

NO. 87654-1

IN THE SUPREME COURT FOR THE  
STATE OF WASHINGTON

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IN THE PERSONAL RESTRAINT OF:

RUSSELL DUANE MCNEIL  
(PETITIONER)

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12 JUL 23 PM 2:53  
BY RONALD R. CARPENTER  
CLERK

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BRIEF IN SUPPORT

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RUSSELL DUANE MCNEIL  
(PETITIONER PRO-SE)  
P.O. BOX 2049- #957470, T-A, 45  
Airway Hts, WA 99001

A. IDENTITY OF PETITIONER

RUSSELL DUANE MCNEIL , is currently serving a sentence of Life without the possibility of parole at the Airway Hts Corrections Center at P.O.BOX 2049, Airway Hts, Washington 99001. Petitioner was sentenced in the Superior Court of Washington at Yakima County, for the crime of Aggravated Murder in the first degree and accomplice to Aggravated Murder in the first degree. Petitioner was sentenced on September 6<sup>th</sup> 1989, to a term of "Life without the possibility of parole".

Honorable Judge James F. Gavin imposed sentence, and Petitioner did appeal this decision to the Washington State Court of Appeals #10289-1-III, which was denied. Petitioner did not seek Discretionary Review by this court.

ISSUE PRESENTED:

Petitioner presents to this court (one) issue in conjunction with the recent decision of the United States Supreme Court in the case of MILLER v. ALABAMA and U.S. v. ARKANSAS and pursuant to RCW 10.73.100(4) and RCW 10.73.090(1).

1. Did the trial court err when it failed to take into consideration whether the petitioner deserved a shorter prison term because of his youth, and the irrefutable evidence from the scientific community regarding the growth of a child's mind, and the state of a child's mind, during the commission of an offense, or the circumstances surrounding the child's development, peer pressures and domestic family relations as the petitioner was a juvenile at the time of the offense?

#### STATEMENT OF THE CASE

Petitioner was sentenced in the Superior Court of Washington at Yakima County, for the crime of Aggravated Murder in the first degree and accomplice to Aggravated Murder in the first degree. Petitioner was sentenced on September 6<sup>th</sup> 1989, to consecutive terms of life without the possibility of parole.

Petitioner was 17 years of age at the time of his arrest for the charge of Aggravated Murder in the first degree and accomplice to Aggravated Murder in the first degree, in which the court after petitioners second appearance ordered petitioner to be tried and sentenced as an adult.

## **B. ARGUMENT**

Petitioner argues that the trial court sentenced petitioner under the mandatory laws of the State of Washington to a term of life without the possibility of parole as a juvenile, without taking into consideration whether the petitioner deserved a shorter prison term because of his youth, and the irrefutable evidence from the scientific community regarding the growth of a child's mind and the state of a child's mind during the commission of an offense, or the circumstances surrounding the child's development, peer pressures and domestic family relations.

The recent decision of the United States Supreme Court in the case of MILLER v. ALABAMA and U.S. v. ARKANSAS (June 25th 2012) has determined that it is "Cruel and Unusual Punishment" to send a young murderer to "die in prison", if a judge has not weighed whether S/he deserved a shorter prison term because of their youth and the nature of their offense. Children who receive a sentence of life without parole get more punishment than adults who receive the same punishment.

Petitioner was 17 years of age at the time of his arrest for the charge of Aggravated Murder in the first degree and accomplice to Aggravated Murder in the first degree, in which the court after petitioners second appearance ordered petitioner to be tried and sentenced as an adult.

The recent decision of the United States Supreme Court in the case of MILLER v. ALABAMA and U.S. v. ARKANSAS (June 25th 2012) has set forth a "New Constitutional rule" warranting application in the instant matter and therefore making the petitioners current conviction "Facially Invalid" pursuant to RCW 10.73.090(1) and warrants review and application pursuant RCW 10.73.100(4) thereby the one year time bar rule and application does not apply.

Because petitioners conviction and sentence is "facially invalid" e.g. to the recent decision of the United States Supreme Court in the case of MILLER v. ALABAMA and U.S. v. ARKANSAS (June 25th 2012) and therefore warrants review and resentencing.

WHEREFORE:

Petitioner humbly requests this Honorable Court grant his petition and order an evidentiary hearing in accordance with the recent decision of the United States Supreme Court in the case of MILLER v. ALABAMA and U.S. v. ARKANSAS (June 25th 2012), grant him relief from his conviction of "Life without the possibility of parole and order that petitioner be sentence to an appropriate sentence with a standard juvenile range.

Dated July 9th 2012

x Russell D. McKiv

IN THE SUPREME COURT

WASHINGTON

IN RE: )

RUSSELL DUANE MCNEIL )

NO: \_\_\_\_\_

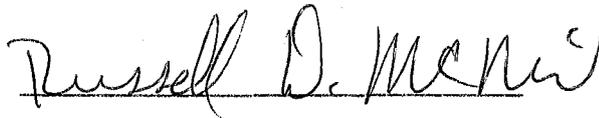
) NOTICE OF SERVICE

) BY MAIL

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Please take notice that today, July 20th 2012,  
I Russell Duane McNeil did place in the U.S. mail (1) PERSONAL  
RESTRAINT PETITION and (1) BRIEF IN SUPPORT at Airway heights  
Correctional Center, P.O. Box 2049, Airway Heights, WA. 99001  
Unit - T legal mail.

DATED: July 20, 2012.



RUSSELL DUANE MCNEIL