aaron's recent participation at the Global Youth Summit:

Aaron . . . shared his story with over 276 juveniles – youth that have been involved in the juvenile justice system—and he shared so much passion that not only did they shake, but the whole room shook (sic). We were at a law school. He is a powerful speaker. He is a motivator. He's a leader, and it's all sincere from the depth of his being. I've seen a change in him, and I do this work today in part for Aaron and what he inspired to me.

RP 33.

Evelyn Maddox, also with the Washington State Partnership Council of Juvenile Justice and Washington Healthcare Authority, worked with Aaron since he first entered juvenile detention at age 15. RP 35. She described Aaron's transformation:

I was able to witness healing and growth . . . Aaron led groups while he was in custody at Remann Hall. He was a model to other youth, and it wasn't long before Aaron

² *State v. Toleafoa*, 1 Wn. App. 2d 1002, 2017 WL 4786994 (2017).

understood what had happened, and he had remorse and he wanted to ride the journey of hope and healing.

RP 35. Ms. Maddox asked the court for “fair justice,” which is to understand that what Aaron “did at 15 years old is not who he is now, and that with the proper supports that he has changed, and he will continue to be who he is today.” RP 36.

The court also heard from Aaron, who expressed sincere remorse for the harm he had done to the man he shot at and all the people he hurt. RP 36.

The prosecutor again argued for the same high end of the adult sentencing range that it sought at the first sentencing, even though the court declined to impose that harsh of a sentence then. RP 9. The prosecutor claimed Aaron could have been charged with more crimes had he not plead guilty, and compared Aaron to a hypothetical adult who committed a hypothetical, more serious crime that could have been punished by death or life in prison. RP 9-10.

Aaron asked the Court to sentence him in accordance with the maximum term that would allow him to stay in a juvenile detention, to age 21-25, or a “juvenile life” sentence, citing the

harmful effects of adult prison on a young person and Aaron's successful rehabilitation in juvenile detention. RP 27; CP 315.

The Court agreed with Aaron that there were "substantial and compelling reasons" justifying an exceptional sentence. CP 316. Under the factors adopted in *Houston-Sconiers*, the court determined that Aaron's "age, immaturity, and impetuosity affected his ability to fully appreciate the risks and consequences of his actions." CP 316. However, the court looked to the purposes of the SRA in considering the sentence to impose, and used Aaron's previous adult sentence as its benchmark. RP 43-45. The trial court imposed an exceptional downward, running the 60-month firearm sentencing enhancement concurrent to the standard range sentence of 192 months of total confinement, or 16 years. CP 316.

On appeal, Aaron argued that the Eighth Amendment and Article I, § 14 required the trial court to presumptively sentence him commensurate with the culpability of a child, not an adult, and that the sentencing court erred in using the standard range, adult sentence set by the SRA as its benchmark. The Court of Appeals rejected his claim by

misconstruing this argument as controlled by *In re Boot*, 130 Wn.2d 553, 571, 925 P.2d 964 (1996) and *State v. Watkins*, 191 Wn.2d 530, 538, 423 P.3d 830 (2018). Slip op. at 4-5. However, Aaron argued that he is entitled to the presumption that he should be sentenced commensurate with the culpability of a child, not that he had a constitutional right to the jurisdiction of juvenile court at issue in *Watkins* and *Boot*.

The Court of Appeals erroneously refused to impose constitutional parameters around a court's discretion when sentencing children tried as adults, but whose conduct is the result the child's transient immaturity and youth.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

- 1. This Court should grant review and hold that Article I, §14 and the Eighth Amendment require the sentencing court to presumptively impose a sentence commensurate with the culpability of a child, not an adult, when it determines a child's adult-charged crime is mitigated by youth.**

In violation of the state and federal prohibitions on cruel and unusual punishment, the sentencing court erred in not presumptively sentencing Aaron commensurate with the culpability of a 15-year-child after the court determined his offenses were mitigated by youth.

- a. This Court should hold the Eighth Amendment is a categorical bar on presumptively sentencing a juvenile based on an adult sentencing scheme when the court determines the mitigating factors of youth require an exceptional sentence.

