

FILED
April 27, 2016
Court of Appeals
Division I
State of Washington

No. 93047-3

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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Apr 27, 2016, 8:30 am
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of

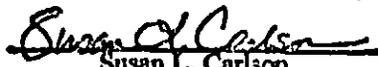
KEVIN LIGHT-ROTH,

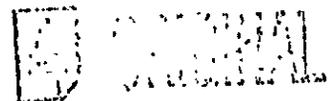
Petitioner.

PERSONAL RESTRAINT PETITION

Jeffrey Erwin Ellis #17139
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4-27-2016:
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Susan L. Carlson
Supreme Court Deputy Clerk



A. STATUS OF PETITIONER

Kevin Light-Roth, Petitioner, challenges his King County Superior Court judgment and sentence for Murder in the Second Degree (King County Case No. 03-1-00392-8). Mr. Light-Roth (DOC # 812302) is currently incarcerated in the Stafford Creek Correctional Center, in Aberdeen, Washington. A copy of the judgment is attached as Appendix A.

This is Light-Roth's second collateral attack on this judgment. Light-Roth challenges only his sentence and contends that this PRP is both timely and not procedurally barred due to a change in the sentencing law that applies retroactively.

B. FACTS

On February 5, 2003, nineteen-year-old Kevin Light-Roth shot and killed nineteen-year-old Tython Bonnett at Chris Highley's apartment in Federal Way.

The State charged Light-Roth with murder in the second degree while armed with a firearm. Light-Roth was convicted and sentenced to 335 months in prison. At sentencing, Light-Roth's counsel did not request an exceptionally lenient sentence; did not present evidence of Light-Roth's youthful attributes; and did not request the sentencing court to consider Light-Roth's youth when imposing the sentence. See *Transcript of Sentencing* attached as Appendix B.

Compelling evidence existed, as Light-Roth's declarations establish. Appendix C.

C. ARGUMENT

Introduction

Did *State v. O'Dell*, 183 Wash.2d 680, 358 P.3d 359 (2015), announce a new rule that applies retroactively?

If the answer to that question is “yes,”—as Light-Roth contends—then that decision is material to Light-Roth’s judgment making this petition timely.

What Constitutes a Change in the Law?

This Court has recently addressed that what constitutes a change in the law in *State v. Miller*, 185 Wash.2d 111, ___ P.3d ___ (2016). *Miller* holds: “A ‘significant change in the law’ contemplates an intervening appellate decision that overturns a prior appellate decision that was determinative of a material issue.” 185 Wash.2d at ___. One test to determine whether an intervening case represents a significant change in the law is whether the defendant could have successfully argued the issue before the new decision. *Id.*

Under that test, *O'Dell* changed the law, even if it did not completely overrule prior precedent. *O'Dell* did not make overrule past precedent that youth was not relevant to sentencing. But, *O'Dell* did recognize the nexus between youth and lessened culpability, a nexus that prior Washington courts rejected as absurd. Under prior precedent, a defendant could not base a request for an exceptionally lenient sentence on evidence of adolescent brain development. *O'Dell* changed that result. *O'Dell* recognizes that science established a nexus

between brain development and culpability. Previous caselaw rejected that nexus reasoning that the age of the defendant does not “relate” to the crime.

O'Dell recognized the studies that establish a clear connection between youth and decreased moral culpability for criminal conduct. Previous attempts to make that connection were rejected by caselaw. In *O'Dell*, 183 Wash.2d at 698-99, this Court held that a “defendant's youthfulness can support an exceptional sentence below the standard range applicable to an adult felony defendant, and that the sentencing court must exercise its discretion to decide when that is.”

In *Ha'mim*, 132 Wash.2d 834, 847, 940 P.2d 633 (1997), the Washington Supreme Court held that a defendant's age, alone, does not automatically support an exceptional sentence below the standard range applicable to an adult felony offender. *O'Dell* explained:

Ha'mim contains reasoning that some, including the trial court in this instance, have understood as absolutely barring any exceptional downward departure sentence below the range on the basis of youth. That reasoning has been thoroughly undermined by subsequent scientific developments. . . Accordingly, we disavow it.

Ha'mim reasoned the age of a young adult defendant is not alone such a factor because age does not relate to the crime or the previous record of the defendant. In addition, the Washington Court of Appeals in *State v. Scott*, 72 Wash.App. 207, 218-19, 866 P.2d 1258 (1993), *aff'd*, *Ritchie*, 126 Wash.2d 388, 894 P.2d 1308, held:

Scott asserts that his youth, 17 years old at the time of the crime, limited his “capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law,” RCW 9.94A.390(1)(e), and thus,

the exceptional sentence [above the standard range] was improper. This argument borders on the absurd.

Granted, teenagers are more impulsive than adults and lack mature judgment. However, Scott's conduct cannot *seriously* be blamed on his "lack of judgment", as he contends. Premeditated murder is not a common teenage vice.

Scott, 72 Wash.App. at 218-19 (footnote omitted).

O'Dell recognizes a changed understanding and repudiates that conclusion:

When our court made that sweeping conclusion, it did not have the benefit of the studies underlying *Miller*, *Roper*, and *Graham*—studies that establish a clear connection between youth and decreased moral culpability for criminal conduct. And as the United States Supreme Court recognized in *Roper*, this connection may persist well past an individual's 18th birthday: "[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18 [just as] some under 18 have already attained a level of maturity some adults will never reach." 543 U.S. at 574, 125 S.Ct. 1183; *see also supra* n.5.

Today, we do have the benefit of those advances in the scientific literature. Thus, we now know that age may well mitigate a defendant's culpability, even if that defendant is over the age of 18. It remains true that age is not a *per se* mitigating factor automatically entitling every youthful defendant to an exceptional sentence. In this respect, we adhere to our holding in *Ha'mim*, 132 Wash.2d at 847, 940 P.2d 633. But, in light of what we know today about adolescents' cognitive and emotional development, we conclude that youth may, in fact, "relate to [a defendant's] crime," *id.* at 847, 940 P.2d 633 (quoting RCW 9.94A.340); that it is far more likely to diminish a defendant's culpability than this court implied in *Ha'mim*; and that youth can, therefore, amount to a substantial and compelling factor, in particular cases, justifying a sentence below the

For these reasons, a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on an offender like *O'Dell*, who committed his offense just a few days after he turned 18. To the extent that this court's reasoning in *Ha'mim* is inconsistent, we disavow that reasoning.

