

71723-5

71723-5

NO. 71723-5-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRIAN RONQUILLO,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

In 1994, Brian Ronquillo was convicted of one count of premeditated murder, two counts of attempted first degree murder, and one count of second degree assault for his role in a drive-by shooting at Ballard High School which resulted in the tragic death of an innocent high school student. Mr. Ronquillo was sentenced as an adult to 621 months (51.75 years) in prison even though he was 16 years old. Later, the Supreme Court held that children are categorically less blameworthy and more capable of rehabilitation than adults, so a judge must weigh the attributes of youth before sentencing a child to life in prison.

Mr. Ronquillo won a new sentencing hearing in 2013. Although Eighth Amendment jurisprudence now requires a judge to consider the effect of a child's age, life circumstances, and capacity for rehabilitation before imposing lifetime incarceration, the re-sentencing court believed that current law provided no legal authority to impose an exceptional mitigated sentence downward.

The sentence imposed on Mr. Ronquillo shows that the adult sentencing laws are unconstitutional as applied to juveniles facing the equivalent of life or near-life sentences.

B. ASSIGNMENTS OF ERROR

1. The trial court erred as a matter of law that it lacked a legal basis to impose an exceptional sentence downward.

2. The sentencing scheme contained in the Sentencing Reform Act (SRA) is contrary to the constitutional requirements that courts adjust sentences for children based on their youth.

3. The court's imposition of an adult sentence on a juvenile that allows no meaningful opportunity for release during the defendant's natural lifetime violates the Eighth Amendment bar on cruel and unusual punishment and the right to fundamental fairness guaranteed by the Fourteenth Amendment.

4. The 615.75-month sentence imposed on Mr. Ronquillo violates the prohibition on inflicting cruel punishment under article I, section 14 of the state constitution.

5. The trial court erred as a matter of law when it concluded that the multiple offense policy mitigating factor set forth in RCW 9.94A.535(1)(g) does not apply to multiple serious violent offenses sentenced under RCW 9.94A.589(1)(b).

6. The trial court erred as a matter of law when it concluded that even if the multiple offense policy mitigating factor did apply, the

proper legal standard was whether the increased damage caused by the additional crimes was “trivial.”

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. When a child commits a crime and faces a sentencing scheme crafted for adult offenders, the sentencing court must adjust the sentence to account for his reduced blameworthiness and capacity for rehabilitation under controlling case law from the United States Supreme Court. The trial court relied on case law holding that the SRA does not permit a judge to reduce a person’s sentence based on personal circumstances such as youth or rehabilitation. Does it violate the constitutional prohibition on cruel and unusual punishment to impose a sentence that allows no meaningful opportunity for release during the defendant’s natural lifetime without using the person’s youth and capacity for rehabilitation as factors justifying a decreased sentence?

2. Article I, section 14 provides more protection against cruel punishment than the Eighth Amendment. Does it violate article I, section 14 to impose a sentence on a child with no meaningful opportunity for release during the defendant’s natural lifetime without using the child’s age, dysfunctional home environment, lack of criminal

history, and proven rehabilitation as mitigating factors requiring a sentence below the standard range?

3. Did the trial court have the discretion to impose an exceptional sentence downward for multiple serious violent offenses pursuant to RCW 9.94A.589(1)(b) in order to further the purposes of the SRA?

D. STATEMENT OF THE CASE

Brian Ronquillo was 16 years old when he participated in a drive-by shooting that took the life of an innocent bystander, a girl also just 16 years old. This was his first criminal charge in either juvenile or adult court. He was convicted in adult court of one count of premeditated murder, two counts of attempted first degree murder, and one count of second degree assault. He received a total sentence of 621 months (51.75 years). CP:12.

In December, 2012, Mr. Ronquillo filed a PRP on the ground that the trial court improperly calculated his offender score. *In re Pers. Restraint of Ronquillo*, 2013 Wash. App. LEXIS 2032; 2013 WL 4607710. Mr. Ronquillo requested a remand for resentencing based on *State v. Breaux*, 167 Wn. App. 166, 273 P.3d 447 (2012) and the rule of lenity. The state conceded that Mr. Ronquillo's offender score should

be recalculated and filed a motion for remand to the trial court for resentencing. The appellate court granted the motion and remanded for resentencing consistent with *Breaux*. CP:12-13.

