No. 92454-6

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Court of Appeals
Division III
State of Washington

NO. 32027-8-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JOEL RAMOS,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT.

1. **The prosecution ignores the conflict between the SRA and the constitutional requirement that a life sentence may not be imposed upon a 14-year-old without adjusting the adult-based standard range based on youth and personal circumstances**

During Joel Ramos's sentencing hearing, the judge was constrained by the statutory scheme in effect in 1994 and its prohibition on reducing punishment based on individual circumstances such as immaturity, traumatic life experiences, and subsequent rehabilitation. This statutory scheme has not been reconsidered or reevaluated following the holdings of *Miller* or *Graham*.[1] The prosecution pressed these statutory constraints on the judge at sentencing and argued this state law controlled over what it called broader federal law. 2RP 134-38. On appeal, the prosecution never addresses the conflict between case law requiring a judge to presume an adult standard range sentence must be imposed and United States Supreme Court decisions prohibiting a sentencing judge from presuming that a sentence of lifetime incarceration is just punishment for a 14 year-old.

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[1] *Miller v. Alabama*, _ U.S. _, 132 S.Ct 2455, 2460, 183 L.Ed.2d 407 (2012); *Graham v. Florida*, 560 U.S. 48, 74, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010);

When pronouncing sentence, the judge emphasized, "I have attempted to restrict my considerations to those authorized by the en banc holding of the Washington State Supreme Court in State versus Lau [sic][2] and in compliance with [former] RCW 9.94A.340." RP 175; *see also* RP 128 (judge directing parties to explain "extent of my discretion" under *Law* and the SRA).

The judge's restriction to "considerations" "authorized" by *Law*, meant he presumed he must impose the standard range and Mr. Ramos bore the burden of convincing the judge of recognized mitigating factors. *See Law*, 154 Wn.2d at 94. Yet the presumptive imposition of a term of life in prison for a juvenile violates the Eighth Amendment. *Miller*, 132 S.Ct. at 2469.

The "considerations authorized by *Law*" include prohibiting a sentence less than the standard range "based on factors personal in nature to a particular defendant." 154 Wn.2d at 97. A forbidden "personal factor" includes an offender's age. *Id.* at 98. A downward departure may not be based factors personal to the defendant, including age, family circumstances or capacity for rehabilitation. *Id.* As *Law*

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[2] The court was referring to *State v. Law,* 154 Wn.2d 85, 110 P.3d 717 (2005). *See* RP 128, 175.

further explained, any reason to deviate from the standard range must "relate to the crime committed by the defendant and ... distinguish the crime from other crimes of the same statutory category." *Id.*

The "considerations authorized by *Law*" directly conflict with the dictate of *Miller*. Although the judge acknowledged the notion of adolescent brain development, he applied *Miller* only to the circumstances of the crime itself. He focused on Mr. Ramos's behavior during the crime. But *Miller* requires a different framework that examines social and family history, contrary to the restricted availability of an exceptional sentence as explained in *Law*.
By expressing stating its sentence was restricted under the decision in *Law*, the judge demonstrated that the sentence imposed does not comply with the Eighth Amendment under recent jurisprudence.

2. **By telling the court the reasons an exceptional sentence above the standard range could be imposed and that the standard range could be far higher, the prosecution breached its agreement to recommend the low-end of the lowest standard range.**

The prosecution breached its agreement to recommend a low end standard range sentence by detailing the reasons why Mr. Ramos could receive a far higher sentence. The only purpose these comments could serve was to influence the judge to impose a harsher sentence.

Given the opportunity to explain why the court should impose the agreed a low-end sentence, the prosecutor told the judge that Mr. Ramos's conduct could qualify for an aggravating factor justifying an exceptional sentence above the standard range and that the separate offenses could have been counted against each other for a higher standard range. RP 140-41, 144-46. On appeal, the State claims it needed to dispute Mr. Ramos's request for an exceptional down sentence, but these comments were not focused on whether the mitigating factors applied. Instead, the prosecutor emphasized the heinousness of the offenses, which was not a fact in dispute, and the reasons the court could impose a far greater sentence, even one exceeding the standard range.

The prosecutor told the judge of the appropriateness of a sentence above the standard range and offered an aggravating factor. RP 144. He sua sponte said that the standard range could have been calculated as 411-548 months if the offenses were counted prior history and serious, violent offenses." RP 161. Even though the prosecutor did not expressly ask for a sentence other than what he promised to recommend, he encouraged the court to impose a higher sentence by offering unsolicited information that condemned Mr. Ramos and justified a higher sentence, and such behavior constitutes a breach of the plea agreement. *State v. Carreno-Maldonado*, 135 Wn.App. 77, 83, 85, 143 P.3d 343 (2006).

A similar error occurred in *United States v. Johnson*, 187 F.3d 1129, 1135 (9th Cir. 1999), where the prosecutor promised to recommend a low-end sentence then read a victim impact statement to the judge from a different case that called the defendant a monster. The *Johnson* Court found there was no reason to include this characterization of the defendant "other than as an attempt by the prosecutor to influence the court to give a higher sentence than the prosecutor's recommendation." Id.

The remedy is to remand the case for resentencing before a judge who has not already rendered a sentencing decision tainted by the receipt of improper argument. *Johnson*, 187 F.3d at 1136. Even if the judge is capable of putting that prior sentencing hearing out of his mind, the appearance of fairness requires a new hearing. Moreover, this judge did not preside during the original plea hearing and there is no judicial economy benefit to continuing his involvement the case.

B. CONCLUSION.

For the foregoing reasons and those discussed in Appellant's Opening Brief, Mr. Ramos was denied his right to a fair sentencing proceeding at which the court meaningfully considers his troubled life circumstances at the time of the offense and his subsequently impressive rehabilitation as he matured, showing he is not irredeemable and deserves to be released into the community.

DATED this 3rd day of December 2014.

Respectfully submitted,

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

STATE OF WASHINGTON, Respondent, v. JOEL RAMOS, Appellant.	)))))))))	NO. 32027-8-III

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3RD DAY OF DECEMBER, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** 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:

[X] JAMES HAGARTY YAKIMA CO PROSECUTOR'S OFFICE 128 N 2ND STREET, ROOM 211 YAKIMA, WA 98901-2639	(X) ( ) ( )	U.S. MAIL HAND DELIVERY E-MAIL BY AGREEMENT VIA COA PORTAL
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SIGNED IN SEATTLE, WASHINGTON THIS 3RD DAY OF DECEMBER, 2014.

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