183 Wash.2d at 695-96.

O'Dell does not completely overrule *Ha'mim* or even *Scott*. But, it does change the law regarding the evidence that is relevant to decreased culpability and which makes a sufficient showing in order to merit consideration by a sentencing judge of a requested mitigated sentence premised on youth. Today, we have the benefit of advances in the scientific literature. Thus, we now know that age may mitigate a defendant's culpability, even if that defendant is over the age of 18 and even if that defendant commits a planned and/or violent crime.

The Change in the Law is Material to Light-Roth's Sentence

In this case, Light-Roth was sentenced without meaningfully consideration of his youth as a possible mitigating circumstance.

First, the evidence is now strong that the brain does not reach its full development until the early 20's in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable. That evidence is highly relevant to Light-Roth's culpability for murder.

In addition to their underdeveloped brains, adolescents also undergo dramatic hormonal and emotional changes that are associated with aggression. Research suggests that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which governs decision-making, foresight, judgment, and impulse control. Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101

Proceedings of the National Academy of Sciences in the United States of America, National Institute of Mental Health, Number 21 (May 25, 2004).

And scientific evidence has continued to shed more light on how and why adolescent behavior differs from adult behavior. The differences in behavior have been documented by scientists along several dimensions. Scientists have found that adolescents as a group, even at later stages of adolescence, are more likely than adults to engage in risky, impulsive, and sensation-seeking behavior. Adolescents are also more emotionally volatile and susceptible to stress and peer influences. In short, the average adolescent cannot be expected to act with the same control or foresight as a mature adult.

Behavioral scientists have observed these differences for some time, but only recently have studies provided an understanding of the neurobiological underpinnings for why adolescents act the way they do. For example, brain imaging studies reveal that adolescents generally exhibit greater neural reactivity than adults or children in areas of the brain that promote risky and reward-based behavior. These studies also demonstrate that the brain continues to mature, both structurally and functionally, throughout adolescence in regions of the brain responsible for controlling thoughts, actions, and emotions. Together, these studies indicate that the adolescent period poses vulnerabilities to risk taking behavior but, importantly, that this is a temporary stage. Specifically, adolescents are less able, on average, than adults to self-regulate, or “cognitively” control, their behavior. See Deborah Yurgelun-Todd, *Emotional and Cognitive Changes During*

Adolescence, 17 *Current Opinion in Neurobiology* 251, 253 (2007); *see also* R. K. Lenroot & Jay N. Giedd, *Brain Development in Children and Adolescents: Insights from Anatomical Magnetic Resonance Imaging*, 30 *Neurosci. & Behav. Revs.* 718, 723 (2006); Lawrence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 *Child Dev.* 28, 40-41 (2009) [hereinafter Steinberg, *Future Orientation*] (“[C]hanges in impulse control and planning are mediated by a ‘cognitive control’ network ... which matures more gradually and over a longer period of time, into early adulthood.”). Cognitive control refers to the ability to voluntarily exert goal-directed behavior while controlling compelling but goal-inappropriate responses. Scientists have identified various interrelated immaturities in adolescents' self-regulatory abilities that contribute to their limitation in controlling their impulses and their greater tendency to engage in risky or reckless behavior. To name just a few, adolescents (1) tend to be more strongly motivated by the possibility of reward than adults; (2) have greater difficulty controlling their impulses; and (3) have greater difficulty recognizing and regulating emotional responses.

Furthermore, studies have shown that adolescents are more likely to take risks when they are in the presence of peers. “[O]ne of the hallmarks of adolescent risk taking is that it is much more likely than that of adults to occur in the presence of peers, as evidenced in studies of reckless driving, substance abuse, and crime.” Albert Chein, et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14:2 *Developmental Sci.* F1, F1 (2011) (internal

citations omitted); Linda Patia Spear, *Rewards, Aversions and Affect in Adolescence: Emerging Convergences Across Laboratory Animal and Human Data*, 1 *Developmental Cognitive Neuroscience* 390, 400(2011). More recent studies have also shown that this increased risk taking in the presence of peers is associated with greater neural activity in the areas of the brain associated with reward processing. Albert Chein, et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14:2 *Developmental Sci.* F1, F1 (2011).

Adolescents have observable limitations in their ability to control their impulses. The relative inability of adolescents to control impulsive behavior is well-documented by studies on developmental changes in impulsivity and self-management over the course of adolescence. *See* Steinberg, *Adolescent Development*, *supra* note 9, at 58; *see also* Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 *Developmental Psychol.* 1531, 1538 (2007). These findings indicate that adolescents have not yet attained adult levels of impulse control. In other words, adolescents are less able than adults to consistently reflect before they act.

All individuals regulate their emotional responses to events. They increase or decrease their emotional reactions to stimuli in accordance with their behavioral goals. *See* Sang Hee Kim & Stephan Hamann, *Neural Correlates of Positive and Negative Emotion Regulation*, 19:5 *J. Cognitive Neurosci.* 776 (2007); Kelly Anne Barnes et al., *Developmental Differences in Cognitive Control of Socio-Affective*

Processing, 32:3 *Developmental Neuropsychol.* 787 (2007). The ability to regulate one's emotions efficiently is crucial for mental and physical health as well as for appropriate social interactions, and impairment of this capability is associated with affective disorders and a variety of other maladaptive psychological conditions. This ability, however, continues to develop through adolescence into adulthood. As a result, similar to their ability to control impulses, adolescents have less ability to regulate their emotional responses to stimuli than adults.

Isabelle M. Rosso et al., *Cognitive and Emotional Components of Frontal Lobe Functioning in Childhood and Adolescence*, 1021 *Annals N.Y. Acad. Sci.* 355, 360-61 (2004); see also, e.g., Todd A. Hare et al., *Biological Substrates of Emotional Reactivity and Regulation in Adolescence During an Emotional Go-Nogo Task*, 63:10 *Biological Psychiatry* 927 (2008) (adolescents show exaggerated responses in subcortical brain regions involved in emotional behaviors, which is associated with risk taking and heightened emotional responses to empty threats).

This relative limitation is important for understanding adolescents' ability to voluntarily control their behavior. Indeed, many situations, particularly those involving social interactions, arouse adolescents' emotional system and impact their ability to make informed decisions about their actions. Peer pressure, for example, can arouse emotions of fear, rejection, or desire to impress friends that can undermine the reliability of adolescent behavioral control systems and result in actions taken without full consideration or appreciation of the consequences.