Before his new sentencing hearing, Mr. Ronquillo filed a motion containing hundreds of pages of information about his personal transformation in the years after he was sentenced to prison and explaining the circumstances of his life in 1994. CP 6-282.

The information presented showed that the Ronquillo family suffered from multiple internal stressors, including Mrs. Ronquillo's gambling habit; the family's internal strife over the differing religious views of Mr. Ronquillo and Mrs. Ronquillo; the authoritarian and punitive atmosphere in the family home; the undercurrent of violence; and the inability of Bonifacio or Brian Ronquillo to express emotions. CP:13-14.

Brian Ronquillo was slightly built and faced racial harassment and threats at school. CP:14-15; 17. In the year before the shooting, Brian's grades had plummeted and he felt like an outsider in school. CP:14-15.

Mr. Ronquillo stayed at a Juvenile Detention Facility from March 27, 1994, when he turned himself in, until he entered the state

prison system in early 1995. Mr. Ronquillo performed remarkably in juvenile detention, and quickly reached “Honor Level” status with extra privileges. Jill Morrison, the librarian, said that she could count one hand the number of children in detention that she had seen during her 10 years there that were as trustworthy as Mr. Ronquillo. “I haven’t worked with a kid like that since.” CP:16-17. Juvenile Corrections Officer John Cavanaugh expressed similar sentiments: “He described Mr. Ronquillo as very private and not one to talk about how he felt, but several times he did share with John his desire to change places with the victim.” CP:17.

Mr. Ronquillo’s early years in prison were similar to many other juveniles entering prison with lengthy sentences – in addition to being denied access to useful programming, many juvenile lifers are ill-equipped for life in prison, where they must adjust to a primitive, Darwinian battle to survive.¹ Mr. Ronquillo believed the best defense was offense, and found protection as the member of a gang. CP:18. Mr. Ronquillo spent two years in solitary at Walla Walla, where he was

¹ Marsha L. Levick and Robert G. Schwartz, *Practical Implications of Miller v. Jackson: Obtaining Relief in Court and Before the Parole Board*. LAW AND INEQUALITY, Vol. 31:369, 393-94 2013.

alone in his cell for 23 hours a day. During this time, Mr. Ronquillo resolved to change and turn his life around. CP:20.

Upon his release from the Intensive Management Unit, Mr. Ronquillo was transferred to the Washington State Reformatory, where he demonstrated exceptional personal growth and maturation. He began consistently programming, furthering his education, holding down a job, and volunteering. CP:21. He was a significant contributor to the “Choices and Consequences Youth Program,” providing a positive impact on youth participants. CP:22-23.

Mr. Ronquillo was transferred to Airway Heights Corrections Center in 2008, where he continued to receive positive work evaluations and behavior reviews. CP:23-26. Mr. Ronquillo married in 2012, and is a loving and supportive husband and the step-father to three children. Mr. Ronquillo sends the majority of his paycheck home to his family every month. CP:26-27. Mr. Ronquillo submitted over 100 pages of letters from people who described the positive impact he has made on their own lives. CP:80-191. Many of the letters are written by people he met while in prison, and each letter offers a personal statement of Mr. Ronquillo’s good character and inspiring effect on their lives. *Id.* These letters show that Mr. Ronquillo has not only

worked on improving his own education and skills while at DOC, but has also mentored other prisoners. CP:21-25.

The demonstrated change in Mr. Ronquillo's behavior from the 1994 crime to his 2014 resentencing may be at least partially explained by the maturation of a person's brain capacity, as described at the resentencing hearing by psychologist Terry Lee. RP:16-23. Dr. Lee testified that teenager's brains are functioning differently than an adults. In fact, since a teenager's frontal lobe is still developing, the limbic system, the emotional part of the brain, is standing in for some of the executive functions for which adults access the frontal lobe. RP:18. Brain development is disrupted by experiences such as "family and social disruptions or trauma abuse." RP:19. Due to undeveloped brain functions, adolescents perceive risk differently, they're more easily influenced by their peers, they're more impulsive, and they have fewer problem solving skills. RP:19-21. As a result, they are less culpable for their behavior. RP:21.

