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Washington State
Supreme Court

No. 95394-5-I

King County Cause No. 06-1-05905-7SEA

SUPREME COURT OF THE STATE OF
WASHINGTON

In re the Personal Restraint Petition of

TIME RIKAT MEIPPEN,

Petitioner,

REPLY IN SUPPORT OF
PERSONAL RESTRAINT PETITION

Respectfully Submitted

REGINALD BELL, SR.,
Inmate Legal Advisor

A. INTRODUCTION

Time Rikat Meippen argues that he is entitled to a new sentencing hearing because the law has changed and now recognizes that children are different, both constitutionally and statutorily speaking. The State argues that Meippen's PRP is untimely - that the laws has always recognized youth as a relevant to certain mitigating circumstances. It also argues because Mr. Meippen's sentence is not a de facto life sentence imposed on a juvenile it does not violate the Eighth Amendment.

In this reply, Meippen shows that the law has changed and that the change in the law is material to his sentence. The change in the law does not mandate a different sentence and does not restrict the State's ability to argue what it perceives to be the aggravating aspects of the crime, but it guarantees an individualized consideration of Meippen's youth and empowers the sentencing judge to impose an exceptionally lenient sentence if it finds such a sentence is justified.

B. ARGUMENT

Introduction

This PRP raises a question of whether this Court's recent decision in *State v. Houston-Sconters*, 188 Wn.2d 1, 391 P.3d 409, (2017), announced a new rule that applies retroactively. It also raises a secondary issue of whether

the emerging constitutional doctrine that "children are different" applies to Meippen. 1.

The Exceptional Sentence Law Has Changed

To determine whether *State v. Houston-Sconiers* changes the law, it is important to determine what the law was regarding whether youth was considered relevant to any mitigating circumstances prior to *Houston-Sconiers*. The Washington Supreme Court explained the applicable law in *State v. Brown*, 139 Wash. 2d. 20, 983 P.2d 608 (1999).

Prior to *Houston-Sconiers* the court precluded any argument for concurrent imposition of weapon enhancements. The Court held unequivocally that if the weapon enhancement sentencing statute "is to have any substance, it must mean that courts may not deviate from the term of confinement required by the deadly weapon enhancement." *Id.* *Houston-Sconiers* overruled *Brown* expressly with respect to juveniles. *Houston-Sconiers* overruled the mandatory nature of RCW 9.94A.533 as interpreted by *Brown*. Thus, *Houston-Sconiers* constitute significant change in the law.

The holding in *Houston-Sconiers* must be applied retroactively, as it provide new interpretation of the SRA. *Houston-Sconiers* struck down the mandatory nature of the enhancements as unconstitutional when applied to juvenile offenders for the first time. It now gives the trial

court the discretion to depart as far as they want below otherwise applicable ranges and/or sentencing enhancements under the Sentencing Reform Act of 1981, RCW 9.94A, when sentencing juveniles in adult court, regardless of how the juvenile got there. 188 Wn.2d 1, 391 P.3d 409 (2017).

The Change in the Law is Material to Meippen Sentence Materiality does not require the ability to foretell the future. Instead, to establish that the change in the law is material to the case under review a Petitioner need only make out a prima facie case that the new law could benefit him. Meippen easily meets that standard. Mr. Meippen, a 17 year old child at the time he committed his crime, he was wrongly denied the opportunity to have the sentencing court meaningfully consider his youth as a mitigating factor warranting a departure from the standard range and concurrent imposition of the weapon enhancements. The Court was misinformed that the firearm enhanced sentence must be served consecutively to the base sentence. As held in Light-Roth, 200 Wash.App at 160, the courts incorrect belief that it lacked discretion to impose the weapon enhancements concurrently based on Mr. Meippens youth is material to his sentence.

Thus, Mr. Meippen's PRP meets all the requirements of

of the exception to the one-year limit codified at RCW 10.73.100(6) and the PRP is thus timely.

C. CONCLUSION

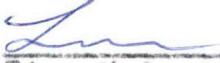
Categorically speaking, a 16 year-old does not have an adult brain. That is now the starting point for the individualized consideration that flows from the recognition that "children are different" and that the distinctive attributes of youth diminish culpability. *Montgomery v. Louisiana*, 136 S.Ct. 718, 733, 193 L.Ed.2d 599 (2016).

This Court should hold that Meippen's petition is timely because the law has changed and remand for a new sentencing hearing.

DATED this 28th day of May, 2018.

Respectfully Submitted:

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CERTIFICATE OF MAILING

The undersigned certifies that on the date below I caused a true and correct copy of the document to which this certificate is attached to be mailed to respondent attorney of record.

5.31.18 
DATE SIGNATURE