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SUPREME COURT
STATE OF WASHINGTON
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NO. 95394-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of
TIME RIKAT MEIPPEN,
Petitioner.

AMENDED SUPPLEMENTAL BRIEF OF RESPONDENT

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A. INTRODUCTION

Except in rare cases, the Eighth Amendment prohibits sentences that deprive juveniles of meaningful opportunities for release in their lifetimes. But the Eighth Amendment is not implicated for every juvenile charged in adult court, nor does it prohibit ever applying mandatory sentencing provisions to any juvenile. Mandatory sentencing implicates the Eighth Amendment only when it denies juveniles a meaningful opportunity for release. This Court recently determined that on collateral review, resentencing is not necessary for offenders with the opportunity for release after 20 years.¹ Meippen, whose sentence is 19.25 years, assuring his release at age 35, is not entitled to resentencing.

Meippen misstates the holding in State v. Houston-Sconiers² as interpreting the Sentencing Reform Act (“SRA”) to require complete discretion *any* time a juvenile is sentenced in adult court. To the extent that Houston-Sconiers includes language suggesting that the Eighth Amendment prohibits sentencing courts from *ever* applying mandatory adult-sentencing provisions to juveniles, that is incorrect and this Court should now clarify its opinion in that case. Under the Eighth Amendment, discretion is required only when a juvenile faces an effective life sentence.

¹ In re Pers. Restraint of Scott, 190 Wn.2d 586, 416 P.3d 1182 (2018).

² 188 Wn.2d 1, 391 P.3d 409 (2017).

B. ISSUES PRESENTED

1. Except for a few juvenile murderers who demonstrate sufficient maturity and corruption, the Eighth Amendment's prohibition on "cruel and unusual punishments" guarantees juveniles a meaningful opportunity for release in their lifetimes. Meippen was 16 when he robbed and shot a store clerk. Meippen will be released at age 35. Has Meippen failed to show that his sentence is cruel and unusual?

2. An exception to the one-year time limit for collateral attacks exists when there has been a significant change in the law, *material to the sentence challenged*, that applies retroactively. In Houston-Sconiers, this Court concluded that sentencing provisions mandating effective life sentences for juveniles violate the Eighth Amendment, and must be discretionary. Has Meippen failed to establish that Houston-Sconiers is material to his sentence of 19.25 years?

C. STATEMENT OF THE CASE

Meippen was convicted of first-degree robbery with a firearm enhancement, first-degree assault (with no enhancement), and second-degree unlawful possession of a firearm. App. to Response to Pet., at pgs. 1-2. He sought a low-end standard-range sentence based on his youth and immaturity. Transcript at 15-17 (Attached to Pers. Restraint Pet). The court rejected Meippen's request and imposed a sentence of 231 months,

or 19.25 years.³ App. to Response to Pet., at pg. 4. Meippen unsuccessfully appealed; the mandate issued May 29, 2009. App. to Response to Pet., at pg. 10. Meippen's earned release date for this case⁴ is October 28, 2025. App. A, at pgs. 2-3. He will be 35.

D. ARGUMENT

1. MEIPPEN'S SENTENCE DOES NOT VIOLATE THE EIGHTH AMENDMENT.

Since 2005, the United States Supreme Court has decided four Eighth Amendment cases altering juvenile sentencing. In Roper v. Simmons, the Court held the death penalty for juveniles to be cruel and unusual because characteristics of youth make juvenile offenders potentially less culpable and more redeemable than adults. 543 U.S. 551, 569, 572, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).

The Court extended those principles to bar sentences of life without parole for juvenile non-murderers. Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). The Court did not require a guarantee of eventual freedom to such offenders, but only "some

³ The sentence was composed of 171 months for first-degree assault, with *concurrent* time for both first-degree robbery and second-degree unlawful possession of a firearm, along with a *consecutive* 60-month term for the single firearm enhancement.

⁴ While he was in custody on this case, Meippen committed and was convicted of second-degree assault and conspiracy to commit bail jumping. He was sentenced to 43 months to run consecutively to this case, and he will be released on 12/28/2027. App. A, at pg. 4.

meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 560 U.S. at 75.

In Miller v. Alabama, the Court expanded Graham to bar *mandatory* life-without-parole sentences for juvenile murderers because it prevented judges from taking into account attributes of youth. 567 U.S. 460, 474, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). The Court did not totally ban life without parole for juvenile killers, but said it should be uncommon. Id. at 479.