Psychologist Mark Mays also provided the court with a psychological assessment of Mr. Ronquillo's current functioning, CP 19-20; 28-29. Dr. Mays concluded that Mr. Ronquillo is psychologically and emotionally healthy:

Brian Ronquillo is 36 years old, chronologically, but in some ways less psychologically mature than his literal age would indicate. His incarceration since age 16 has deprived him of many of the typical cultural experiences for growth, maturation, and development. Instead, he has adapted to a subculture of prison life, and has attempted to deal with challenges and circumstances based on the immediate situations he has faced. His focus has been more on survival than advancement, and his psychological makeup has influenced how he's done this. *Even with such challenges, Brian Ronquillo does not display psychiatric illness or psychopathology.* His tests show him as within normal range, although with some characteristics, traits, and an interpersonal style that may distinguish him from other people who are also without a diagnosable mental disorder or a personality disorder

CP:29.

Mr. Ronquillo also presented the trial court with empirical evidence showing that his 51.75 year sentence was, in practical effect, a life sentence. CP:34-35.

Mr. Ronquillo addressed the court and accepted full responsibility for his actions, stating, "Missy's death weighs heavy on me and I have to live with that for the rest of my life. The hurt and pain I've caused the Fernandes family is unimaginable." RP:56. Mr. Ronquillo also expressed his remorse: "Words can't fully express how remorseful I am. I know that sorry isn't enough, but I truly am sorry. I'm so, so sorry." RP:56

Mr. Ronquillo asked the sentencing court to impose an exceptional sentence downward based on new U.S. Supreme Court jurisprudence finding that juveniles have lessened culpability and are less deserving of the harshest punishments. CP:29-40; 473-75. He also argued that, given his status as a juvenile, the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the principles of the SRA. CP:35-36; 475-76.

Mr. Ronquillo presented information to the court indicating a lower sentence would also meet the all of the purposes of the SRA. In addition to being just because of the constitutional considerations mentioned above, a lower sentence would be commensurate to similar sentences imposed for similar crimes by adults. CP:36-40. Mr. Ronquillo also presented evidence of his rehabilitation and low risk of re-offense. CP:27-29; 477.

The court acknowledged the evidence of Mr. Ronquillo's maturation and rehabilitation in prison: "the Court ... takes note of all the wonderful things that Mr. Ronquillo has done while he's been incarcerated, the lives that he has positively impacted, and appreciates and applauds him for the work that he has done in that regard." RP:65. Nevertheless, it concluded that it did not have a legal basis to impose an

exceptional sentence. It imposed sentences at the bottom of the range for all counts, to be served consecutively, for a total of 615.75 months, or 51.3 years. RP:65-66.

E. ARGUMENT

1. The Court’s Reliance on a Sentencing Framework that Bars Meaningful Consideration of Youth, Home Environment, and Rehabilitation Violates the Eighth Amendment and article I, section 14.

- a. *The court must meaningfully weigh a child’s moral culpability and capacity for rehabilitation in order to comply with the constitution.*

“Criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Miller v. Alabama*, U.S., 132 S.Ct 2455, 2465, 183 L.Ed.2d 407 (2012); *Graham v. Florida*, 560 U.S. 48, 76, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). A minor’s chronological age is a “relevant mitigating factor of great weight.” *Miller*, 132 S.Ct. at 2467 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 116, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982)). In addition, the court “must” take into account the child’s “background and emotional development” in assessing culpability. *Id.* These cases require individualized sentencing for juveniles facing the most serious penalties available. *Miller*, 132 S.Ct. at 2460.

In Washington, the SRA governs sentencing for any person convicted of a felony in adult court. Under this scheme, a standard range sentence presumptively applies unless the court finds substantial and compelling reasons to depart from it. *State v. Law*, 154 Wn.2d 85, 94, 110 P.3d 717 (2005) (“Generally, a trial court must impose a sentence within the standard range.”). As the judge recognized here, case law construing the SRA bars courts from imposing a sentence less than the standard range based on “youth (and all that accompanies it.” *Miller*, 132 S.Ct. at 2469; RP:64.

The defendant in *Law* was convicted of theft in the first degree and had a lengthy criminal history. 154 Wn.2d at 89. She asked for a reduced sentence below the standard range based on her strides in rehabilitating herself. *Id.* at 89-90. She was successfully addressing her drug addiction and improving her parenting skills so she could retain custody of her son; a prison sentence would negatively impact her recovery and her relationship with her young children. *Id.* at 90.

The trial court gave her an exceptional sentence below the standard range but the Supreme Court reversed this sentence because none of the SRA’s stated purposes justified a mitigated sentence for the reasons relied on by the trial court. *Id.* at 95-96. It held that the trial

court's subjective belief that a person's rehabilitation merits a lesser sentence "is not a substantial and compelling reason justifying a departure." *Id.* at 96.