Each of these attributes continues to develop throughout adolescence and early adulthood, and is critical to the ability to effectively and consistently control one's behavior. The developmental immaturities that adolescents exhibit with respect to each of these attributes compound to make them particularly prone to engage in risky and sensation-seeking behavior. See Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychol. 1009, 1011-13 (2003).

Light-Roth's crime bears the now-recognized hallmarks discussed above. His crime was impulsive; was committed in an emotionally heightened context; displayed astonishingly poor judgment; and was committed in the presence of peers.

But, the attached declarations further establish Light-Roth's immaturity and impulsivity at the time of the crime.

Obviously, a PRP is not the forum to argue for an exceptionally lenient sentence. The question here, like in *O'Dell*, is whether Light-Roth has made a sufficient showing to merit remand for a new sentencing hearing where he will bear the burden of proving a mitigating factor. He has met that burden. Because the change in the law announced in *O'Dell* is material to Light-Roth's sentence, this Court should—at a minimum—remand for an evidentiary hearing or, if the State does not contest Light-Roth's new evidence at this stage, then this Court should remand for resentencing.

D. CONCLUSION

Based on the above, this Court should call for a response and, depending on the response, either grant this petition or remand for an evidentiary hearing.

DATED this 27th day of April, 2016.

Respectfully Submitted:

/s/Jeffrey Erwin Ellis
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Attorney for Mr. Light-Roth
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Portland, OR 97205
JeffreyErwinEllis@gmail.com

· APPENDIX A

FILED
2004 JUL -7 PM 3:40
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 03-C-00392-8 KNT

Vs.

JUDGMENT AND SENTENCE
FELONY

KEVIN W LIGHT-ROTH

Defendant,

I. HEARING

L1 The defendant, the defendant's lawyer, JOHN CAIN, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Monique Stream, Alexis Stream, Noreen Light, Chris Highly, Curtis Stream

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 06/01/2004 by jury verdict of:

Count No.: II Crime: MURDER IN THE SECOND DEGREE
RCW 9A.32.050 (1) (a) Crime Code: 00144
Date of Crime: 02/05/2003 Incident No. _____

Count No.: III Crime: UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE
RCW 9A.41.040 (1) (a) (2) (a) Crime Code: 00531
Date of Crime: 02/05/2003 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

Additional current offenses are attached in Appendix A

CERTIFIED COPY TO COUNTY JAIL JUL 7 2004

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) II RCW 9.94A.510(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) Domestic violence offense as defined in RCW 10.99.020 for count(s) _____
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count II	5	XIV	175 TO 275	+60 MONTHS	235 TO 335 MONTHS	LIFE AND/OR \$50,000
Count III	4	VII	36 TO 48		36 TO 48 MONTHS	10 YRS AND/OR \$20,000
Count						
Count						

- Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____, Findings of Fact and Conclusions of Law are attached in Appendix D. The Stats did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

- The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 Date to be set.
 Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ 0, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.734)(crimes committed after 7/1/02);
- (c) \$ 0, Recoupment for attorney's fees to King County Public Defense Programs;
 Recoupment is waived (RCW 9.94A.030);
- (d) \$ 0, Fines; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA;
 VUCSA fine waived (RCW 69.50.430);
- (e) \$ 0, King County Interlocal Drug Fund; Drug Fund payment is waived;
(RCW 9.94A.030)
- (f) \$ 0, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ 0, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ 0, Other costs for: _____

+ restitution

- 4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.
- Court Clerk's trust fees are waived.
 - Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately, [] (Date): _____ by _____ m.

275
(NL) ~~35~~ months/days on count II; _____ months/days on count _____; _____ months/day on count _____
45 ~~48~~ months/days on count III; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts II + III are consecutive concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: 60 months on count II for a total of 335 months confinement

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 335 months.

Credit is given for 509 days served [] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of life years, defendant shall have no contact with Chris Highley, Curtis Stream, Darla Sein, Terry Kolbet, Jesse Kolbet, Daniel Kolbet, Stacie Harft, Amanda Riehn, Brett DeMatteo, Brian Edgell, Jennifer Duff, Pam Markes, Shelley Manney, Colleen Concannon, Herb's Stream, Tulya Bonnett.

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer, [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94A.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
- APPENDIX H for Community Custody conditions is attached and incorporated herein.
- APPENDIX J for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining terms of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 7/2/04


 JUDGE

Print Name: ROBERT GAIN

Presented by:

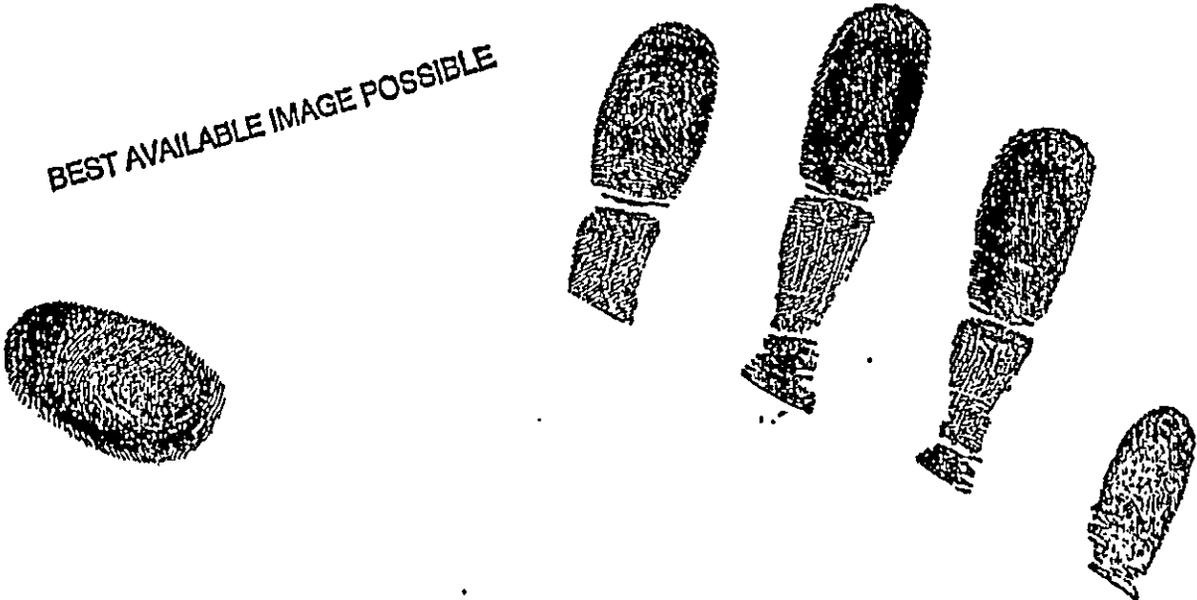
Approved as to form:


