

FILED
May 19, 2016
Court of Appeals
Division III
State of Washington

NO. 33794-4-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JEREMIAH JAMES GILBERT,

Defendant/Appellant.

REPLY BRIEF OF APPELLANT,

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ARGUMENT

The State relies upon *State v. Ramos*, 189 Wn. App. 431(2015) and *In re Boot (State v. Cornejo*, 130 Wn. 2d 553, 925 P.2d 964(1996) to support its position that the trial court did not commit error at Mr. Gilbert's resentencing hearing.

The State misinterprets both cases. In fact, *In re Boot*, which relied upon *State v. Massey*, 60 Wn. App. 131, 803 P.2d 340, *reviewed denied*, 115 Wn. 2d 1021, 802 P.2d 126(1990), *cert. denied*, 449 U.S. 960, 111 S.Ct. 1584, 113 L.Ed. 2d 648(1991), has been impliedly overruled by *Miller v. Alabama*, 567 U.S. ____, 132 S.Ct. 2455, 183 L.Ed 2d 407(2012).

Boot, relying upon *Massey*, held that “the sentence of life imprisonment without parole, applied to a 13-year-old, against an Eighth Amendment challenge.” *See: In re Boot* at 569-70.

Mr. Gilbert maintains that *State v. Ramos*, is a stand alone case. In effect, the *Ramos* Court held, at 450, that *Miller* did not apply under the facts and circumstances.

The two defendants whose sentences were before the court in *Miller* had each received a mandatory sentence of life without parole for separate single murders, in robberies gone bad. Mr. Ramos, by contrast, received

20-year sentences (the low end of the standard range) for the three counts of first degree felony murder to which he pleaded guilty, and a 25-year sentence for the one count of premeditated intentional murder to which he pleaded guilty. *Miller* does not apply, by its terms, to his sentence.

Miller applies to all juvenile offenders who have been sentenced to life in prison without possibility of parole. The factual predicates are only one part of the multitude of factors that a resentencing court must consider in connection with what constitutes an appropriate sentence 23-years after the original sentence was imposed.

The State, when considering *State v. Ronquillo*, 190 Wn. App. 765(2015) and *State v. Keodora*, 191 Wn. App. 305 (2015) makes short shrift of the holdings in those cases. There is no indication on the record that the resentencing court considered the impact of a mandatory minimum 25 year sentence for aggravated first degree murder followed by a mandatory minimum 20 year sentence for first degree murder. Rather, it appears that the resentencing court believed that Mr. Gilbert would soon be eligible to apply for parole to the Indeterminate Sentencing Review Board. (ISRB).

The truth of the matter is that Mr. Gilbert cannot make application for parole until he has served the two mandatory minimum sentences.

This means that his first opportunity to apply for parole to the ISRB will not occur until 2037.

No one can disagree that the underlying crimes were heinous. Nevertheless, both at the time of the decline hearing in 1992, and the recent resentencing hearing, the record argues favorably in Mr. Gilbert's behalf. The State's argument about "sophistication and maturity" runs counter to the evaluation under the *Kent factors*. See: *Kent v. United States*, 385 U.S. 541, __S.Ct., __, ___ L.Ed__ (1966).

The State's argument is also contrary to the current research on brain development in youth. It is flawed in its analysis of both what occurred at the resentencing hearing and as applying recent case law.

Mr. Gilbert otherwise relies upon the argument contained in his original brief.

Dated this 19th day of May, 2016.

Respectfully submitted,

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COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	KLICKITAT
Plaintiff,)	NO. 92-1-00108-1
Respondent,)	
)	
v.)	CERTIFICATE OF
)	SERVICE
)	
JEREMIAH JAMES GILBERT,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 19th day of May, 2016, I caused a true and corrected copy of *Reply Brief of Appellant* to be served on:

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