The court in *Law* explained that case law "prohibit[s] exceptional sentences based on factors personal in nature to a particular defendant." *Id.* at 97. A "personal factor" includes an offender's age, which may not be considered as a reason to impose a sentence less than the standard range. *Id.* at 98. The *Law* Court relied on *State v. Ha'mim*, 132 Wn.2d 834, 846-47, 940 P.2d 633 (1997), which reversed an exceptional sentence imposed based on the youth of an 18 year-old offender and her lack of criminal history. *Id.* *Law* emphasized that case law has "consistently" held that factors permitting a court to deviate from the standard range must "relate to the crime and distinguish it from others in the same category," and may not be factors personal to the defendant, including age, family circumstances or capacity for rehabilitation. *Id.*

"[R]emoving youth from the balance" and subjecting a juvenile to the most severe penalties "contravenes *Graham's* foundational principle" that a judge may not impose such penalties on juveniles "as though they were not children." *Miller*, 132 S.Ct. at 2466. *See also*

Roper v. Simmons, 543 U.S. 551, 569-74, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). Yet when resentencing Mr. Ronquillo, the judge explained she could “deem something legally a mitigating factor only if it distinguishes this crime from other similar crimes. That’s the standard under the law that I have to impose.” RP:63. The judge concluded that under *Ha’ mim*, as a matter of law, “I cannot rely on Mr. Ronquillo’s age and the juvenile brain science to impose an exceptional sentence unless there’s a demonstration that he lacked the neurological development ... such that he did not understand right from wrong or that it impaired his ability to conform his conduct to the law. And reluctantly, the Court concludes that that showing has not been made.” RP:64.

It is appropriate to reconsider established rules when they are incorrect and harmful under the doctrine of stare decisis. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 343, 217 P.3d 1172 (2009). Prior decisions are harmful when they threaten a fundamental constitutional principle. *Id.* *Miller* demonstrates that the prior rules requiring a sentencing judge to impose an adult-based sentencing range upon a juvenile – without accounting for his age and its attributes –

violates the fundamental principle barring cruel and unusual punishment.

The doctrine of constitutional avoidance is an interpretive tool permitting courts to construe ambiguous statutory language to avoid serious constitutional doubts. *State v. Strong*, 167 Wn.App. 206, 212-13, 272 P.3d 281 (2012), *rev. denied*, 174 Wn.2d 1018 (2012). The list of mitigating factors found in RCW 9.94A.535 is nonexclusive; the legislature clearly contemplated that courts may find additional mitigating circumstances other than the ones identified by the statute: “... The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.” RCW 9.94A.535. As such, this provision may be construed consistently with *Miller*, *Graham*, and *Roper*, if interpreted to include age and its attributes as reasons to impose a sentence below the standard range. Indeed, under *Graham* and *Miller*, age and its attributes are constitutionally imperative considerations that justify imposition of an exceptional sentence downward.

To comply with the Eighth Amendment, a child’s age and related attributes must be considered by the sentencing judge as reasons for departing from the standard range. *Miller*, 132 S.Ct. at 2471. This

Court should re-examine *Law* as it applies to juveniles and construe the exceptional sentence statute consistently with *Miller*.

The trial court was restricted by the criteria of the exceptional sentence statute and case law interpreting that statute when confronted with Mr. Ronquillo's request for a mitigated sentence that accounted for his individual circumstances. The statute and the case law on which the court relied predated *Miller*, *Graham*, *Roper*, and the legislature's own recognition that youth constitutes a valid mitigating factor, as reflected in RCW 9.94A.540(3) (enacted 2005).² The court could not meaningfully consider the mandate of *Miller* and the Eighth Amendment analysis of *Graham* and *Roper* when it adhered to a sentencing scheme that precludes reducing a person's sentence based on personal characteristics.

b. It constitutes unconstitutionally cruel punishment to impose an adult standard range sentence amounting to life in prison on a 16-year-old child.

The *Roper*, *Graham*, and *Miller* decisions agree: juveniles differ from adults in several ways that – without excusing their crimes – reduce

² In 2005, the Legislature amended the law requiring mandatory minimum sentences so that they “shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).” RCW 9.94A.540; Laws 2005, ch. 437 § 4.

youth are in flux, leaving opportunity for additional character formation. *Roper*, 543 U.S. at 570.