 Deputy Prosecuting Attorney, WSBA# 23590
 Print Name: NELSON LEE


 Attorney for Defendant, WSBA # 16169
 Print Name: JOHN CAIR

FINGERPRINTS

BEST AVAILABLE IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: *Kevin W Light-Roth*
DEFENDANT'S ADDRESS: _____

KEVIN W LIGHT-ROTH

DATED: 7-2-04

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

Barbara Miner
JUDGE, KING COUNTY SUPERIOR COURT

BY: *Barbara Miner*
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

S.I.D. NO. _____
DOB: JUNE 22, 1983
SEX: M
RACE: W

CLERK

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 03-C-00392-8 KNT

vs.

JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

KEVIN W LIGHT-ROTH

Defendant,

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
ROBBERY 1 WITH DOLLAR GUN	08/04/2000	ADULT	001025978	KING CO
POSSESSING STOLEN PROPERTY	02/18/2000	JUVENILE	008000879	PIERCE CO
TAKING MOTOR VEHICLE WITHOUT PERMISSION	03/03/1999	JUVENILE	988084920	KING CO
ESCAPE 2	UNK	JUVENILE	988021711	PIERCE CO

[] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 7-2-04


JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 03-C-00392-8 KNT

vs.

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

KEVIN W LIGHT-ROTH

Defendant,

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

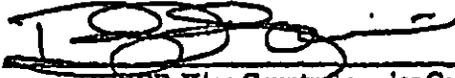
(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 7-2-04



JUDGE, King County Superior Court

APPENDIX B

1 IN THE SUPERIOR COURT OF KING COUNTY

2 IN AND FOR THE COUNTY OF KING

3 -----
4 STATE OF WASHINGTON,)

5 Plaintiff,)

6 vs.)

7 KEVIN W. LIGHT-ROTH,)

8 Defendant.)

No. 03-C-00392-8 KNT

COA No. 54509-4-I
9 -----

10
11 VERBATIM REPORT OF PROCEEDINGS

12 BEFORE THE HONORABLE BRIAN GAIN

13 JUDGE OF THE SUPERIOR COURT
14

15 -----
16
17
18 July 2, 2004

19 Regional Justice Center

20 Kent, Washington
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22
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24 Ed Howard

25 Court Reporter

**DISK
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A P P E A R A N C E S

FOR THE PLAINTIFF: Nelson Lee
FOR THE DEFENDANT: John Cain

* * * * *

ATTENTION READER: Please note that a computer disk in WORD PERFECT, AMICUS, or ASCII (formatted or unformatted), can be ordered from this court reporter and/or a complete, computerized word concordance of this transcript or a compressed copy of the transcript at a nominal fee. If interested, please call this court reporter at (206) 205-2594.

* * * * *

PROCEEDINGS

Unless specifically spelled out, names and places are spelled phonetically.

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THE COURT: Please be seated.

MR. LEE: Good morning, your Honor.

THE COURT: Good morning.

MR. LEE: This is the matter of state of Washington versus Kevin Light-Roth. This is Kent Cause No. 03-C-00392-8.

Nelson Lee and Andy Colasurdo on behalf of the state of Washington.

Mr. John Cain is appearing on behalf of the Defendant, who is present and in custody.

Your Honor, we appear before you this morning for sentencing after the jury convicted the Defendant on June 1st of 2004 of Count 2 of the information, murder in the second degree, and Count 3 of the information, unlawful possession of a firearm in the first degree.

The jury also found beyond a reasonable doubt that with respect to Count 2, murder in the second degree, that the Defendant was armed with a firearm at the time.

On Count 2 the Defendant's offender score is 5; the seriousness level is 14. Including the 60-month firearm enhancement his total standard range of confinement is 235 months to 335 months with a maximum term of life in prison and/or a \$50,000 fine.

With respect to Count 3, the Defendant's offender

1 score is 4; the seriousness level is 7. His total
2 standard range is 36 to 48 months of confinement with
3 a maximum term of ten years and/or a \$20,000 fine.

4 At this time the State respectfully requests that
5 the Court impose the maximum sentence on both counts
6 with the terms to run concurrently.

7 In seeking the maximum of 335 months confinement,
8 I think it's important for the Court to understand how
9 this case substantially differs from your typical, if
10 you can you call it that, murder in the second degree.

11 Here we have a Defendant who basically in cold
12 blood murdered an acquaintance, or perhaps even a
13 friend of his, for really no good reason at all, if
14 ever you could have a good reason for taking the life
15 of another human being.

16 After doing so, he demonstrated a complete
17 disregard not only for human life but also just a
18 considerable amount of contempt by the manner in which
19 he disposed of Tython Bonnett's body and how he
20 conducted himself in the six to seven days following
21 the murder.

22 There is absolutely nothing redeeming about this
23 man. There is nothing redeeming whatsoever about the
24 way he conducted himself back in February of 2003.
25 There is nothing redeeming about the way he conducted

1 himself after the police learned that he was the
2 murderer and attempted to apprehend him. There was
3 certainly nothing redeeming about the way he conducted
4 himself during this trial.

5 Beginning first with essentially testimony full
6 of lies during the pre-trial hearing, followed by his
7 attempt to defraud this Court by soliciting perjured
8 testimony from a fellow inmate at the King County jail
9 here at the Regional Justice Center in Kent.

10 Not only, in fact, did he ask that fellow inmate
11 to perjure himself so as to help the Defendant, but he
12 offered, after securing that perjured testimony, to
13 eliminate and in no uncertain terms to kill the
14 witnesses in that other inmate's own cases that he was
15 facing for trial.

16 It's unfortunate, I guess, in light of the
17 Blakely decision that this Court and the State are
18 bound to seek a sentence within the standard range,
19 because frankly I think the only way that the
20 community can be protected from the Defendant who has
21 a history of terrorizing the communities in which he
22 has lived is to lock him up for as long a period of
23 time as possible.

24 And that is why we are asking for 335 months on
25 the murder in the second degree charge and the 48

1 months with respect to the unlawful possession of a
2 firearm.