In Montgomery v. Louisiana, the Court held that Miller was both substantive and procedural and is retroactive. Montgomery clarified that Miller did not merely require a procedure to consider youth at sentencing when the juvenile faces a life sentence, but also required that life sentences not be imposed on juveniles whose crimes reflected transient immaturity. ___ U.S. ___, 136 S. Ct. 718, 734, 193 L. Ed. 2d 599 (2016).

Thus, the Eighth Amendment requires that in those particular cases when a juvenile faces life without parole — literally or effectively — the court must individually consider the mitigating qualities of youth, and recognize that a life sentence is inappropriate except for juvenile murderers who have sufficient maturity and corruption. State v. Ramos, 187 Wn.2d 420, 428-29, 387 P.3d 650 (2017). In other words, all juvenile non-murderers must have a meaningful opportunity for release in their

lifetimes. But the Eighth Amendment does not require absolute discretion in *all* cases, nor does it prohibit Meippen's 19.25-year sentence.⁵

In Houston-Sconiers, the two juvenile defendants faced possible sentences of 40.25 years and 45.25 years, a large portion of which was based on mandatory firearm enhancements. 188 Wn.2d at 8. The sentencing court imposed exceptional sentences below the standard range on all counts, but expressed frustration that the mandatory firearm enhancements prevented it from going lower than 26 and 31 years. Id. at 20-21. Resting entirely on the Eighth Amendment, this Court held that the sentencing court was not *required* to impose the firearm-enhancement time. Id. at 21. Instead, this Court said that where mandatory adult-sentencing provisions result in extreme sentences for juveniles (the defendants there faced 40.25 and 45.25 years), the Eighth Amendment requires a Miller hearing and discretion to deviate from otherwise-

⁵ Courts in other jurisdictions have recognized that the Eighth Amendment has no application to sentences that are not the functional equivalent of life in prison. See e.g., Demirdjian v. Gipson, 832 F.3d 1060, 1077 (9th Cir. 2016) (sentence providing for parole at age 66 did not trigger Miller protections); Commonwealth v. Bebout, 186 A.3d 462, 469-70 (Penn. 2018) (minimum 45-year sentence, with parole at age 60, not de facto life sentence); State v. Steele, 915 N.W.2d 560, 626 (Neb. 2018) (sentence providing for parole at age 67 not de facto life sentence); Sen v. State, 390 P.3d 769, 777 (Wyo. 2017) (sentence providing for parole after 35 years, at age 50, not de facto life sentence); Steilman v. Michael, 407 P.3d 313, 320 (Mont. 2017) (sentence providing opportunity for release after 31.33 years not de facto life sentence); State v. Taylor G., 110 A.3d 338, 345-46 (Conn. 2015) (10-year sentence did not implicate Miller).

mandatory provisions. Id. In so holding, this Court cited to cases where juveniles faced 50 years, 52.5 years, and 45 years. Id. at 26.

To avoid the “risk of disproportionate punishment,” the Eighth Amendment requires sentencing courts to consider youth before imposing the “harshest prison sentence” — i.e., life in prison without parole. Miller, 567 U.S. at 479. But extending this principle to *all* juvenile sentences would release Miller and Graham from their Eighth Amendment moorings. Thus, Houston-Sconiers does not apply to sentences that do not approach the functional equivalent of life in prison.

Here, Meippen faced 19.25 years, including five years for a single firearm enhancement. The parties and the court recognized the mandatory nature of the firearm enhancement, but unlike the sentencing court in Houston-Sconiers, Meippen’s sentencing judge expressed no desire to impose a lesser sentence and specifically declined to impose the low end of the standard range. Transcript at 15-17.

Meippen’s case does not implicate the Eighth Amendment because his sentence is not an effective life sentence, and he is assured of release well within his lifetime. He is not entitled to collateral relief. See In re Pers. Restraint of Benn, 134 Wn.2d 868, 884-85, 952 P.2d 116 (1998) (petitioner must establish actual and substantial prejudice from a constitutional error).

This Court’s recent holding in Scott should solidify this point. Scott sought collateral relief from a final sentence of 900 months — 75 years. 190 Wn.2d at 589. This Court concluded that for juvenile offenders serving effective life sentences whose cases are final, RCW 9.94A.730 (the “Miller fix” statute) generally remedies a failure at sentencing to conduct an individualized inquiry into the mitigating qualities of youth. Id. at 597.