Juveniles' immaturity and vulnerability mean that "the case for retribution is not as strong with a minor as with an adult." *Roper*, 543 U.S. at 571. Moreover, "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." *Id.* A recent study confirms that harsher juvenile laws passed in the 1990's did little to deter juvenile offenders.³ Most significantly, juveniles' immaturity or failure to appreciate risk or consequence are temporary deficits. *Miller*, 132 S.Ct. at 2464. As children mature and "neurological development occurs," they demonstrate a substantial capacity for change. *Id.* at 2465. The Court's reasoning draws from the evolving science of brain development and sociological studies, but its resulting rule of law is grounded in the fundamental constitutional principle prohibiting excessive sanctions under the Eighth Amendment.

³ Franklin E. Zimring and Stephen Rushin, *SYMPOSIUM: "YOUTH MATTERS: MILLER V ALABAMA AND THE FUTURE OF JUVENILE SENTENCING:"* Guest Editor: John F. Stinneford: *Did Changes in Juvenile Sanctions Reduce Juvenile Crime Rates? A Natural Experiment.* 11 Ohio St. J. Crim. L. 57, Fall, 2013.

Incapacitating a child for the rest of his life is rarely justifiable when a juvenile's developmental immaturity is temporary and her capacity for change is substantial. *Id.* at 2464-65; *see* M. Levick, et al, "The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence," *U. Pa. J.L. & Soc. Change*, 297 (2012). Consequently, imposing a severe penalty on a person whose "culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity" fails the Eighth Amendment's requirement of proportional punishment. *Roper*, 543 U.S. at 571; *accord Miller*, 132 S.Ct. at 2469.

Although *Miller* did not categorically bar a sentence of life in prison without parole for a juvenile convicted of homicide, it came close. It held that such a severe sentence, even for a horrible crime, is constitutionally permissible only in the rarest of circumstances where there is proof of "irreparable corruption." 132 S.Ct. at 2469.

Before imposing a sentence that amounts to a term of lifetime incarceration, *Miller* requires sentencing courts to evaluate the juvenile's individual circumstances and impose a sentence proportional to his culpability. 132 S.Ct. at 2468; *see People v. Gutierrez*, 324 P.3d 225 (Cal. 2014) (construing requirements of *Miller*). Culpability is not

defined by the defendant's participation in the offense. Instead, the relevant mitigating factors the judge must consider are: (1) "chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) family and home environment; (3) the circumstances of the homicide, including extent of participation and the effects of peer or familial pressure; (4) whether "incompetencies associated with youth" impaired his ability to navigate the criminal justice system; and (5) the possibility of rehabilitation. 132 S.Ct. at 2468. *Miller* requires the sentencing judge to treat children differently from adults for sentencing purposes. 132 S.Ct. at 2469.

Mr. Ronquillo received a sentence of 51.75 years in prison without the possibility of parole. The average life expectancy for men who are not in prison is 77.6 years, and prison accelerates the negative consequences of aging. CP:34-35. The actual extent of the diminished life expectancy resulting from imprisonment was addressed by the United States Sentencing Commission which defines a life sentence as 470 months (or just over 39 years). Based on the median age at sentencing (25 years), the life expectancy for a person in general prison

population is 64 years of age.⁴ A study in Michigan suggested that adjusting for length of sentence and race resulted in significant shortening of life expectancy. Life expectancy for Michigan adults incarcerated for natural life sentences was found to be 58.1 years.⁵ That number dropped even lower for those who began their sentences as children, therefore serving longer years in prison than adults with the same sentence. Michigan youth serving a natural life sentence were found to have an average life expectancy of 50.6 years. *Id.*

The *Roper*, *Graham*, and *Miller* line of cases require sentencing to be based on individual characteristics of the juvenile defendant. One of the basic principles underlying the requirement for a “meaningful opportunity for release” is the fact that it is impossible even for experts to distinguish between “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Miller*, 132 S.Ct. at 2469 (quoting *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 68). It is at a

⁴ U.S. Sentencing Commission Preliminary Quarter Data Report (through March 31, 2014) at A-8.

resentencing, years later, with the opportunity to review 20 years of change and rehabilitation, that a court can make the most informed decision with regard to the appropriate length of the sentence for a juvenile. The United States Supreme Court has recognized that postsentencing rehabilitation can inform a intelligent resentencing decision. *United States v. Pepper*, 131 S.Ct. 1229, 1242, 179 L.Ed.3d 196 (2011). Even Justice Thomas, in his dissent, acknowledged that “Like the majority, I believe that postsentencing rehabilitation can be highly relevant to meaningful resentencing.” *Id.* at 1258 (Thomas, J., dissenting).

