

FILED
SUPREME COURT
STATE OF WASHINGTON
1/4/2022 3:28 PM
BY ERIN L. LENNON
CLERK

NO. 99560-5

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

D'ANGELO SALOY,

Petitioner.

BRIEF OF RESPONDENT RE: STATE V. HAAG

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A. IDENTITY OF RESPONDENT

Respondent, the State of Washington, asks this Court to deny the petition for review.

B. COURT OF APPEALS OPINION

The Court of Appeals decision at issue is State v. Saloy, No. 79818-9-I, filed December 28, 2020 (unpublished).

C. STATEMENT OF THE CASE

In October 2008, when D'angelo Saloy was 16, he shot two teenagers, Quincy Coleman and Demario Clark, outside Seattle's Garfield High School. Coleman died; Clark survived. Saloy was not immediately caught and went on to commit several adult felonies at age 19 in 2011. He was charged in the shootings in 2012 and convicted in 2014, at age 22. His 60-year standard-range sentence was vacated as a de facto life sentence. At resentencing in 2019, Saloy presented evidence of youthful mitigation and subsequent development. Based on

those factors, the resentencing court granted an exceptional sentence totaling 41 years. The Court of Appeals affirmed. Saloy has petitioned for review. This Court has asked for supplemental briefing on State v. Haag, No. 97766-6, 198 Wn.2d 309, 495 P.3d 241 (2021).

D. THE COURT SHOULD DENY THE PETITION FOR REVIEW

Haag does not diminish the measured holdings of the court of appeals in Saloy's case. As the court below properly concluded, Saloy's resentencing court painstakingly followed this Court's directives for resentencing under Miller v. Alabama¹ and did not abuse its discretion in determining the length of Saloy's sentence, which was a 20-year reduction based on Saloy's youthfulness, developmental immaturity and neurological disorders. In fact, the procedures and deliberative judgment employed by the resentencing court should serve as

¹ 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

an example of the right way to conduct a Miller resentencing involving a youthful offender who committed extremely serious crimes.

Secondly, Haag should not affect the court of appeals' reasoned opinion that Saloy's 41-year sentence, for the premeditated, cold-blooded murder of one teenager and attempted murder of another, is not a de facto life sentence. Several factors distinguish Saloy's case from Haag. Saloy's sentence is lower. He was not apprehended for several years, during which time he became an adult and chose to commit serious adult felonies. And Saloy was not sentenced for murder and attempted murder until he was a 22-year-old man, six years after his crimes, demonstrating that a one-size-fits-all approach focusing on the age at which an offender is to be released is a poor yardstick to determine a de facto life sentence.

1. SALOY’S RESENTENCING COURT FOLLOWED THE COMMANDS OF THIS COURT UNDER MILLER AND DID NOT VIOLATE HAAG IN DETERMINING THE LENGTH OF SALOY’S MITIGATED SENTENCE BASED ON YOUTH.

In Haag, this Court reversed Haag’s resentencing under RCW 10.95.030 because the resentencing court “misapplied the law because it emphasized retribution over mitigation.” 198 Wn.2d at 321. Specifically, this Court faulted the resentencing court for a “clearly backward looking” approach where the “emphasis on retribution was stark.” Id. at 323. The Haag resentencing court’s consideration of youth “primarily focused on the youth of the victim” and the court “founded its resentencing decision on retribution.” Id. at 323-24.

Moreover, this Court in Haag observed that Haag’s resentencing court had discounted Haag’s “voluminous” rehabilitation evidence, including a lack of prison infractions, work in a prison chapel and kitchen, his conversion to an altruistic religion, and expert testimony about low risk of

reoffending. 198 Wn.2d at 324. The resentencing Court in Haag had labeled Haag a “savage” and dwelled on the young victim’s life cut short and Haag’s “vile, cowardly” acts. Id. at 323-24. This Court reversed Haag’s sentence because the resentencing court did not “adhere to th[e] rule” that “[o]ur statutes and precedent require that mitigation factors count for *more* than retributive factors.” Id. at 326 (emphasis in original).

But Saloy’s resentencing could not have been more different — and could not have focused more on mitigating factors and Saloy’s prospects for rehabilitation. This Court should see Saloy’s resentencing as an example of how resentencing under Miller is done right.