Pointing to Montgomery, in which the Supreme Court said that states are not required to “relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole,” this Court held that Scott was not entitled to collateral relief because RCW 9.94A.730 provided him a meaningful opportunity for release — after serving 20 years. Scott, 190 Wn.2d at 592. This Court said that Houston-Sconiers did not require resentencing for Scott because Houston-Sconiers was a direct appeal. Id. at 594-95. It follows, then, that if on collateral review the opportunity for release *after 20 years* remedies a sentencing court’s failure to conduct a Miller hearing, then Meippen’s *19.25-year sentence* for shooting a man is not cruel and unusual.⁶

⁶ Meippen misstates the State’s position to be that the Eighth Amendment is implicated “if a person receives a sentence in excess of 20 years.” Supp. Brf. of Pet. at 11. The legislature’s decision to grant statutory relief to juvenile offenders after serving at least 20 years does not mean that sentences greater than 20 years necessarily implicate or violate the Eighth Amendment.

Meippen misreads this Court's decision in Houston-Sconiers as interpreting the SRA to require adult-sentencing courts to ignore all mandatory provisions when imposing sentence on *any* juvenile. See Supp. Brf. of Pet. at 11 (“Houston-Sconiers found th[e] absence of discretion violated the Eighth Amendment without regard to the length of sentence imposed.”). But nothing in the plain language of the firearm enhancement statute (or any other statute cited by Meippen) explicitly grants sentencing courts discretion as to juvenile offenders. And this Court cannot rewrite statutes to expressly exclude juvenile offenders. See State v. Furman, 122 Wn.2d 440, 458, 858 P.2d 1092 (1993) (court cannot rewrite statutes to exempt juveniles from death penalty). But this Court must interpret statutes to render them constitutional when possible. Id. That is what this Court did in Houston-Sconiers.

Houston-Sconiers noted that the automatic-adult-court jurisdiction statute and the firearm enhancement statute do not explicitly cross-reference one another. This Court thereby avoided a constitutional dilemma *arising from the length of the potential sentence* by reading the weapon-enhancement statute as discretionary for juveniles facing effective life sentences. 188 Wn.2d at 24-26. That is important, because Houston-Sconiers' interpretation of the enhancement statute to grant such discretion was necessary *only* to comport with the Eighth Amendment. Thus, its

holding applies *only* to juveniles facing effective life sentences, because, as discussed previously, the Eighth Amendment is implicated only in such sentences. This Court should reject Meippen's over-broad reading of Houston-Sconiers.

Meippen's 19.25-year sentence is not an effective life sentence. It does not violate the Eighth Amendment. Meippen cannot show a constitutional error. His personal restraint petition should be dismissed.

2. MEIPPEN'S PETITION IS UNTIMELY BECAUSE HOUSTON-SCONIERS IS NOT MATERIAL TO HIS SENTENCE.

RCW 10.73.090 limits collateral attacks to one year after the judgment becomes final, if it is valid on its face. RCW 10.73.090(1). An exception exists for significant changes in the law that are material to the sentence, and that apply retroactively. RCW 10.73.100(6). To be a significant change in the law, an opinion must effectively overturn a prior decision that originally determined a material issue. State v. Miller, 185 Wn.2d 111, 114-15, 371 P.3d 528 (2016). A case settling a point of law without overturning precedent is not a significant change in the law. In re Pers. Restraint of Light-Roth, ___ Wn.2d ___, 422 P.3d 444, 449 (2018).

In State v. Brown, this Court said the weapon-enhancement statute did not allow judicial discretion. 139 Wn.2d 20, 983 P.2d 608 (1999).

Houston-Sconiers applied Miller to hold that sentencing courts have discretion when the potential sentence implicates the Eighth Amendment. 188 Wn.2d at 25. Miller is a significant change in the law that applies retroactively. Montgomery, 136 S. Ct. at 736.

Meippen's 19.25-year sentence does not implicate the Eighth Amendment because it is not an effective life sentence. Where Houston-Sconiers overturned Brown, it did so *only* where it conflicts with the Eighth Amendment. It is not material to Meippen's sentence.

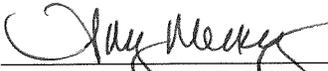
E. CONCLUSION

For the above-stated reasons, the State respectfully asks this Court to dismiss this untimely personal restraint petition.