For Eighth Amendment purposes, a sentence of life without the possibility of parole is the harshest possible penalty that may be imposed on a juvenile. *Miller*, 132 S.Ct. at 2475. This penalty is reserved for only the rarest case involving a juvenile offender who is irreparably corrupt. *Id.* at 2469. Mr. Ronquillo’s impressive record of caring and responsible behavior as he matured, despite being in prison,

⁵ ACLU of Michigan Life Without Parole Initiative, *Michigan Life Expectancy Data for Youth Serving Natural Life Sentences*, available online at: <http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf>, last accessed August 14, 2014.

demonstrates he is not irredeemable, yet the court imposed a sentence denying him any meaningful opportunity for release.

c. *To comply with Miller, the court may not presume the law favors imposing a life sentence on a child.*

Under the SRA, the standard range is the “presumptive” sentence that the court must impose. *Law*, 154 Wn.2d at 94. However, the presumptive imposition of a term of life in prison for a juvenile violates the Eighth Amendment. *Miller*, 132 S.Ct. at 2469. In order to construe the sentencing scheme in a constitutional manner, the trial court may not presume that a child will receive a sentence of lifetime incarceration.

The California Supreme Court recently evaluated a state statute governing the sentence to be imposed on a juvenile convicted of special circumstances murder. As written, the statute gave the court discretion to impose a sentence of 25 years to life instead of life without parole, but courts had construed the law where life in prison was the generally imposed sentence. *People v. Gutierrez*, 324 P.3d 245 (2014). The *Gutierrez* Court ruled that “[g]iven *Miller*’s conception of a prior individualized sentencing inquiry, a serious constitutional concern would arise” if the court must presume that the appropriate sentence

would be life in prison. *Id.* To avoid this “serious constitutional concern,” the court decided to re-construct the statute and held there is now “no presumption in favor of life without parole.” *Id.* at 1387.

For Mr. Ronquillo, “consecutive sentences were presumptively called for,” by statute based crimes of conviction, unless the court found adequate reasons to depart from this presumption and impose an exceptional sentence below the standard range. *In re Pers. Restraint of Mulholland*, 161 Wn.2d 322, 330-31, 166 P.3d 677 (2007); *see* former RCW 9.94A.400(1)(b); RCW 9.94A.589(1)(b) (current statute). Mr. Ronquillo bore the burden of convincing the court that the offenses should not count as separate and distinct incidents and that there were substantial and compelling reasons to depart from the presumptive sentence. *See State v. Graciano*, 176 Wn.2d 531, 539, 295 P.3d 219 (2013); *see also State v. Rogers*, 112 Wn.2d 180, 185, 770 P.2d 180 (1989). Even though the court acknowledged it had discretion to consider a sentence less than the standard range, it treated the standard range as the presumptively appropriate sentence. RP 64-65. Under the challenged case law, the court was not permitted to use Mr. Ronquillo’s age alone, or his rehabilitation, as a reason to depart from the standard range as explained in *Law and Ha’ mim*. Mr. Ronquillo is entitled to a

new sentencing hearing at which there is no presumption favoring consecutive, standard range terms.

2. The Determinate Sentence of 51.3 Years in Prison is Unconstitutional Because There is No Meaningful Opportunity for Release.

Sentencing a juvenile to spend the rest of his life in prison is the “harshest possible penalty” available. *Miller*, 132 S.Ct. at 2469. It is a penalty reserved for those who are irreparably corrupt, beyond redemption, and unfit to reenter society notwithstanding the diminished capacity and greater prospects for reform that ordinarily distinguishes juveniles from adults. *Id.*

The 51.3-year determinate sentence imposed on Mr. Ronquillo does not include an opportunity for release based on his rehabilitation. Given evidence on the lifespans of juveniles sentenced to lengthy prison terms, this sentence essentially requires him to spend the rest of his life in prison. Yet the uncontested evidence before the court showed Mr. Ronquillo is not irreparably corrupt or beyond redemption. Sentencing a person who committed a crime when 16 years old to a determinate term that results in a de facto life term, when he is not beyond redemption, is contrary to the dictates of *Graham* and *Miller* and violates the Eighth Amendment.