The Eighth Amendment requires courts consider the mitigating qualities of youth when sentencing children declined for prosecution in adult court. *Houston-Sconiers*, 188 Wn.2d at 8, 20-21. Though *Houston-Sconiers* requires a trial court to consider the *Miller*³ factors in determining whether an exceptional sentence is required, neither *Miller* nor *Houston-Sconiers* instructs the court on what standard to use or what presumption applies once it finds the crime is mitigated by youth. *See State v. Ramos*, 187 Wn.2d 420, 445, 387 P.3d 650 (2017).⁴

³ *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

⁴ *Ramos* addressed whether the prosecution had the burden of proving whether the *Miller* factors justified a life without parole sentence. This holding as limited to the record presented. *Ramos*, 187 Wn.2d at 436-37. This Court accepted review and held oral argument in *State v. Gregg*, 9 Wn.App.2d 569, 444 P.3d 1219 (2019), *review granted*, 194 Wn.2d 1002, 451 P.3d 341 (2019) (argued Feb. 25, 2020), which addresses whether the Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution requires the presumption that a juvenile's youthfulness is a mitigating factor. This case does not address the constitutional requirements for the court's exercise of its discretion once it determines a child's offense is mitigated by youth at issue in Aaron's case.

The Eighth Amendment “categorically” bars certain sentencing practices for a particular class of offenders, “based on mismatches between the culpability of [the] class of offenders and the severity of [the] penalty.” *Miller*, 567 U.S. at 470. In deciding whether a given punishment is disproportional for a class of offenders, the Court asks whether a national consensus exists against the sentencing practice, looking at “objective indicia,” including legislative enactments. *Graham v. Florida*, 560 U.S. 48, 62, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).

The court must also exercise its independent judgment, considering “the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question.” *Id.* at 67. This includes inquiry into whether the challenged sentencing practice serves legitimate penological goals. *Id.*

The presumption that children should not be sentenced as “miniature adults,” *Miller*, 567 U.S. at 482, is consistent with others areas of law that presumptively treat children as children until the State meets its burden to prove otherwise. In transfer hearings, the burden “is on the government to establish that

transfer to adult status is warranted, since there is a presumption in favor of juvenile adjudication.” *United States v. Nelson*, 68 F.3d 583, 588 (2d Cir. 1995); *State v. Massey*, 60 Wn. App. 131, 137, 803 P.2d 340 (1990). Children between the age of eight and 12 years old are presumed to be incapable of committing crimes. RCW 9A.04.050.

The same presumption should apply here, where the sentencing court found that Aaron was entitled to an exceptional sentence based on “all the other factors identified in *Houston-Sconiers*, including diminished capacity and heightened capacity for change, which I think is demonstrated in this case.” RP 45.

Despite the trial court determining that Aaron’s offense was mitigated by youth, the court relied on the SRA’s sentencing goals for adults in imposing Aaron’s sentence, finding all of the requirements in the SRA “apply in this particular case.” RP 43-44.

But the goals of the SRA do not account for the diminished culpability and amenability to rehabilitation of children like the JJA does; thus the SRA should not be the presumptive starting point for the court to sentence a child.

Indeed, the goals of the two sentencing schemes could not be more distinct. Where the JJA presumes careful consideration of the child's very specific circumstances, imposing punishment commensurate with the child's specific culpability, the SRA seeks proportionality with other offenders, taking into account the offender's prior criminal history and the seriousness of the offense. RCW 13.40.010(2)(a)-(i); RCW 9.94A.010(1)-(7). The SRA does not contemplate preparing a person for reentry through treatment and rehabilitation as the JJA does—rather it seeks to conserve financial resources. *Id.*

Because Aaron's diminished culpability so squarely falls within the purpose and intent for sentencing children as reflected in the JJA, his case illustrates why the Eighth Amendment should require the sentencing court to presumptively sentence a child as a child, not an adult, when the court determines his crime is mitigated by youth.

b. Article I, §14 independently requires the presumption that a child should be sentenced as a child, not an adult, when the court finds the mitigating factors of youth justify an exceptional sentence.

Article I, section 14 more broadly protects children from cruel punishment, as this Court recently explained in *Bassett*. It

is interpreted independently in the context of lengthy punishment imposed on children. *State v. Bassett*, 192 Wn.2d 67, 78, 428 P.3d 343 (2018); *see also State v. Fain*, 94 Wn.2d 387, 392-93, 617 P.2d 720 (1980).