First, Saloy’s resentencing was not pursuant to a Miller-fix statute but solely under Miller, so analysis in Haag about legislative intent under RCW 10.95.030 is not applicable.²

² When resentencing an offender for aggravated murder under RCW 10.95.030, the court is *statutorily* required to consider rehabilitation. That is not so for crimes under the SRA. State v. Ramos notes that a resentencing court “may certainly

Nonetheless, Saloy’s resentencing court did not place *any emphasis on retribution whatsoever*. The judge did not expound on lost young lives or hyperbole about a “savage,” as Haag’s court did. Instead, Saloy’s resentencing court was *entirely* focused on weighing the mitigating factors of youth and Saloy’s developmental difficulties against facts of Saloy’s crimes and subsequent prison life that *informed a measured decision about Saloy’s prospects for rehabilitation*. See CP 385-93 (Findings of Fact and Conclusions of Law). The resentencing court soberly said it based its decision on “the defendant’s upbringing, the social, emotional, and cognitive development, the criminal history here, the facts of this crime, and frankly the realities of the recent changes of the law,” along

exercise its discretion to consider evidence of subsequent rehabilitation where such evidence is relevant to circumstances of the crime or the offender’s culpability” but “declined to hold that the court is *constitutionally* required to consider such evidence in every case.” 187 Wn.2d 420, 449, 387 P.3d 650 (2017) (emphasis added).

with its hope and belief that Saloy can eventually change and mature. RP 308.

Saloy's resentencing court *did* find that Saloy's "youthfulness, developmental immaturity, and neurological disorders support an exceptional sentence in this case" — not simply as a matter of high-court edict as in Haag, but from weighing the evidence. CP 385-93; see Haag, 198 Wn.2d at 324 (court comments that Haag's reduced culpability is based on "case law"). The court in Saloy's case then balanced that evidence against facts of Saloy's deliberate, premeditated murder and attempted murder and lack of remorse, continued criminal offenses after the slaying, and a significant history of prison misbehavior and disregard for authority. CP 319-38, 390-92.

Whereas Haag had shown exemplary prison behavior, religious conversion and eagerness for education, Saloy had taken some classes and got a GED but also spent his time in prison defying authority, using drugs, engaging in disruptive

behavior, inciting a riot, and exhibiting gang affiliation. CP 319-38. Certainly, Saloy's resentencing court had the discretion to weigh all these factors in determining the length of a sentence that would allow for Saloy's rehabilitation, and thus his unlikelihood of reoffending, before he is released to the public. That is what his resentencing court did.

It did not sentence Saloy based on retribution in any way, but on careful consideration of mitigating factors and his prospects for rehabilitation. It arrived at a sentence based on a conclusion that Saloy would take longer than others to mature and rehabilitate, that 20 years was not sufficient given the totality of the facts, and it hoped Saloy would "get educated and work on ... self development." RP 312-13. That is just what this Court should want, and indeed has said it does want trial courts to do when resentencing youthful offenders who commit terrible crimes.

This Court has insisted that trial courts "retain the discretion to determine whether and to what extent a juvenile

offender has been rehabilitated, whether youthfulness contributed to the crime, and whether he or she is likely to reoffend.” Haag, 198 Wn.2d at 326. That is the discretion that Saloy’s resentencing court carefully employed and did not abuse. To conclude otherwise, under these circumstances, would indeed be denying that discretion and reweighing the evidence — something this Court has been so careful to disavow. Id.; see also Ramos, 187 Wn.2d at 453 (“Although we cannot say that every reasonable judge would necessarily make the same decisions as the court did here, we cannot reweigh the evidence on review”).

Haag should not affect Saloy’s resentencing. Saloy’s resentencing court primarily and carefully considered youthful mitigation and rehabilitation and arrived at a sentence that was a 20-year reduction from the term that the legislature prescribed for Saloy’s offenses. He got the exceptional sentence based on youth that he asked for — he just did not get the number of

years he had hoped for. That does not mean the trial court abused its discretion. This Court should deny review.³

2. SALOY’S MITIGATED 41-YEAR SENTENCE FOR FIRST-DEGREE MURDER AND ATTEMPTED FIRST-DEGREE MURDER, ORIGINALLY IMPOSED AT AGE 22, IS NOT A DE FACTO LIFE SENTENCE.

In Haag, this Court concluded that a 46-year sentence for a 17-year-old offender “amounts to a de facto life sentence because it leaves the incarcerated individual without a meaningful life outside of prison.” 198 Wn.2d at 327. In response, Saloy argues simply that there is no difference between Saloy’s 41-year sentence and Haag’s 46-year sentence. As this Court did in Haag, Saloy focuses entirely on his age at release. That approach misses important distinctions and

³ For the first time in his supplemental brief on Haag, Saloy argues for a new judge on remand. This judge applied the law as it existed at the time. If the law has changed in the interim, the judge will apply the new law. Saloy’s motion for a new judge is baseless.

nuances that should not be ignored in a case like Saloy's when deciding how long is too long to imprison a teenage killer.

