

\*THIS 2ND AMENDED PRP REPLACES THE PRP FILED ON 10-23-17 AND THE AMENDED PRP FILED ON 11-21-17. See Commissioner's Ruling 3-21-18

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
1/5/2018  
BY SUSAN L. CARLSON  
CLERK

95394-5

SCANNED

JAN 12 2018  
WASHINGTON STATE  
SUPREME COURT

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

PERSONAL RESTRAINT PETITION )  
OF ) NO. 77528-6-I  
)  
) MOTION TO AMEND PETITION  
TIME RIKAT MEIPPEN, ) AND AMENDED PETITION  
)  
Petitioner, )  
\_\_\_\_\_ )

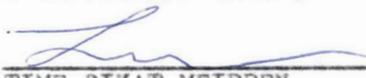
FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2018 JAN 5 AM 11:39

TO: RICHARD JOHNSON/COURT CLERK

YOU ARE HEREBY NOTIFIED that Mr. Meippen request expedited consideration of his motion to amend his CrR 7.8 motion transferred to this Court pursuant to CrR 7.8(c). The amended petition ask this court to transfer the petition to the Superior Court pursuant to RAP 16.12 to hold a new sentencing hearing to consider Mr. Meippen's youth when imposing sentence in light of the Supreme Court decision in State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409, 413 (2017).

Please set the matter for 01,08, 2018, at 9:00am

Dated this 31st day of December 2017.

  
\_\_\_\_\_  
TIME RIKAT MEIPPEN  
Coyote Ridge Correction Center  
P.O. Box 769  
Connell WA. 99326

AMENDED PETITION

A. STATUS OF PETITIONER

Mr. Meippen is in custody of the Department of Corrections after being convicted of first degree

robbery and first degree assault under King County  
Superior Court Cause No. 07-108234-1

1. This is Meippen's third post conviction attack on his judgment and sentence. In his first attack Meippen claimed that his two convictions violated prohibition against double jeopardy. In his second attack he claimed the trial court imposition of a firearm enhanced penalty is erroneous under Carle. In this instant attack he claims the trial court erred when it failed to consider his age at the time of his sentencing under Houston-Sconiers. This instant petition, therefore, does not seek similar relief under RAP 16.4(d).

#### GROUND FOR RELIEF

Meippen claims that he has only one reason for this court to grant him relief.

1. Meippen who was 16 years old at the time of his crime and who was given an exceptionally high sentence for an assault and robbery conviction, asserts that the law has changed regarding the sentencing of juveniles and the change in the law applies retroactively. "We agree that Miller and Houston-Sconiers represent a significant change in the law that is material to the order being challenged and that the changed law is intended to be applied retroactively." Matter of Smith, No. 49127-3-II, 2017 WL 3723086, at \*2 (Wash.Ct.App. Aug.29, 2017)(unpublished).

Meippen's current sentence is unlawful and this motion is timely.

Mr. Meippen respectfully request that this Court call for a response and then set a reference hearing on this petition.

2. The following facts are important when considering this case.

At the age of 16, Time Meippen, entered a tobacco shop and when the register was opened to complete a sale to Meippen, Meippen pulled out a handgun and shot the cashier in the face.

Meippen then stole money out of the till. As a result of this incident Meippen was charged with first degree robbery and first degree assault while armed with a firearm. Meippen received a jury trial and was convicted as charged. CP28-29,101-02,2RP22-28,9RP5-6. The jury also found by special verdict that Meippen was armed with a firearm when he committed the robbery. CP103.

The Court imposed a high end sentence on each count and a five year sentence on the robbery conviction rejecting Meippens request for a low end sentence due to his inexperience in life and child like out looked. Appendix A.

3. The following reported court decision in cases similar to mine shows the error Mr. Meippen believes happen in his case.

State v. Houston-Sconiers,  
188 Wn.2d 1, 391 P.3d 409, 413 (2017).

Matter of Smith,  
No. 49127-3-II, 2017 WL 3723086, at \*2 (Wash Ct. App. Aug. 2017)(unpublished decision)

Miller v. Alabama,  
567 U.S. 460 (2012)

4. The following Court rules and statutes are important when considering this case.

RAP 16.4(d), RAP 16.11, RAP 16.2, RCW 10.73.140, RCW 10.73.100(6), Sentencing Reform Act.

5. This petition is the best way to get the relief I want and no other way will work as well because.

The Washington Supreme Court as recently recognized that the law regarding the sentencing of youth has changed. Because of the recognition that children are different, sentencing court are required to consider the attributes of youth when imposing sentence and have full discretion to impose a sentence below the guidelines and even less than a mandatory sentencing enhancement otherwise requires. see *Houston-Sconiers*, at Id.

Meippen's case mirrors *Houston-Sconiers*. Meippen seeks a sentencing hearing where the court has the discretion to determine whether his diminished culpability due to his youthfulness where the court must consider and weigh the mitigating qualities of youth against any aggravating circumstances. "Trial courts must consider mitigating qualities of youth at sentencing and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements." 188 Wn.2d at 21.

In *Houston-Sconiers*, the court held a judge had the discretion to run multiple firearm enhancements concurrently with each other, notwithstanding the mandatory language of the statute. This same rule applies here to a mandatory term

which know this Court has the discretion to ignore.

It is beyond peradventure that Houston-Sconiers changed the law regarding whether a sentencing court possess the judicial discretion to impose a sentence less than the otherwise-applicable mandatory minimum. In fact, Division II has so held, albeit in an unpublished decision. *Matter of Smith*, supra.

This change in the law is material to Meippen's sentence, it makes no difference, legally speaking, that Meippen did not seek an exceptional lenient term or a sentence below the otherwise-applicable minimum. A trial court errs when it operates under the mistaken belief that it did not have the discretion to impose a mitigated exceptional sentence for which a defendant may have been eligible." *State v. McFarland*, 399 P.3d 1106, 1110-11(2017). When a sentence is imposed based on a misunderstanding of the relevant sentencing discretion, that sentence is invalid. *In re Goodwin*, 146 Wash.2d 861, 868, 50 P.3d 618, 622 (2002).

There is no doubt that this change in the law that applies retroactively. Houston-Sconiers changed the substantive law, not the procedural law. That change applies retroactively. *In re Lavery*, 154 Wash.2d 249, 258, 111 P.3d 837 (2005) (quoting *in re Greening*, 141 Wash.2d 687, 697, 9 P.3d 206 (2000)).

The children are different constitutional rule applies retroactively. The United States Supreme Court made that

point clear in *Montgomery v. Louisiana*, 136 S.Ct. 718, 729, 193 L.Ed.2d 599 (2016), when it stated:

The Court now holds that when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral courts to give retroactive effect to that rule. Teague conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts.

Miller was a new substantive rule of constitutional law. *Montgomery* held that Miller announced a substantive rule of constitutional law. *Montgomery* further explained.

If a state collateral proceeding is open to a claim controlled by federal law, the state court has the duty to grant the relief that federal law requires. *Yates*, 484 U.S. at 218. Where state collateral review proceedings permit a prisoner to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.

*Montgomery*, 136 S.Ct at 731-32. Division II of the Court of Appeals reached the same decision in the unpublished Smith decision cited previously.

This Court should transfer Meippen's successive to the trial trial court with instruction to conduct a reference hearing and once the reference hearing has and/or order a new sentencing hearing.

C. STATEMENT OF FINANCES

The Court has already waived the filing fee and assigned the petition the above case number

D. REQUEST FOR RELIEF

I want this court to grant me a new sentencing hearing.