DATED this 19th day of October, 2018.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
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Senior Deputy Prosecuting Attorney
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Office WSBA #91002

APPENDIX A

Inmate: MEIPPEN, Time R (315209)

Gender: Male	DOB: 02/06/1990	Age: 28	Category: Regular Inmate	Body Status: Active Inmate
RLC: HV	Wrap-Around: No	Comm. Concern: No	Custody Level: Minimum 3 - Long Term Minimum	Location: CRCC — I / IB341L
ERD: 12/28/2027				CC/CCO: Westphal, Jeremy K

Offender Information (Combined)

Prison Max Expiration Date:	03/24/2030	Last Static Risk Assessment Date:	09/11/2018	DOSA:
Planned Release Date:		Last Offender Need Assessment Date:	10/02/2017	ISRB? No
Earned Release Date:	12/28/2027	RLC Override Reason:		CCB? No
ESR Sex Offender Level:				SOSSA? No
ESR Sex Offender Level Date:		Offender Release Plan:	Notification	WEP? No
County Sex Offender Level:		Victim Witness Eligible?	Yes	
Registration Required?		County Of First Felony Conviction:	Spokane	
ORCS?	No	P U L H E S D X T R 1 1 1 1 1 1 1 1 1 0		
IDCNF?	No			
SMICNF?	No			

Sentence Structure (Field)

Cause: AB – 061059057 – King

Convicted Name:	Date Of Sentence:	Cause Status:	Offense Category:	
Time Meippen	01/23/2008	Active	Robbery	
Distinct Supervision Type:	Start Date:	Scheduled End Date:	Consecutive Supervision:	
CCP	03/24/2030	03/23/2033		
Count: 1 – RCW 9A.56.200 – Robbery 1				
Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
03/24/2030	0Y, 18M, 0D	548	09/23/2031	Life
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
Yes	Y			
Count: 2 – RCW 9A.36.011 – Assault 1				
Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
03/24/2030	0Y, 36M, 0D	1,095	03/23/2033	Life
Violent Offense?	DW / FA Enhancement?	Anticipatory:		

Yes N

Cause: AC – 061059057 – King

Convicted Name:	Date Of Sentence:	Cause Status:	Offense Category:
Time Meppen	01/23/2008	Active	Assault
Distinct Supervision Type:	Start Date:	Scheduled End Date:	Consecutive Supervision:
MON	03/24/2030	03/24/2030	

Count: 3 – RCW 9.41.040(1)(b) – Unlawful Possession of a Firearm 2

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
03/24/2030	0Y, 0M, 0D	0	03/24/2030	04/28/2034
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
No	N			

Cause: AD – 071029938 – King

Convicted Name:	Date Of Sentence:	Cause Status:	Offense Category:
Time Meppen	02/26/2008	Active	Unknown
Distinct Supervision Type:	Start Date:	Scheduled End Date:	Consecutive Supervision:
MON	03/24/2030	03/24/2030	

Count: 1 – RCW 9A.76.170 – Bail Jump

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
03/24/2030	0Y, 0M, 0D	0	03/24/2030	07/08/2038
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
No	N	Conspiracy		

Cause: AE – 071082341 – King

Convicted Name:	Date Of Sentence:	Cause Status:	Offense Category:
Time Meppen	02/26/2008	Active	Assault
Distinct Supervision Type:	Start Date:	Scheduled End Date:	Consecutive Supervision:
CCP	03/24/2030	09/23/2031	

Count: 1 – RCW 9A.36.021 – Assault 2

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
03/24/2030	0Y, 18M, 0D	548	09/23/2031	08/23/2036
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
Yes	N			

Sentence Structure (Inmate)

Cause: AB – 061059057 – King

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Time Meppen	01/23/2008	
Time Start Date:	Confinement Length:	Earned Release Date:	
03/14/2008	0Y, 231M, 0D	10/28/2025	

Count: 1 – RCW 9A.56.200 – Robbery 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 60M, 0D		33.33%	12/23/2016	02/21/2029	Life Yes
Supervision Type:	Supervision Length:	Consecutive Count:		Hold To Stat Max Expiration:					
CCP	0Y, 18M, 0D								

Count: 2 – RCW 9A.36.011 – Assault 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 171M, 0D		10.00%	10/28/2025	11/17/2028	Life Yes
Supervision Type:	Supervision Length:	Consecutive Count:		Hold To Stat Max Expiration:					
CCP	0Y, 36M, 0D								

Cause: AC – 061059057 – King

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Time Meippen	01/23/2008	
Time Start Date:	Confinement Length:	Earned Release Date:	
03/13/2013	0Y, 12M, 0D	02/05/2014	