3 I think it should not be lost on anyone here in
4 the courtroom today that after being released from
5 prison on his robbery conviction back in July of 2003,
6 it took less than a year before he was out and about
7 committing burglary, stealing firearms, carrying
8 firearms, and ultimately culminating in the murder of
9 Tython Bonnett in February of 2003.

10 This man certainly has not learned from his
11 exposure to the criminal justice system and to law
12 enforcement, and he has certainly not learned anything
13 from his time of incarceration while being
14 incarcerated on the robbery charge.

15 Before the Court imposes sentence, I would like
16 to inform the Court that Alexis Stream is present and
17 that she has a letter from Twila Bonnett, the victim's
18 mother, and would like to address the Court before the
19 Court imposes sentence.

20 MS. STREAM: Alexis Stream.

21 I have been shot in the chest with a bullet from
22 a gun held by the hand of Kevin W. Light-Roth. My
23 bleedings and excruciating pain is deep and endless by
24 second, by minute, by hour, by day. I awake every
25 morning to suffer the same. There is no medical help,

1 no counseling, no pain killers to numb or lessen the
2 bullet that has been lodged in my heart, much less
3 the very bowels of my being.

4 Life has lost its flavor; color has become dull.
5 The will to continue living has turned into a
6 cancerous will to stop living. I lay my head on my
7 pillow every night and close my eyes. I pray that I
8 will stop breathing; I pray to just die.

9 I am now half a person, half a woman, half a
10 mother. My only son, Tython Kolby Bonnett, born
11 August 3, 1983, has been murdered.

12 There is no amount of prison sentence that will
13 ease the pain, the pain that has now become an ugly
14 hideous growth that I must shoulder for the rest of my
15 days on this earth.

16 I do pray one day that he, Kevin, will come to
17 repentance in your soul for needlessly taking the life
18 of another human being.

19 My son, Tython, wanted to live. He loved life
20 and was so excited about living. His energy was
21 endless as is my love for him. He was a small town
22 boy who was fearless. He was always eager to try
23 something new and was not afraid of anyone. In school
24 he played football and soccer and wrestling. He was
25 on the swim team; he played golf. During the summer

1 he water skied and skate boarded.

2 Most of all he liked to skateboard, listen to
3 music, snow boarding outside with his friends. He
4 liked to play the guitar for people he loved. He
5 liked animals -- he ate watermelon.

6 His favorite color was dark purple, blue, and
7 black. He liked to follow the other children. He
8 would play computer games for endless hours.

9 He grew up without a father. His father
10 committed suicide when he was 6. Tython will not have
11 a chance to grow up, fall in love or get married or to
12 bear children.

13 I could talk for hours about the love I have for
14 my son. I just let the state of Washington
15 representatives to know from me, thank you, Federal
16 Way Police Department, and especially Russ Gingham.
17 Thank you for the jurors who had to listen to
18 testimony given in the murder trial of my son.

19 Thank you. Sincerely, Twila B. Bonnett.

20 MR. LEE: Your Honor, I believe that is
21 the witnesses who wish to address the Court.

22 In addition to the confinement period, the State
23 is also asking that the Court impose, or order
24 restitution, that the Defendant also pay all court
25 costs and the victim penalty assessment, that

1 following his incarceration he is to serve community
2 custody for a period of 24 to 48 months, during which
3 time he is to follow all of the recommendations and
4 conditions of the Department of Corrections, that he
5 have no contact for life with the following
6 individuals:

7 Chris Highley, Curtis Stream, Danle Sain, Terry
8 Kolbet, Jesse Kolbet, Daniel Kolbet, Stacy Hanft,
9 Amanda Reihm, Brett DeMartino, Brian Edgell,
10 Jennifer Daft, Pam Marks, Shelby Manning, Colleen
11 Concannon, and finally Alexis Stream.

12 And that concludes the State's recommendation.

13 THE COURT: Did you indicate there are
14 other individuals who wish to speak?

15 MR. LEE: There are not, your Honor.

16 THE COURT: Mr. Cain, any dispute as to
17 the scoring?

18 MR. CAIN: No, not to the scoring.

19 THE COURT: Any recommendations from
20 the Defense?

21 MR. CAIN: Your Honor, I would ask that
22 you impose the sentence in the mid or low range.

23 Actually, the Defendant's mother is present. He
24 is 21 years of age, and there are some fine qualities
25 that has in terms of intellect, that he has shown some

1 loyalty to friends. His mother would make the
2 statement that when he has committed a wrong, he has
3 always admitted it. He has attention deficit disorder
4 that has plagued him throughout his life.

5 The Court heard the testimony in this case. I'm
6 not going to elaborate on it. It does seem that many
7 of the people who testified in this case showed,
8 stretching the truth.

9 My client is the one that was found guilty, and
10 he is bearing responsibility, but I think that there
11 were many people who acted wrongly in this case.

12 Certainly, the State relied upon Mr. VanBrackle,
13 who was not given a deal, *Mr. Milam, who was not
14 given a deal, but I think this was a case that I
15 cannot say that Mr. Bonnett was dumped on the road by
16 my client. He was found guilty, and he did run from
17 the police.

18 So, this is a very tragic case, but it was not
19 charged as a first degree murder; it was charged as a
20 second degree murder. There was no premeditation
21 alleged as an element of this case. He is going to
22 have flat time of 60 months.

23 So, I think a sentence that puts him into the
24 mid-20 years for incarceration is not unreasonable. I
25 know the Defendant wants to address the Court.

1 If the Court would hear from his mother, she
2 would address the Court.

3 THE COURT: Sure.

4 Why don't you come up here in between the tables
5 and please state your name for the court reporter.

6 MS. LIGHT: Noreen Light.

7 First, I would just like to address the comments
8 about the reaction to the police. I think that the
9 negative reaction may be in part to the negative
10 interaction between Kevin and his stepfather who is a
11 Seattle police detective, and I think that is part of
12 his fear of interacting with the police, initially.

13 I was a single parent for most of Kevin's early
14 years, and because my work was in public safety, I
15 have worked as a 911 dispatcher for most of my life.
16 I worked shift work, nights, weekends, Christmas,
17 everything, and so my parents were a big part of
18 Kevin's life.

19 They stepped up to help take care of him when I
20 was gone, and I submitted a letter that my mother
21 wrote to you. I hope that you will take a moment to
22 read that and to consider her input. She is 84 years
23 old and she could not be here. Actually, Kevin asked
24 that she not be brought to the trial because he
25 thought it would be too difficult for her.