Under the individual facts of Saloy's case, a 41-year term for first-degree murder and attempted first-degree murder is not the same as a life sentence.

First, to say that 41 years is the same as 46 years is logically fallacious. If 41 is the same as 46, then is 36 the same as 41? If so, is 31 the same as 36? If so, is 26 the same as 31? Then, by this faulty logic, 26 years is the equivalent of an entire life behind bars. But that isn't true.⁴ The only true fact is that

⁴ Saloy's reasoning is an example of a sorites paradox. "According to this paradox, taking a grain of sand away from a heap of sand makes no significant difference: What we are left with will still be a heap of sand. . . . [T]he sorites paradox maintains that each time we take a grain of sand away from the heap, it will make no difference 'because one grain is too small to make a difference between something being a heap or not.' Repeated long enough, however, 'this line of reasoning will become absurd, for it will become obvious that what is left can no longer be described as a heap.'" Eric Lode, Slippery Slope Arguments and Legal Reasoning, 87 Calif. L. Rev. 1469, 1485 (1999) (citations omitted). See also Hyde, Dominic and Diana Raffman, "Sorites Paradox," The Stanford Encyclopedia of Philosophy (Summer 2018 Edition), Edward N. Zalta (ed.),

Saloy will serve five years less than Haag would have. In other words, Saloy will be free to live life as an adult for five more years than Haag would have. That is not the same.

Second, Saloy's urgings to see his 41-year term as identical to Haag's 46-year term ignores important differences. Haag murdered a neighbor girl when he was 17 in 1994, and was promptly jailed, convicted and then sentenced in 1995. Haag, 198 Wn.2d at 313-14. This Court in Haag focused on the fact that Haag would not be released until age 63, never having spent a day as an adult outside prison walls. Haag, this Court reasoned, would never have the "chance to exercise the rights of adulthood, such as establishing a career, marrying, raising a family or voting." 198 Wn.2d at 327 (quoting Casiano v. Comm'r of Corr., 317 Conn. 52, 78, 115 A.3d 1031 (2015)). Moreover, having never lived life in public as an adult, Haag would "miss out on developments of the world," such as the

URL = <<https://plato.stanford.edu/archives/sum2018/entries/sorites-paradox/>>.

internet, and have a hard time readjusting to life outside prison.
198 Wn.2d at 327-28.

But Saloy was not charged with the 2008 murder and attempted murder until 2012, four years later. During that time, Saloy had become an adult. But instead of exercising the rights and responsibilities of adulthood, Saloy chose to maintain a life of gang-affiliated, armed and violent crime, resulting in his conviction for multiple adult felonies. In the end, Saloy was not originally sentenced in his case until he was 22 years old, in 2014, six years after the slaying and attempted slaying.

So unlike Haag, Saloy had an opportunity to be a responsible adult, to take advantage of the opportunities adulthood offers. He chose not to.

But more importantly, focusing on Saloy's age at release, as in Haag, is plainly inappropriate in this case. Had Saloy not eluded justice in 2008, when he committed his crimes, a 41-year term would have meant release not at age 60 but six years

earlier, or approximately age 54.⁵ Is that where this Court would set the next ceiling for de facto life sentences? Could this Court credibly say that a 54-year-old man has no meaningful opportunity to enjoy the rights and responsibilities of adulthood? Focusing solely on the age at release is a poor yardstick in Saloy's case. As Saloy's resentencing court properly did, the measure should be how much time is needed to ensure that Saloy is rehabilitated and afford him a reasonable chance to return to the community without harming anyone else.

Using age at release as the sole measure creates other problems. What about someone who commits a terrible murder at age 16 but avoids capture for 30 years, until he is 46 years old? Could it be said that the constitution demands that he cannot be sentenced to anything more than 14 years, because otherwise he would be over 60 when he is released? Focusing

⁵ The estimate that Saloy will be released at age 60 is based on predictions about earned early release.

on the age at release in Saloy's case, instead of the factors that the resentencing court employed, is not appropriate here. A 41-year term for someone sentenced at age 22, for crimes committed at age 16, is not a de facto life sentence.

E. CONCLUSION


Saloy's case should serve as an example of how a youthful offender, who committed terrible crimes, is appropriately resentenced under Miller and this Court's instructions and guidance. The resentencing court did everything it should have done to properly weigh all the relevant factors. It did not abuse its discretion. It did not impose a de facto life sentence. Haag should not affect this case. This Court should deny review.

This document contains 2,438 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 4th day of January 2022.

Respectfully submitted,

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January 04, 2022 - 3:28 PM

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