Under article I, §14, a claim that a sentence is “categorically unconstitutional based on the nature of the juvenile offender class” is subject to the categorical bar analysis. *Bassett*, 192 Wn.2d at 82-83. This categorical approach “requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question” and whether the sentence “serves legitimate penological goals.” *Id.* at 83. Issues of culpability, the severity of the punishment, and whether penological goals are served all allow the court to include youth-specific reasoning in its analysis. *Id.* at 83-84.

An independent state constitutional analysis indicates that a more protective rule is required when sentencing children in adult court. *See State v. Gunwall*, 106 Wn.2d 54, 59-61, 720 P.2d 808 (1986) (state constitutional provisions may be more

protective than their federal constitutional analogs);⁵ *Bassett*, 192 Wn.2d at 78.

Alternatively, this Court should hold that a combination of factors renders the court's sentence unconstitutional as applied to Aaron. *Fain*, 94 Wn.2d at 397 (setting out the four factors a court should consider in deciding if a sentence is proportional under article I, section 14).

As recognized in *Bassett*, the *Fain* framework does not include significant consideration of the characteristics of children as a class. *Bassett*, 192 Wn.2d at 83. This analysis "weighs the offense with the punishment," which makes it ill-suited to a categorical challenge based on the characteristics of children as an offender class. *Id.*

However, the *Fain* proportionality test may be useful here because it allows for comparison between the juvenile and adult sentencing schemes, which establishes the SRA is grossly disproportionate when imposed for crimes committed by children. *See Id.* at 84-85.

⁵ Appellant's Opening Brief analyzes the six *Gunwall* factors to reach this conclusion. Br. of App. at 28-32.

Had Aaron not been declined to adult court, he faced a maximum sentence of detention in a juvenile facility until age 25. RCW 13.40.0357; RCW 13.40.300. By contrast, in adult court, his possible sentence was more than double, 146-221.25 months, plus 60 months for the mandatory firearm enhancement. CP 14.

The disparity between the severity of an adult and juvenile sentence is the difference between a child living his adult life in prison or out of prison. This difference exists because, as discussed above in section 1(a), *supra*, the two sentencing schemes have entirely different purposes. The juvenile scheme seeks to rehabilitate and reintegrate youth into society based on their unique capacity for change and diminished culpability, whereas the SRA's primary purpose is punishment. *See e.g., State v. T.C.*, 99 Wn. App. 701, 707, 995 P.2d 98 (2000).

Under either the categorical approach or *Fain's* proportionality test, Article I, section 14 requires that a child be sentenced commensurate with the diminished culpability of a

child when the court finds the offense was committed with the diminished capacity of youth.

- c. The Court of Appeals mistakenly determined that *Boot* and *Watkins* control.

The Court of Appeals' premise for rejecting Aaron's constitutional claim—that "there is no constitutional right to adjudication under juvenile court processes," Slip op. at 4-5, misapprehends Aaron's argument. Aaron did not argue he is entitled to juvenile court jurisdiction, but that the sentencing court's discretion should be bound by Article I, § 14 and the Eighth Amendment, requiring a presumptive sentence commensurate with the culpability of a child as contemplated by the JJA rather than the SRA.

2. **Contrary to *Houston-Sconiers*, the court failed to exercise its discretion to reduce restitution based on youth.**

Houston-Sconiers holds trial courts have complete discretion to consider mitigating circumstances associated with youth when sentencing a child in adult court. *Houston-Sconiers*, 188 Wn.2d at 21. Under *Houston-Sconiers*, this sentencing discretion should extend to restitution. If a sentencing court has discretion to decline to impose an otherwise mandatory firearm

enhancement, it also has discretion to impose less than the full sum of restitution requested for an insurance company.

In *State v. Blazina*, this Court recognized the tremendous barriers to successful reentry caused by onerous legal financial obligations. 182 Wn.2d 827, 835, 344 P.3d 680 (2015). In determining restitution, the court should be authorized to consider the equities of youth and indigence as the legislature provides in RCW 13.40.190(1)(g), which allows sentencing courts to “determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider. . .” This restitution provision is consistent with the rehabilitative aims that govern the sentencing of children.

Here the parties mistakenly believed restitution was mandatory under the SRA, requiring Aaron to pay over \$200,000 to a private insurance company. Slip op. at 2, 6. The Court of Appeals rejected Aaron’s claim that he was entitled to presumptive application of the JJA sentencing procedures, which would have allowed the court to reduce the amount he

owed a private insurance company. This Court should grant review of this significant issue. RAP 13.4(b)(1),(3)&(4).