Our Supreme Court has acknowledged “our repeated recognition that the Washington State Constitution’s cruel punishment clause often provides greater protection than the Eighth Amendment.” *State v. Roberts*, 142 Wn.2d 471, 506, 14 P.3d 713 (2000); Wash Const. art. I, § 14. This “established principle” requires no analysis under *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986). *Id.* at 506 n.11. Given the Eighth Amendment’s almost categorical prohibition on sentences of lifetime incarceration for a juvenile, article I, section 14 further bars the imposition of a determinate term of prison lasting the rest of a 16-year-old’s life when that sentence was imposed without regard for the child’s capacity for rehabilitation.

The Legislature has recognized the gross disproportionality in imposing harsh prison sentences on children convicted of serious offenses by removing mandatory minimum sentences for them. RCW 9.94A.540(3) (declaring mandatory minimum terms “shall not be applied in sentencing of juveniles tried as adults”).

It has also enacted a new mechanism for people convicted as juveniles to demonstrate their rehabilitation and receive parole through the Department of Corrections, after serving 20 years. SB 5064. ch. 130, § 10 (2014) (adding new section to RCW 9.94A). This new law

was enacted in recognition of the unconstitutional application of the SRA to juveniles.

This law will not apply to Mr. Ronquillo, because of the “custodial assault” conviction he acquired in the early years of his incarceration – long before his brain had reached maturity and before his two years in solitary precipitating his rehabilitation.⁶ Even if the law did apply to Mr. Ronquillo, it would not correct the constitutional invalidity of his sentence. *See Gutierrez*, 324 P.3d at 266. Parole eligibility is an act of “grace”; it does not cure unconstitutionally cruel punishment. *State v. Fain*, 94 Wn.2d 387, 394-95, 617 P.2d 720 (1980). Mr. Ronquillo is entitled to a new sentencing hearing where the court meaningfully considers the effect of youth on Mr. Ronquillo’s culpability and adjusts its sentence based on his demonstrated capacity for transformation by maturity and education.

3. The Multiple Offense Policy Mitigating Factor Set Forth in RCW 9.94A.535(1)(g) Applies to Multiple Serious Violent Offenses Which Would Otherwise Be Subject to RCW 9.94A.589(1)(b).

⁶ *See State v. Ronquillo*, 2000 Wash. App. LEXIS 450 (2000) (affirming conviction for custodial assault for “raising his arm to a prison guard while watching a fight between inmates.”)

A court has discretion to impose an exceptional sentence below the standard range if it find that “[t]he operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.” RCW 9.94A.535(1)(g). In Mr. Ronquillo’s case, the trial court concluded that this mitigating factor applies only to RCW 9.94A.589(1)(a), but not to RCW 9.94A.589(1)(b): “And the case law that I’m bound to follow says that that particular statutory provision does not apply when the convictions are for serious violent offenses. ... I do feel that *State v. Graham*⁷ is binding legally on this Court.” RP:61. This Court is not bound by Division Three’s decision in *State v. Graham*. *State v. Simmons*, 117 Wn. App. 682, 73 P.3d 380 (2003), affirmed, 152 Wn.2d 450, 98 P.3d 789 (2004).

Statutory construction “begins with the plain language of the statute. If the plain language is unambiguous, [the Court] need go no further.” *State v. Cooper*, 176 Wn.2d 678, 294 P.3d 704, 706 (2013). *See also State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003):

When statutory language is unambiguous, we look only to that language to determine the legislative intent

⁷ 178 Wn. App. 580, 314 P.3d 1148 (2013), review granted, 180 Wn.2d 1013, 327 P.3d 55 (2014).

without considering outside sources. Plain language does not require construction. When we interpret a criminal statute, we give it a literal and strict interpretation. *We cannot add words or clauses to an ambiguous statute when the legislature has chosen not to include that language.* We assume the legislature means exactly what it says.

(quotation and citations omitted) (emphasis added).