1 And she offered to come today. But, again, Kevin
2 and I discussed it, and we really didn't think it was
3 in her best interests to come.

4 There are many things I wish you could know about
5 my son. John mentioned his intelligence. Other
6 things that you have not had an opportunity to see in
7 him is his kindness and the positive relationships
8 that he has had with so many of his family members and
9 other people that he has encountered, but I have only
10 a few minutes to speak to you, and I did write a very
11 short letter which has been submitted, I believe, or
12 perhaps John has not submitted it to you yet.

13 MR. CAIN: I have both the letters
14 here.

15 THE COURT: You can bring them up.

16 MS. LIGHT: In my letter I am
17 presenting a very simple, straightforward message
18 about Kevin. In the past he has always accepted
19 responsibility for his actions. He has told me what
20 he has done in these other instances, and has been
21 very straightforward with me about that.

22 He has accepted the consequence of those actions
23 without sidestepping his own responsibility and
24 without ever placing any blame on anyone else.

25 If Kevin were responsible for Tython's death, I

1 believe he would accept that responsibility and those
2 consequences of that act. However, Kevin has stated
3 from the beginning to me, to the police, and in his
4 letters to his friends and his family that he did not
5 kill Tython Bonnett.

6 You have the task of assessing the case and
7 imposing an appropriate sentence within the standard
8 sentencing range, and what I am asking is that you
9 consider my input in deciding that, making that
10 decision, and to impose the lowest sentence within
11 that range.

12 Thank you.

13 THE COURT: Mr. Cain, any others, other
14 than the Defendant who wishes to speak?

15 MR. CAIN: I don't have anyone else who
16 wishes to speak.

17 I did forget to address the issue of the no
18 contact order that the State had requested. I
19 appreciate that Mr. Highley, and I assume Mr. Stream,
20 do not want to have contact.

21 I don't know if the other individuals have stated
22 concern or have asked that a no contact order be
23 entered. So I am sort of in the dark in that. I know
24 that there was some friendship between the Kolbets and
25 my client, and I know that Shelby Manning, at least at

1 one point in time they were friends. So I don't know
2 if they want to have the restraining order imposed or
3 not.

4 Actually, my preference would be that the Court
5 not impose a restraining order unless we have some
6 word from, for lack of a better phrase would be, the
7 more peripheral witnesses in this case.

8 THE COURT: Let me read the letters
9 first.

10 Mr. Light-Roth, is there anything you would like
11 to add on your own behalf?

12 THE DEFENDANT: Yes, your Honor. Just
13 a couple of things.

14 I have listened to Mr. Lee for the last however
15 long to talk about how callous and unfeeling I am. He
16 doesn't know me. He has never sat down and talked to
17 me. He has never even met me. He doesn't know
18 anything about me.

19 I am not callous, and I am not unfeeling, and I
20 wish with all my heart there was something I could do
21 now or then that would have prevented, saved
22 Tython Bonnett from dying. And I know there is
23 nothing I can say about that. There is nothing I can
24 say about that that is going to make it any better for
25 anybody; so I won't do that.

1 I want to reiterate, I didn't kill Tython
2 Bonnett, and that's the truth, and I intend to appeal.

3 Thank you.

4 THE COURT: Well, I just wanted to make
5 a couple of comments if you are finished, Mr. Cain.

6 MR. CAIN: Yes, your Honor, I am
7 finished.

8 THE COURT: I did in fact hear the
9 entire trial. I am persuaded, as the jury obviously
10 was, that what Mr. Light-Roth has just told me, that
11 he did not kill Tython Bonnett, is not the truth.

12 In determining, however, what the appropriate
13 sentence is, I also have some information that the
14 jury did not have. I have had the opportunity to
15 listen to Mr. Light-Roth when he testified in the
16 pre-trial hearing. I had an opportunity to see the
17 arrogance that the jury had described to them in the
18 testimony, his attitude towards the procedures of the
19 court and the law and the proceedings.

20 I further have, at this point, have had an
21 opportunity to review his criminal history.
22 Mr. Light-Roth, as has been pointed out, is a young
23 man. He has in terms of his activities in this
24 particular case, I saw the film and the photographs of
25 his trying to escape from the police.

1 I did see in his prior record that he has an
2 escape conviction as a juvenile. He has a robbery in
3 the first degree with a handgun conviction for which
4 he apparently went to the State prison system.

5 With this conviction Mr. Light-Roth currently has
6 two strikes. He is going to the Department of
7 Corrections, probably end up some place like Walla
8 Walla where there are a lot of people who believe they
9 are smarter and tougher than anybody else.

10 And if Mr. Light-Roth continues with the current
11 attitude and conduct, and then if he makes it out of
12 the State prison system, if he continues with the same
13 attitudes that he has demonstrated in his past, it
14 will not be long before Mr. Light-Roth gets his third
15 strike, and then there are no options.

16 At this point I am going to follow the State's
17 recommendation. I am satisfied that Mr. Light-Roth
18 demonstrates classic sociopathic behavior, didn't care
19 about anybody but himself, and I am satisfied he is
20 dangerous. I am satisfied, as I pointed out, if he
21 makes it out of prison and does not somehow change his
22 life, then he is going to get his third strike, or try
23 to escape and be killed by the police or run into
24 somebody who is tougher than him who will take his
25 life.

1 It is a shame that Mr. Light-Roth at such a young
2 age is basically wasting his life. But at this point
3 I am satisfied, having listened to the trial, and
4 listened to the pre-trial, looking at the record, that
5 Mr. Light-Roth's return to society, if he makes it
6 out, as I pointed out, needs to be delayed as long as
7 possible because, again, unless he changes
8 dramatically in prison he is going to be back out,
9 hurt somebody, and be back in for the rest of his
10 life.

11 My job at this point is to ensure that he does
12 not do that for as long as possible. So I am going to
13 follow the recommendation, impose 335 months, 45
14 months on the other charge; they will run concurrent.
15 Community custody is required for 24 to 48 months.

16 I am going to impose restitution and the victim
17 penalty assessment. Although I have toured prisons
18 such as Walla Walla and know there is some opportunity
19 to be employed and to earn some resources, I am
20 satisfied that the restitution and victim penalty
21 assessment are the best I can anticipate at this
22 point. The funeral costs, et cetera, are going to be
23 part of the restitution. So I will waive other
24 non-mandatory financial obligations.