Count: 3 – RCW 9A.41.040(1)(b) – Unlawful Possession of a Firearm 2

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 12M, 0D		33.33%	02/05/2014	03/13/2014	04/28/2034 No
Supervision Type:	Supervision Length:	Consecutive Count:		Hold To Stat Max Expiration:					
MON	0Y, 0M, 0D								

Cause: AD – 071029938 – King

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Time Meippen	02/26/2008	AB – 061059057 –
Time Start Date:	Confinement Length:	Earned Release Date:	
10/28/2025	0Y, 24M, 21D	07/07/2026	

Count: 1 – RCW 9A.76.170 – Bail Jump

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 24M, 21D		33.33%	07/07/2026	11/11/2026	07/08/2038 No
Supervision Type:	Supervision Length:	Consecutive Count:		Hold To Stat Max Expiration:					
MON	0Y, 0M, 0D								

Cause: AE – 071082341 – King

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
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Washington Time Meippen 02/26/2008 AB - 061059057 -
 Time Start Date: Confinement Length: Earned Release Date:
 10/28/2025 0Y, 43M, 0D 12/28/2027

Count: 1 - RCW 9A.36.021 - Assault 2

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: ERT %: ERD: MaxEx: Stat Max: Violent Offense?
 0Y, 43M, 0D 33.33% 12/28/2027 03/24/2030 08/23/2036 Yes
 Supervision Type: Supervision Length: Consecutive Count: Hold To Stat Max Expiration:
 CCP 0Y, 18M, 0D

Gain-Loss

Cause - 061059057 - King

Cause Info
 Convicted Name: Time Meippen (315209) Date Of Sentence: 01/23/2008 Schedule End Date: Cause Status:
 Offense Type: Unknown DOSA: No Intake Complete: No EM Flag: No
Distinct Supervision Info
 Cause Prefix: AA Type: MON Statutory Max Date: Life Schedule End Date: Tolling Indicator: No
Supervision Activities

Supervision Type	Activity Type	Activity Date	State	Supervising Officer	Field Office
There is no data to display.					

Cause - 061059057 - King

Cause Info
 Convicted Name: Time Meippen (315209) Date Of Sentence: 01/23/2008 Schedule End Date: 03/23/2033 Cause Status:
 Offense Type: Robbery 1 DOSA: No Intake Complete: No EM Flag: No
Distinct Supervision Info
 Cause Prefix: AB Type: CCP Statutory Max Date: Life Schedule End Date: 03/23/2033 Tolling Indicator: No
Supervision Activities

Supervision Type	Activity Type	Activity Date	State	Supervising Officer	Field Office
There is no data to display.					

Cause - 061059057 - King

Cause Info
 Convicted Name: Time Meippen (315209) Date Of Sentence: 01/23/2008 Schedule End Date: 03/24/2030 Cause Status:
 Offense Type: Assault, Other DOSA: No Intake Complete: No EM Flag: No
Distinct Supervision Info
 Cause Prefix: AC Type: MON Statutory Max Date: 04/28/2034 Schedule End Date: 03/24/2030 Tolling Indicator: No
Supervision Activities

Supervision Type	Activity Type	Activity Date	State	Supervising Officer	Field Office
There is no data to display.					

Cause - 071029938 - King

Cause Info					
Convicted Name: Time Meippen (315209)	Date Of Sentence: 02/26/2008	Schedule End Date: 03/24/2030	Cause Status:		
Offense Type: Other Felony	DOSA: No	Intake Complete: No	EM Flag: No		
Distinct Supervision Info					
Cause Prefix: AD	Type: MON	Statutory Max Date: 07/08/2038	Schedule End Date: 03/24/2030	Tolling Indicator: No	
Supervision Activities					
Supervision Type	Activity Type	Activity Date	State	Supervising Officer	Field Office
There is no data to display.					

Cause - 071082341 - King

Cause Info					
Convicted Name: Time Meippen (315209)	Date Of Sentence: 02/26/2008	Schedule End Date: 09/23/2031	Cause Status:		
Offense Type: Assault II	DOSA: No	Intake Complete: No	EM Flag: No		
Distinct Supervision Info					
Cause Prefix: AE	Type: CCP	Statutory Max Date: 08/23/2036	Schedule End Date: 09/23/2031	Tolling Indicator: No	
Supervision Activities					
Supervision Type	Activity Type	Activity Date	State	Supervising Officer	Field Office
There is no data to display.					

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