By its plain language, RCW 9.94A.535(1)(g) authorizes an exceptional sentence when the “presumptive sentence” generated by RCW 9.94A.589 for multiple current offenses is “clearly excessive in light of the purpose of [the SRA], as expressed in RCW 9.94A.010.” Subsections (1)(a) and (1)(b) of RCW 9.94A.589 both deal with calculating the presumptive sentence when there are multiple current offenses. RCW 9.94A.535(1)(g) does not distinguish between RCW 9.94A.589(1)(a) and RCW 9.94A.589(1)(b). If the legislature had intended to limit the application of RCW 9.94A.535(1)(g) to subsection (1)(a) of RCW 9.94A.589, it would have stated as such. Because the statute is unambiguous, the Court cannot limit its application by adding qualifying language to the statute.

The reasoning in *Mulholland* is controlling. In a situation closely analogous to the one presented here, the issue in *Mulholland* was whether the exceptional sentence provisions of RCW 9.94A.535

apply to both subsection 1(a) and 1(b) of RCW 9.94A.589. The specific language in RCW 9.94A.535 which the Court examined is as follows:

A departure from the standards in RCW 9.94A.589(1) and (2) governing whether the sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations of this section ...

The State argued that this language applies only to RCW 9.94A.589(1)(a). The Supreme Court rejected this argument based on the plain language of RCW 9.94A.535:

In our judgment, the State's argument fails because it pays too little heed to the plain language of RCW 9.94A.535. ... *Because it does not differentiate between subsections (1)(a) and (1)(b), it can be said that a plain reading of the statute leads inescapably to a conclusion that exceptional sentences may be imposed under either subsection of RCW 9.94A.589(1).*

Mulholland, 161 Wn.2d at 329-30 (emphasis added).

The identical principle applies here – because RCW 9.94A.535(1)(g) does not differentiate between subsections (1)(a) and (1)(b) of RCW 9.94A.589, the inescapable conclusion is that the “multiple offense policy” mitigating factor may be applied under either subsection.

Even if RCW 9.94A.535(1)(g) were somehow deemed to be ambiguous or “susceptible to more than one reasonable interpretation, the rule of lenity [would] require[] this Court to adopt the interpretation most favorable to the defendant.” *State v. Flores*, 164 Wn.2d 1, 17, 186 P.3d 1038 (2008). *See also In re PRP of Sietz*, 124 Wn.2d 645, 652, 880 P.2d 34 (1990) (“[T]he rule of lenity applies to the SRA and operates to resolve statutory ambiguities, absent legislative intent to the contrary, in favor of a criminal defendant.”); *State v. Breaux*, 167 Wn.App. 166, 273 P.3d 447 (2012) (applying the rule of lenity to resolve ambiguity in RCW 9.94A.589(1)(b) regarding the scoring of multiple serious violent offenses).

4. The Proper Legal Standard for Application of RCW 9.94A.535(1)(g) is Whether the Presumptive Sentence is Clearly Excessive in Light of the Purposes of the SRA

By its plain language, RCW 9.94A.535(1)(g) authorizes an exceptional sentence when the “presumptive sentence” generated by RCW 9.94A.589 for multiple current offenses is “clearly excessive in light of the purpose of [the SRA], as expressed in RCW 9.94A.010.”

The purposes of the SRA are to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender’s criminal history;

- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve himself or herself;
- (6) Make frugal use of the state's and local government's resources; and
- (7) Reduce the risk of reoffending by offenders in the community.

RCW 9.94A.010.

Given Mr. Ronquillo's status as juvenile at the time of his offense and his concomitant lessened culpability, along with evidence presented to the sentencing court regarding his authoritarian, punitive homelife, the racial violence and threats to which he was subjected, and his extraordinary post-conviction rehabilitation, a mitigated exceptional sentence downward would meet the purposes of the SRA.

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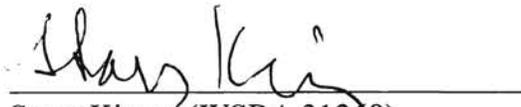
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F. CONCLUSION.

Mr. Ronquillo's case should be remanded for a new sentencing hearing.

DATED this 15th day of August 2014.

Respectfully submitted,



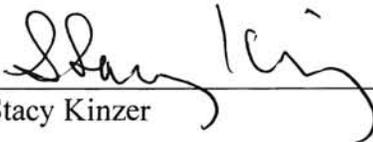
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CERTIFICATE OF SERVICE

I certify that on the 5th day of August, 2014, a true and correct copy of the foregoing OPENING BRIEF was served upon the following individuals by depositing same in the U.S. Mail, first-class, postage prepaid:

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