E. CONCLUSION

Aaron's transformation in juvenile detention is evidence of the purpose and promise of juvenile justice's rehabilitative goals and demonstrates why courts have resoundingly determined that children are constitutionally different from adults for purposes of sentencing. To carry out this Court's constitutional imperative of recognizing the fundamental differences between children and adults at sentencing, a court's discretion should be guided by the JJA and not controlled by the SRA. The same principles extend to restitution. This Court should accept review and further explain the constitutional bounds of the court's discretion in sentencing children tried in adult court. RAP 13.4(b)(1),(3),4).

Respectfully submitted this the 10th day of August 2020.

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

STATE OF WASHINGTON,)	No. 37349-5-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
AARON ATA TOLEAFOA,)	
)	
Appellant.)	

PENNELL, C.J. — Aaron Ata Toleafoa appeals his sentence, arguing it was unconstitutionally imposed without proper recognition of his mitigated culpability. We disagree and affirm.

FACTS

In 2014, Aaron Toleafoa engaged in a crime spree that ended with a near-fatal shooting. He was 15 years old at the time. Mr. Toleafoa was charged with eight felonies and two misdemeanors. The juvenile court declined jurisdiction and Mr. Toleafoa

eventually pleaded guilty to a reduced set of charges, including attempted second degree murder.

Mr. Toleafoa was first sentenced in 2016. He presented a mitigation package and requested an exceptional sentence downward based on youth. The trial court denied that request and imposed a standard range sentence totaling 260 months. The court also imposed restitution. Mr. Toleafoa appealed his term of incarceration and his case was remanded for resentencing pursuant to the intervening decision of *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017). See *State v. Toleafoa*, No. 49152-4-II (Wash. Ct. App. Oct. 24, 2017) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2049152-4-II%20Unpublished%20Opinion.pdf>.

Resentencing occurred in 2018. In addition to reasserting his arguments based on youth, Mr. Toleafoa presented evidence of his substantial rehabilitation during his time in juvenile custody. Mr. Toleafoa asked the court to impose a sentence that would allow him to be released by age 21 or 25, so that he could avoid being transferred to an adult prison facility.¹ Mr. Toleafoa's attorney noted that restitution was "mandatory." Report of Proceedings (Aug. 10, 2018) at 22. He did not request reconsideration of restitution.

¹ Placement at a juvenile rehabilitation facility cannot extend beyond a defendant's twenty-first or twenty-fifth birthday, depending on circumstances. RCW 13.40.300.

The trial court acknowledged Mr. Toleafoa's youth and the progress he had made toward rehabilitation. It determined a mitigated sentence was appropriate. The court imposed a total sentence of 192 months, along with the restitution amounts that had been imposed in 2016.² The sentence imposed by the court was 68 months lower than the original term of incarceration, but it would still result in Mr. Toleafoa being in custody past the age of 25.

Mr. Toleafoa brings this timely appeal from that judgment and sentence. His case was administratively transferred from Division Two to Division Three of this court and considered without oral argument.

ANALYSIS

Mr. Toleafoa challenges the constitutionality of the trial court's sentencing procedure. This is the type of issue that can be raised for the first time on appeal. *State v. Osman*, 157 Wn.2d 474, 481-82, 139 P.3d 334 (2006); RAP 2.5(a). Nevertheless, the substance of Mr. Toleafoa's claims fail on the merits.

Because he was under 18 years of age at the time of his offense and determined to have diminished culpability due to youth, Mr. Toleafoa claims he should have been sentenced according to Washington's standards for juvenile court. Mr. Toleafoa

² The court waived discretionary legal financial obligations.

highlights precedent holding that life without parole sentences designed for adults are constitutionally excessive for a minor defendant whose “crimes reflect transient immaturity.” *State v. Ramos*, 187 Wn.2d 420, 440, 387 P.3d 650 (2017) (quoting *Montgomery v. Louisiana*, __U.S.__, 136 S. Ct. 718, 735, 193 L. Ed. 2d 599 (2016)).³

From that premise, Mr. Toleafoa extrapolates that *any* adult sentence is presumptively inappropriate for a minor defendant with mitigated culpability. According to Mr. Toleafoa, a sentencing court that finds a juvenile defendant’s culpability was mitigated by youth must presumptively resort to sentencing options under the Juvenile Justice Act of 1977 (JJA) chapter 13.40 RCW, not the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, which was designed for adults.