25 Mr. Cain, I am going to impose a no contact

1 order. If those individuals do not wish to
2 participate, then they can appear and I will consider
3 relieving Mr. Light-Roth of the prohibition. But at
4 this point I am going to impose it. And it will be up
5 to those individuals to come and ask that it not be
6 imposed.

7 And the reason for that is I think this case has
8 demonstrated in Mr. Light-Roth's situation a disregard
9 for human life, and the testimony of an individual who
10 was apparently solicited to perjure themselves. And
11 there was at least implied threats to the health of
12 other individuals. So I'm satisfied that they need to
13 come and tell me that they are not afraid and their
14 reasons. That will be the order.

15 Mr. Cain.

16 MR. CAIN: Your Honor, might I ask in
17 at that portion of the order where the Court orders
18 the restraining order that it be included into the
19 order that the Court may reconsider that upon request
20 of the parties? There might be a time line problem if
21 that language is not put into the order.

22 THE COURT: I have no problem with
23 that.

24 MR. CAIN: Thank you.

25 THE COURT: With regard to the no

1 contact order, it will impose no contact, also, to the
2 family of Tython Bonnett, and the language I usually
3 put in that situation is, unless it is at their
4 request. The reason for that is sometimes in the
5 healing process some interaction may be helpful. But
6 other than that, he is to have no contact with
7 Tython's mother or any other relative.

8 Any other questions by way of clarification,
9 Mr. Cain?

10 MR. CAIN: No, your Honor.

11 THE COURT: Mr. Lee, any questions?

12 MR. LEE: Just of Counsel, if his
13 client waives his presence at a future restitution
14 hearing?

15 MR. CAIN: Yes, your Honor.

16 You will waive presence?

17 THE DEFENDANT: Yes.

18 MR. CAIN: He will waive his presence
19 at the restitution hearing.

20 THE COURT: Mr. Light-Roth, that
21 doesn't mean you can't be here. It means you are not
22 required to be here. If you are still in the State
23 prison system, they don't necessarily have to bring
24 you back. You can still have Mr. Cain request you be
25 here if you wish; you are not required to be here.

1 Anything further, Mr. Cain?

2 MR. CAIN: Not for the sentencing. We
3 had a couple of motions that were going to be before
4 the Court.

5 THE COURT: Are you referring to
6 findings and conclusions?

7 MR. CAIN: Yes.

8 MR. LEE: Your Honor, with respect to
9 the 3.5 findings, Mr. Cain has indicated some changes
10 he wants made, and I will make those. If I can also
11 request a hearing date just to be set as a precaution
12 approximately three weeks from today's date to
13 accommodate counsel's schedule, and I will also
14 present 404(b) findings.

15 If we can resolve the matters, then we can strike
16 the hearing. If not, just so we have a hearing in
17 place.

18 THE COURT: That would be
19 appropriate. So let's set the hearing date, Mr. Cain
20 and Mr. Lee.

21 Does the 22nd work, at 8:30, 22nd of July?

22 MR. CAIN: What day of the week is
23 that?

24 THE COURT: That's a Thursday.

25 MR. CAIN: I am leaving for a period of

1 time.

2 THE COURT: We can do it any time that
3 week except Friday.

4 MR. CAIN: Thursday the 22nd?

5 THE COURT: Yes.

6 MR. CAIN: That would be fine.

7 THE COURT: At 8:30 unless you are in
8 agreement and have signed off.

9 MR. CAIN: All right. Your Honor, I
10 had --

11 THE COURT: Go ahead. I'm listening.

12 MR. CAIN: I had submitted previously a
13 declaration of indigency and motion for the appeal
14 purpose.

15 THE COURT: I will sign it.

16 MR. CAIN: I'm a little bit
17 embarrassed, but I was unable to bring the order. I
18 told Mr. Lee that. He advised me that I think I can
19 come back this afternoon if the Court is in session
20 and I can present it.

21 THE COURT: I will sign the order of
22 indigency so you can file the notice.

23 MR. CAIN: Thank you, your Honor.

24 I am looking for the paragraph that would tell me
25 credit for time served.

1 I provided to my client the notice of rights on
2 appeal. He signed that order.

3 THE COURT: Because this was a trial, I
4 still need to go through it with Mr. Light-Roth.

5 MR. CAIN: Okay. And also he signed
6 off on the notice that he cannot possess a firearm.

7 THE COURT: I am signing the notice of
8 ineligibility to possess a firearm. I reviewed the
9 judgment and sentence; it does appear to comport with
10 my oral order, and I have signed it along with
11 Appendix H, Appendix B, and Appendix G.

12 Mr. Light-Roth has provided his fingerprints in
13 open court, and I have signed the fingerprint form. I
14 am also signing the notice of rights.

15 Mr. Light-Roth, you have indicated you wish to
16 appeal, but I need to make sure that you understand
17 your rights. You have the right to appeal in this
18 case. You also have a right to appeal if the sentence
19 is outside the standard sentence range. This case is
20 not outside that range.

21 You have to file a notice of appeal within 30
22 days or you waive your right to appeal. The original
23 and one copy of the notice must be filed with and
24 filing fee paid to the clerk of the superior court
25 within 30 days after the entry of the judgment, which

1 is today.

2 I will sign the paperwork when prepared by Mr.
3 Cain for you to proceed with what is known as in forma
4 pauperis, which means you do not have the resources to
5 pay those costs.

6 If you for some reason do not have Mr. Cain file
7 the notice, the superior court clerk will provide you
8 a notice of appeal and file it as soon as you have
9 completed it.

10 You also have the right to have counsel appointed
11 and portions of the trial record necessary for review
12 transcribed at public expense on appeal. You also
13 have, and it is on the back of this form, certain
14 rights which are known as rights on collateral attack,
15 and those rights are basically limited to one year.

16 You will have a copy of this so if you have any
17 questions you can ask Mr. Cain, or if you need
18 assistance from the superior court clerk's office, you
19 can get that.

20 I have signed the notice of rights.

21 Anything further, Counsel?

22 MR. LEE: Your Honor, I actually need
23 to make one amendment to the judgment and sentence.
24 On Page 4 it reads 335 months for Count 2. I need to,
25 in reading the language of the form, to subtract the

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60 months and add the 60 months.

THE COURT: The total is 335, 60 of which is the enhancement.

MR. CAIN: No objection. And I will provide my client in open court his copy of the notice of rights.

THE COURT: We will be in recess.