Mr. Toleafoa’s attempt to constitutionally transpose juvenile court processes into adult court runs headlong into long-standing precedent. There is no constitutional right to adjudication under juvenile court processes. *In re Pers. Restraint of Boot*, 130 Wn.2d 553, 571, 925 P.2d 964 (1996). This is true regardless of a juvenile defendant’s reduced

³ In *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018), our Supreme Court held that article I, section 14, of the Washington Constitution is more protective than the United States Constitution and prohibits imposing a sentence of life without parole on a minor defendant, regardless of a finding of reduced culpability. Nevertheless, Mr. Toleafoa does not appear to argue that all minor defendants, regardless of mitigating circumstances, should be sentenced under the Juvenile Justice Act of 1977, chapter 13.40 RCW.

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culpability. *State v. Watkins*, 191 Wn.2d 530, 538, 423 P.3d 830 (2018). The right to proceed under juvenile court provisions is purely a creature of statute. *See id.* at 536, 538. Once the juvenile jurisdiction is lawfully declined in accordance with applicable procedures, no further rights exist under the JJA. *Id.* at 538.

Recent decisions setting constitutional guideposts for sentencing juvenile offenders do not compel a different result. In *Houston-Sconiers*, the Washington Supreme Court recognized the Eighth Amendment to the United States Constitution requires judges have maximum flexibility when sentencing juveniles in adult court. 188 Wn.2d at 21. But that flexibility is in reference to the SRA, not the JJA. *See id.* When sentencing a juvenile defendant in adult court, a sentencing court has “absolute discretion to depart” below the “otherwise applicable SRA ranges” based on the defendant’s reduced culpability. *Id.* at 9 (emphasis added).

Mr. Toleafoa was declined into adult court. He has not challenged this decision. Accordingly, the JJA no longer governed Mr. Toleafoa’s case and the court was not required to consult it any further.

The only statutory provision governing Mr. Toleafoa’s sentencing hearing was the SRA. Once the court found Mr. Toleafoa’s offense was mitigated by transient immaturity, *Houston-Sconiers* empowered the court to depart downward from the sentencing range


contemplated by the SRA. No further statutory restrictions applied. Consistent with *Houston-Sconiers*, the court's hands were "not tied" by any state statutes, be they found in the SRA or the JJA. *Id.* at 9. Once freed from statutory restrictions, the court had multiple options. It could have followed Mr. Toleafoa's suggestion for a sentence short enough to avoid transfer to an adult correctional facility; but it was also permitted to settle on a sentence between the extremes of what would have otherwise applied in juvenile or adult court. The sentencing court appropriately exercised its discretion. Review on appeal is therefore unwarranted.

In addition to challenging his term of incarceration, Mr. Toleafoa argues for the first time on appeal that the trial court's restitution order violated his constitutional right to be free from excessive punishment. Mr. Toleafoa has not established a basis for relief. Imposition of restitution turns on the victim's losses, not a defendant's culpability. RCW 9.94A.753(3). The juvenile sentencing cases cited by Mr. Toleafoa have no bearing on the trial court's restitution order. Nor, as set forth above, was the trial court required to consult JJA provisions regarding restitution to insurance companies. *See* RCW 13.40.190(1)(g).

CONCLUSION

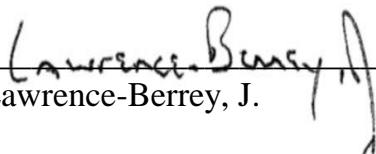
The judgment and sentence is affirmed.⁴

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Pennell, C.J.

WE CONCUR:



Lawrence-Berrey, J.



Fearing, J.

⁴ Mr. Toleafoa has filed a statement of additional grounds for review that fails to detail any assignments of error. As such, it will not be reviewed. *See* RAP 10.10(c).

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	COA NO. 37349-5-III
)	
AARON TOLEAFOA,)	
)	
PETITIONER.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10TH DAY OF AUGUST, 2020, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 10TH DAY OF AUGUST, 2020.



X _____

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August 10, 2020 - 4:23 PM

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Appellate Court Case Title: State of Washington, Respondent v. Aaron Ata Toleafoa, Appellant
Superior Court Case Number: 15-1-01426-1

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