(PROCEEDINGS CONCLUDED)

C E R T I F I C A T E

1
2
3 STATE OF WASHINGTON)
4 COUNTY OF) ss.
5)

6 I, N. Edward Howard, official court reporter for
7 the State of Washington in and for the county of King,
8 do hereby certify that I was acting in that official
9 capacity on July 2, 2004, during the proceedings in
10 the matter of STATE OF WASHINGTON v. KEVIN W.
11 LIGHT-ROTH, Cause No. 03-C-00392-8 KNT.

12 I further certify that the foregoing transcript,
13 consisting of 25 pages, is a true and accurate
14 transcript, and that these proceedings were reported
15 by me in machine/computer stenotype and thereafter
16 reduced to print by me or under my direction.

17 I further certify that I am not related to any
18 of the parties to this action, nor am I interested in
19 the outcome thereof.

20 WITNESS MY HAND on this 8th day of October,
21 2004, in the City of Kent, County of King, State of
22 Washington.

23 -----
24 N. EDWARD HOWARD
25 OFFICIAL COURT REPORTER
REGIONAL JUSTICE CENTER
ROOM 2D
KENT, WASHINGTON 98104

DECLARATION OF NOREEN LIGHT

I, Noreen Light, declare:

1. I am Kevin Light-Roth's mother. I am making this to describe my perception of Kevin's youthfulness at the time of the crime at issue in this case.
2. Kevin was an academically advanced child in many areas, while also slow to develop in others.
3. From an early age (in vitro) he was observed as a hyper-active child. His short attention span, distracted nature and impulsivity impacted his relationships with other children and his success in the classroom. With a late June birthday, Kevin was also one of the youngest in his grade, adding to the difference in his ability to delay gratification and apply appropriate social skills, compared to others in his peer cohort. Early in grade school, Kevin was diagnosed with ADHD and behavior management plans were implemented (with little success) to help him self-manage his impulse control.
4. Exemplifying his inability to assess risk and recognize cause and effect were the four consecutive years of his wearing casts on broken limbs caused by climbing, jumping and bicycle accidents. Bone scans revealed strong bones; he simply did not recognize the physical risk of his behaviors, nor remember the impact of previous actions.
5. Through all of this, Kevin maintained a positive disposition, seeking friendships, and showing great desire to please and be accepted by others. He was the child who always brought a piece of cake or a small token home from a birthday party, to share with his mom. He was eager to share his toys or whatever he had, with others. He was loyal to his friends, often standing up for others when he perceived that they had been unjustly impacted by someone else. Conversely, he had a quick wit and sometimes a sarcastic sense of humor which resulted in him making comments that were not always socially appropriate.
6. In his early teens, Kevin began using alcohol and, later, other drugs. His drug use exacerbated his inability to judge risk, and to relate actions with outcomes. He befriended others who were using drugs and was increasingly drawn to high-risk, and illegal, behavior (beginning with shoplifting alcohol). Each incident involved alcohol or other drugs. Each time, he expressed sincere remorse and voiced his desire to think things through before acting; but he did not seem to have the ability to do so.
7. At the age of 19, Kevin still continued to exhibit substantial impulsivity and a limited ability to manage his behavior by thinking through the consequences of his actions and by being drawn to risky and exciting behaviors – both legal and illegal. In fact, it was not for several years after Kevin's arrest and trial did his youthful thought-process decrease and eventually disappear.

8. Since that time, he has matured, earning an associate's degree, writing novels and short stories, maintaining relationships with family members, and, in November of 2014, getting married.

9. Kevin is now a mature, 32-year-old man who mentors others in a positive way. He continues to be thoughtful, taking responsibility for his own actions, and has developed a better sense of selection in those in whom he places his trust and who receive his loyalty. He has (through me) reached out to the adoptive mother of a daughter he fathered when he was just 15. He calls and counsels his younger half-brother and his younger cousin, hoping to help them avoid the mistakes he has made. And, he is continually encouraging other incarcerated men to stay away from the drugs available in prison, stay clean in their physical and mental selves and to participate in all programs, including work and education opportunities. He does this to help others prepare themselves for being employable, able to "stay legal" on the outside, and to be respectable and respectful people, as he strives to be.

10. Kevin has grown from being an impulsive, and challenging, child to being a person I know as both my son and my best friend. I believe that age and developmental stages, as well as much introspection and self-education have helped Kevin become a person who has a lot to offer to others.

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

APRIL 12, 2016
Date and Place OLYMPIA, WA



Noreen Light

DECLARATION OF KRISTI O'BRIEN

I, Kristi O'Brien declare:

1. I am making this declaration on behalf of my cousin Kevin Light-Roth and hoping that this may help to have a better understanding of his background and maturity level at the time of the crime.
2. Kevin and I were very close growing up. My little brother and Kevin were only a few months apart and frequently played together. I am 6 years older than Kevin. When Kevin reached about age five, I started babysitting him over the summer.
3. Kevin's mom, Noreen Light, was a single parent raising Kevin by herself. Kevin's father Carl Roth has been absent since Kevin was a baby. He had no father figure.
4. Kevin's mom worked most the time being the sole provider. Kevin grew up as an only child and as a very lonely child.
5. Prior to when Kevin went to prison, I do not feel he knew how to properly act or react in social situations. On many occasions he would say inappropriate things. Often he would repeat lines or scenes he had watched from television or movies when having casual conversations with myself and others. I believe Kevin was stunted socially and emotionally due to unintentional neglect.
6. Kevin has always been highly intelligent, however very immature in many ways. I also know Kevin started experimenting with drugs and alcohol at a very young age as well. When intoxicated his behavior was erratic and out of control. There have been times when Kevin has confided to me while in tears, telling me he did not know how to be normal or fit in to society. It would break my heart because I knew he was just a little boy trying to raise himself without a lot of example to follow.
7. Kevin was only a child at the time of this offence. He was a troubled teenager who had a drug and alcohol problem. He spent most his teenage life locked in institutions. Like any teenager he wanted so badly to fit in and be accepted by his peers and often fell into the wrong crowd and led by unhealthy influences.
8. All this is so very sad. I know Kevin wishes daily he could turn back time and make better decisions. He has had a long time to think about that. He has spent majority of his life locked up.
9. I have noticed a change in Kevin over the last 5 yrs. He is beginning to mature into a man now. I believe Kevin has unlimited potential. He is very bright and talented. I hope the court will consider the fact that Kevin was only a child then and lacked the ability to reason as an adult.

I declare under the penalty of perjury that the foregoing is true and correct.

April 23, 2016

/s/Kristi O'Brien

